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OPEN MEETING COVER SHEET

MEETING DATE: FEBRUARY 28, 2019

DATE DELIVERED: FEBRUARY 21, 2019

AGENDA ITEM NO.: 2

CAPTION: Docket No. 48350; SOAH No. 473-19-2463.ws
Application of the city of Dayton for
Certificates of convenience and Necessity in
Liberty and Harris Counties

ACTION REQUESTED: Discussion and possible action with respect
to Draft Preliminary Order

Distribution List.

Commissioners' Offices (6)
Central Records (Open Meeting Notebook)
Pemberton, Margaret (5)
Journey, Stephen
OPD Support Team
Namazi, Jonthan



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PUC DOCKET NO. 48350
SOAH DOCKET NO. 473-19-2463.WS

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
DAYTON FOR CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
LIBERTY AND HARRIS COUNTIES	§	

DRAFT PRELIMINARY ORDER

On May 8, 2018, the City of Dayton filed an application under Texas Water Code (TWC) § 13.244¹ to obtain water and sewer certificates of convenience and necessity (CCN) in Liberty and Harris Counties. This preliminary order identifies the issues that must be addressed in this proceeding.

The City of Dayton, a municipality with fewer than 10,000 residents, seeks approval of its application to obtain water and sewer CCNs encompassing 80,045 acres. The City of Dayton currently serves 1,080 existing water customers—1,008 with a 5/8-inch or 3/4-inch meter and 72 with a 1-inch meter or larger—and proposes to add 116 customers with 5/8-inch or 3/4-inch meters under Texas Commission on Environmental Quality (TCEQ) public water system number 146002.² Additionally, the City serves 935 residential, 139 commercial, and 6 industrial sewer customers and proposes to add 116 more connections under TCEQ discharge permit number 10564-004.³ Due to the construction of three subdivisions, additional water and sewer service will be needed to serve the new connections.⁴

In response to the City of Dayton’s application, 13 parties requested to intervene and 38 parties filed requests under TWC § 13.246(h) to exclude tracts of land from the City’s proposed service area. Additionally, Woodland Hills Water, LLC, T&W Water Service, South Central Water Company, Aqua Texas, Inc., River Ranch Municipal Utility District No. 2, River Ranch Municipal Utility District No. 3, River Ranch Municipal Utility District No. 4, River Ranch

¹ Texas Water Code Ann. § 13.244 (West 2008 & Supp. 2017).

² Application at 8–9 (May 8, 2018).

³ *Id.*

⁴ Application at 18, Att. 2.

Municipal Utility District No. 5, River Ranch Municipal Utility District No. 6, River Ranch Municipal Utility District No. 7, River Ranch Municipal Utility District No. 13, River Ranch Municipal Utility District No. 14, and River Ranch Municipal Utility District No. 15 (collectively, River Ranch MUDs) filed requests for a public hearing.

T&W Water Service and South Central Water Company assert, among other things, that as holders of water CCNs adjacent to or in the vicinity of the requested certificated area, granting the City's requested CCNs will adversely affect T&W and South Central's ability to serve their customers and their investments in water assets.⁵ Aqua Texas asserts, among other things, that if the City's application is granted, Aqua Texas will no longer have the ability to respond to neighboring landowner requests for service, and that the City's application failed to address regionalization.⁶ The River Ranch MUDs assert that each did not receive proper notice of the application.⁷ In response to the large number of opt-out requests, the City reduced its requested CCN area from 80,045 acres to 15,752 acres.⁸ After the City reduced the proposed boundaries of its requested service area, T&W Water Service, South Central Water Company, the River Ranch MUDs, and Woodland Hills Water, LLC withdrew their requests to intervene and for a public hearing.⁹

On February 5, 2019, the Commission referred this docket to SOAH. The City of Dayton was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by February 12, 2019. Commission Staff, the City of Dayton,⁷ and Aqua Texas each timely filed a list of issues on February 12, 2019.

⁵ T&W Water Service Motion to Intervene and Request for Public Hearing (Jul. 16, 2018); South Central Water Company Motion to Intervene and Request for Public Hearing (Jul. 18, 2018).

⁶ Aqua Texas Motion to Intervene and Request for Public Hearing (Jul. 19, 2018).

⁷ Motion of River Ranch Municipal Utility Districts to Intervene and Request for Hearing (Aug. 20, 2018).

⁸ Commission Staff's Recommendation on Sufficiency of Supplemental Mapping at 1 (Feb. 4, 2019).

⁹ South Central Water Company Motion to Withdraw (Jan. 8, 2019); T&W Water Service Motion to Withdraw (Jan. 8, 2019); River Ranch MUDs Motion to Withdraw (Jan. 17, 2019).

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹⁰ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did the City's notice comply with TWC § 13.246 and 16 Texas Administrative Code (TAC) § 24.235?

Water

2. Does the City's requested water service area overlap with the certificated service areas of other entities? If so, what specific areas will overlap? Has the City received appropriate consent to provide water service within the entities' service boundaries?
3. What modifications, if any, must be made to reflect land removed from the requested water service area because of a qualified landowner's election to exclude some or all of the landowner's property under TWC § 13.246(h) and 16 TAC § 24.227(h)?
4. Does the City possess the financial, managerial, and technical capability to provide continuous and adequate water service to the entire unserved area? TWC § 13.241(a) and 16 TAC § 24.227(a).
5. What evidence establishes that a water CCN should be granted for the entire 15.752 acres? TWC § 13.246(c)(2) and 16 TAC § 24.227(d).
6. Should the Commission grant the City a water CCN for only a portion of the requested 15.572 acres? If so, in what area should the Commission issue the certificate and what evidence establishes the granting of a partial CCN?
7. Does the City have access to an adequate supply of water or have a long-term contract for purchased water with an entity whose system meets the requirements of 16 TAC § 24.227(a)(1)(A)? TWC § 13.241(b)(2) and 16 TAC § 24.227(a)(1)(B).

¹⁰ Tex. Gov't Code § 2003.049(e).

8. Would the requested unserved area require construction of a physically separate water system? If so, has the City proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.227(b).
9. Is the requested water CCN necessary for the service, accommodation, convenience, or safety of the public in the entire unserved area? TWC § 13.246(b) and 16 TAC § 24.227(c).
10. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(d) weigh in favor of granting the City a water CCN to include the entire unserved area? In answering this issue, please address the following sub-issues:
 - a. Is the requested sewer service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.227(d)(1).
 - b. Does the entire unserved area currently need water service? TWC § 13.246(c)(2) and 16 TAC § 24.227(d)(2).
 - i. Have any landowners, prospective landowners, tenants, or residents requested water service in the unserved area?
 - (1) If so, were the requests for service for the entire unserved area?
 - (2) If not, should certification of the City's service area be limited to areas where the City is currently providing service or to areas where the City has received requests for service? TWC § 13.246(b) and 16 TAC § 24.227(c).
 - ii. Are there economic needs for additional water service in the entire unserved area?
 - iii. Are there environmental needs for additional water service in the entire unserved area?
 - iv. Are there written applications or requests for water service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the entire unserved area?
 - c. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(d)(3), if the City is granted a water CCN to include the entire unserved area, what is the effect on:
 - i. the City of Dayton,
 - ii. landowners located within the unserved area, and

- iii. any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the unserved area? In particular, how will granting the City a water CCN affect the development plans of any municipality?
- d. Taking into consideration the current and projected density and land use of the City's requested unserved area, does the City have the ability to provide adequate water service to the entire unserved area, including meeting the standards of the TCEQ and the Commission? TWC § 13.246(c)(4) and 16 TAC § 24.227(d)(4).
- e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.227(d)(5).
- f. Is the City financially able to pay for the facilities necessary to provide continuous and adequate water service to the entire unserved area? TWC § 13.246(c)(6) and 16 TAC § 24.227(d)(6).
 - i. Does the City have existing facilities adequate to provide continuous and adequate service to the entire unserved area? If not, are additional facilities needed to ensure that continuous and adequate service can be provided to the entire unserved area?
 - ii. Is the City planning to build facilities in the future? If so, what facilities is the City planning to build? Where will these facilities be located? When will the facilities be built? Who will construct the facilities? Has the City retained or engaged engineering or construction firms regarding the facilities? How will the addition of new facilities impact the bills of the City's existing customers?
 - iii. What is the amount of credit available to the City? How will the City finance new facilities or upgrades to existing facilities?
 - iv. Does the City possess the ability to finance facilities and upgrades to facilities through its retained earnings?
- g. How, if at all, would environmental integrity be affected by granting the City a water CCN to include the entire unserved area? TWC § 13.246(c)(7) and 16 TAC § 24.227(d)(7).
- h. Is it probable that water service would be improved by granting the City a water CCN to include the entire unserved area? TWC § 13.246(c)(8) and 16 TAC § 24.227(d)(8).

- i. Is it probable that costs to consumers would be lowered by granting the City a water CCN to include the entire unserved area? TWC § 13.246(c)(8) and 16 TAC § 24.227(d)(8).
 - j. How, if at all, would the land be affected by granting the City a water CCN to include the entire unserved area? TWC § 13.246(c)(9) and 16 TAC § 24.227(d)(9).
11. Should the Commission require the City, in accordance with TWC § 13.246(d) and 16 TAC § 24.227(e), to provide a bond or other financial assurance to ensure that continuous and adequate water service is provided?
12. If applicable, what were the City's efforts to:
 - a. extend water service to any economically distressed area, within the meaning of TWC § 15.001(11), located within the City's certificated service area; and
 - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).
13. Has a development agreement been reached regarding the development of any portion of the requested service area?
14. Are there any current timetables for when development of any portion of the requested service area will actually begin? If not, when does the City contemplate development occurring?
15. Is any portion of the requested service area within the municipal limits or the extraterritorial jurisdiction of the City?
16. If at all, does the City contemplate beginning annexation proceedings regarding any portion of the requested service area?
17. Does the City have a master plan for any portion of the requested service area?
18. Who will construct any water infrastructure necessary to serve the requested service area? How will that construction be financed? Has the City made any budget projections for the construction of any necessary water infrastructure?
19. Has an engineering plan been completed for any water infrastructure necessary to serve the requested service area? If so, what are the parameters of that plan? If not, when will an engineering firm be engaged to develop such a plan?

20. If the Commission grants the City a water CCN, should the area added to the City's service area only include the area in which the City currently has facilities and is providing water service?
21. Alternatively, if the Commission grants the City a water CCN, should the area added to the City's service area only include the area in which the City currently has facilities and is providing water service, and areas where it has a definite plan to construct facilities to provide water service?
22. Should the authority that may be granted to the City to expand its certificated area be conditioned on facilities necessary to provide continuous and adequate service being installed within a set period of time? If so, what is the appropriate period of time?

Sewer

23. Does the City's requested sewer service area overlap with the certificated service areas of other entities? If so, what specific areas will overlap? Has the City received appropriate consent to provide sewer service within the entities' service boundaries?
24. What modifications, if any, must be made to reflect land removed from the requested sewer service area because of a qualified landowner's election to exclude some or all of the landowner's property under TWC § 13.246(h) and 16 TAC § 24.227(h)?
25. Does the City possess the financial, managerial, and technical capability to provide continuous and adequate sewer service to the entire unserved area? TWC § 13.241(a) and 16 TAC § 24.227(a).
26. What evidence establishes that a sewer CCN should be granted for the entire 15.752 acres? TWC § 13.246(c)(2) and 16 TAC § 24.227(d)
27. Should the Commission grant the City a sewer CCN for only a portion of the requested 15.572 acres? If so, in what area should the Commission issue the certificate and what evidence establishes the granting of a partial CCN?
28. Does the City have access to sewer treatment or capacity, or both, or a long-term contract for purchased sewer treatment or capacity, or both, with an entity whose system meets the requirements of 16 TAC § 24.227(a)(2)(A)? TWC § 13.241(c) and 16 TAC § 24.227(a)(2)(B).

29. What evidence establishes that the City is capable of meeting TCEQ's design criteria for sewer treatment plants and the requirements of the TWC?
30. Would the requested unserved area require construction of a physically separate sewer system? If so, has the applicant proven that regionalization or consolidation with a retail public utility for sewer service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.227(b).
31. Is the requested sewer CCNs necessary for the service, accommodation, convenience, or safety of the public in the entire unserved area? TWC § 13.246(b) and 16 TAC § 24.227(c).
32. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(d) weigh in favor of granting the City a sewer CCN to include the entire unserved area? In answering this issue, please address the following sub-issues:
- a. Is the requested sewer service area currently receiving adequate sewer service? TWC § 13.246(c)(1) and 16 TAC § 24.227(d)(1).
 - b. Does the entire unserved area need additional sewer service? TWC § 13.246(c)(2) and 16 TAC § 24.227(d)(2).
 - i. Have any landowners, prospective landowners, tenants, or residents requested sewer service in the unserved area?
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 - (2) If not, should certification of the City's service area be limited to areas where the City is currently providing service or to areas where the City has received requests for service? TWC § 13.246(b) and 16 TAC § 24.227(c).
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- d. Taking into consideration the current and projected density and land use of the City's requested unserved area, does the City have the ability to provide adequate sewer service to the entire unserved area, including meeting the standards of the TCEQ and the Commission? TWC § 13.246(c)(4) and 16 TAC § 24.227(d)(4).
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- h. Is it probable that sewer service would be improved by granting the City a sewer CCN to include the entire unserved area? TWC § 13.246(c)(8) and 16 TAC § 24.227(d)(8).
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37. Is any portion of the requested service area within the municipal limits or the extraterritorial jurisdiction of the City?
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39. Does the City have a master plan for any portion of the requested service area?
40. Who will construct any sewer infrastructure necessary to serve the requested service area? How will that construction be financed? Has the City made any budget projections for the construction of any necessary sewer infrastructure?

41. Has an engineering plan been completed for any sewer infrastructure necessary to serve the requested service area? If so, what are the parameters of that plan? If not, when will an engineering firm be engaged to develop such a plan?
42. If the Commission grants the City a sewer CCN, should the area added to the City's service area only include the area in which the City currently has facilities and is providing sewer service?
43. Alternatively, if the Commission grants the City a sewer CCN, should the area added to the City's service area only include the area in which the City currently has facilities and is providing sewer service, and areas where it has a definite plan to construct facilities to provide sewer service?
44. Should the authority that may be granted to the City to expand its certificated area be conditioned on facilities necessary to provide continuous and adequate service being installed within a set period of time? If so, what is the appropriate period of time?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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