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DOCKET NO. 49277

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PUBLIC UTILITY COMMISSION
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OF TEXAS

APPLICATION OF THE CITY OF §
FORT WORTH FOR A SEWER §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN TARRANT, §
DENTON, WISE AND PARKER §
COUNTIES §

COMMISSION STAFF'S RECOMMENDATION ON SUFFICIENCY OF REVISED MAPPING

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Staff's Recommendation on Sufficiency of Revised Mapping. In support thereof, Staff shows the following:

I. BACKGROUND

On March 1, 2019, the City of Fort Worth (Fort Worth) filed an application for a sewer certificate of convenience and necessity in Tarrant, Denton, Wise, and Parker Counties. On October 16, 2019, Fort Worth filed supplemental information, constituting a substantial amendment to its original application (Amended Application). The requested service area now consists of 25,452 acres and has no customers and no requests for service.

On October 12, 2020, the administrative law judge (ALJ) issued Order No. 18, requiring Staff to file a final recommendation by January 15, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the Amended Application and, as supported by the attached memorandum of Patricia Garcia of the Commission's Infrastructure Division, recommends that the proposed transaction does not satisfy the criteria in Texas Water Code § 13.246(c) and Texas Administrative Code (TAC) §§ 24.225-24.239. Specifically, Fort Worth has not provided sufficient information related to the need for service in the requested area. There are no utility

customers in the requested service area nor are there any current requests for service.¹ Fort Worth submitted several developer agreements, but none indicate a specific start date for development. As Fort Worth has not adequately shown that there is a need for service in the requested area, Staff consequently does not recommend that the transaction be approved to proceed at this time.

V. CONCLUSION

For the reasons stated above, Staff respectfully requests the entry of an order consistent with the foregoing recommendation that the transaction not be approved to proceed at this time.

Dated: January 8, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

/s/ Rustin Tawater
Rustin Tawater
State Bar No. 24110430
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7230
(512) 936-7268 (facsimile)
rustin.tawater@puc.texas.gov

¹ City of Fort Worth's Response to Commission Staff's First Request for Information at 7 (Nov. 16, 2020).

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 8, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater _____
Rustin Tawater

Public Utility Commission of Texas

Memorandum

TO: Rustin Tawater, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: January 8, 2021

RE: Docket No. 49277 – *Application of the City of Fort Worth for a Sewer Certificate of Convenience and Necessity in Tarrant, Denton, Wise and Parker Counties*

The City of Fort Worth (Fort Worth) filed with the Public Utility Commission of Texas (Commission) an application to obtain a sewer certificate of convenience and necessity (CCN) in Denton, Parker, Tarrant, and Wise Counties, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237. As explained below, I recommend denial of the application.

Background

Fort Worth's original request to obtain a sewer CCN consisted of approximately 261,819 acres and 600,851 customers. The originally requested area was reduced and the current request consists of 26,800 acres and no existing customers, and notice was provided for this revised request.

Comment Period

The comment period ended September 21, 2020. On August 31, 2020, the City of Weatherford (Weatherford) filed a request to intervene in this proceeding, indicating that the service area sought under the amended application extended into Weatherford's extraterritorial jurisdiction (ETJ). On September 4, 2020, Robert and Betty Browder filed a letter requesting that their property be excluded from the requested area.

Fort Worth submitted on November 12, 2020 revised mapping to address Weatherford's and the landowners' comments. Tracy Montes, Infrastructure Division, reviewed the maps and digital data and determined they were sufficient to resolve the landowners' opt-out request and Weatherford's ETJ adjustments. Weatherford withdrew its request to intervene after the revised mapping was submitted. The revised mapping data shows the requested area was

further reduced to approximately 25,452.86 acres with no existing customers and no requests for service. The requested area lies entirely within Fort Worth's ETJ.¹

Factors Considered

TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227 require the Commission to consider certain factors when granting or amending a water or sewer CCN. Therefore, the following criteria were considered.

TWC § 13.246(c)(1) and 16 TAC § 24.227(a), (e)(1) require the Commission to consider the adequacy of service currently provided to the requested area.

There are no customers and no requests for service² in the requested area.

TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2) require the Commission to consider the need for service in the requested area.

Fort Worth has not proven that there is a need for service in the requested area. There are no sewer utility customers and no requests for service in the requested areas.³ Fort Worth submitted several developer agreements. The dates on the agreements range from 2000 through 2019 and none indicate a start date for development. In addition, Fort Worth has no immediate plans to expand and serve the requested area at this time.

TWC §§ 13.241(b) and 13.246(c)(3); and 16 TAC § 24.227(e)(3) require the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area.

Fort Worth would be a certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

The landowners in the area would have their potential options for sewer utility service in the area limited.

The requested area currently does not receive retail sewer utility service and there would be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the request. As stated above, Weatherford intervened in the docket, but after Fort Worth submitted revised mapping Weatherford withdrew its request to intervene.

TWC § 13.246(c)(4) and 16 TAC § 24.227(a), (e)(4) require the Commission to consider the ability of the applicant to provide adequate service.

Fort Worth has the ability to provide adequate service to the requested area through the TCEQ-approved Wastewater Discharge Permit No. WQ0010494013 and a proposed Wastewater Discharge Permit No. WQ00156680001.

¹ Response (November 16, 2020) at page 8.

² Response (November 16, 2020) at page 7.

³ Response (November 16, 2020) at page 7.

TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5) require the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

There are other sewer providers in the surrounding area. Fort Worth did not contact the providers to find out if they would be able to provide service to the requested areas. Fort Worth would be able to serve the areas without building a new wastewater plant. Fort Worth would need to install only collection lines and other collection facilities as needed in the requested areas.

TWC § 13.246(c)(6) and 16 TAC §§ 24.227(a), (e)(6), and 24.11(e) require the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service.

Spencer English, Financial Analyst in the Rate Regulation Division, has provided the following:

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test.

Fort Worth meets two out of the five leverage tests; Fort Worth is only required to meet one. Fort Worth meets the first leverage test with a debt to equity ratio of 0.88, which is less than one. This is calculated by dividing long-term debt of \$6,279,013 by equity of \$7,169,837.⁴ The applicant meets the second by having an investment-grade credit rating of AA from Standard and Poor's Financial Services LLC.

Fort Worth has submitted projected financial statements in its application with no cash shortages predicted, and therefore, meets the operations test. There are also sufficient unrestricted cash reserves available to cover operations and maintenance shortages in the first five years of operations.⁵

TWC § 13.246(d) and 16 TAC § 24.227(f) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

Mr. English also provided the following.

As I explained in the discussion of TWC § 13.246(c)(6) and 16 TAC §§ 24.227(a), (e)(6), and 24.11(e), Fort Worth meets the financial tests. Therefore, I recommend that Fort Worth not be required to provide a bond or other financial assurance to ensure continuous and adequate service.

TWC §§ 13.246(c)(7) and (9) and 16 TAC § 24.227(e)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.

The environmental integrity of the land will be minimally affected as Fort Worth would be able to serve the areas without building a new wastewater plant and would need only to install

⁴ Application at 313.

⁵ *Id* at 315.

collection lines and other collection facilities as needed in the requested areas. Environmental risks of private septic systems would be reduced as landowners in the areas would be able to connect to a public sewer system rather than having on-site sewage facilities.

TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8) require the Commission to consider the probable improvement in service or lowering of cost to consumers.

This is not applicable because there are no customers currently receiving service in the requested service areas. The landowners in the area would have their potential options for sewer utility service in the area limited.

Recommendation

Based on the above information, I recommend that Fort Worth's request not be approved at this time. Fort Worth has not proven that there is a need for service in the requested areas. There are no sewer utility customers and no requests for service in the requested areas.⁶ The landowners in the area would have their potential options for sewer utility service in the area limited.

⁶ Response (November 16, 2020) at page 7.