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DOCKET NO. 49845

APPLICATION OF RIVER ACRES §
WATER SUPPLY CORPORATION TO §
AMEND ITS WATER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN NUECES COUNTY §

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PUBLIC UTILITY COMMISSION
STATE OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION OF THE APPLICATION

On August 12, 2019, River Acres Water Supply Corporation (River Acres) filed an application with the Public Utility Commission of Texas (Commission) to amend its water Certificate of Convenience and Necessity (CCN) number 11084 in Nueces County. Specifically, River Acres seeks to add approximately 816 acres to its water service area across two distinct bounded areas. On December 16, 2020, River Acres filed consent forms concurring with Staff's proposed map and certificate. On January 6, 2021, River Acres filed its audited annual financial report for the year 2019.

On January 12, 2021, Order No. 14 in this proceeding was filed, requiring Commission Staff (Staff) to file a final recommendation on the application by February 8, 2021. Therefore, this pleading is timely filed.

I. RECOMMENDATION

Staff has reviewed River Acres' application and supplemental information and, as detailed in the attached memorandum from Roshan Pokhrel, Infrastructure Division, recommends that River Acres has satisfied all applicable legal requirements and has demonstrated its capability of providing continuous and adequate water service in the requested area. Staff further recommends that approving River Acres' requested amendment is necessary for the service, accommodation, convenience, and safety of the public. Accordingly, Staff recommends that River Acres' application be approved.

II. CONCLUSION

Staff recommends that River Acres' application be approved. Staff respectfully requests that an order be issued consistent with the foregoing recommendation.

Dated: February 8, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/Courtney Dean
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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 February 8, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean
Courtney N. Dean

Public Utility Commission of Texas

Memorandum

TO: Courtney Dean, Attorney
Legal Division

FROM: Roshan Pokhrel, Engineering Specialist
Infrastructure Division

DATE: February 8, 2021

RE: **Docket No. 49845**, *Application of River Acres Water Supply Corporation to Amend its Water Certificate of Convenience and Necessity in Nueces County*

On August 12, 2019, River Acres Water Supply Corporation (River Acres) filed an application to amend its water Certificate of Convenience and Necessity (CCN) No. 11084 in Nueces County, under Texas Water Code (TWC) §§ 13.242 to 13.250 and the 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Background

River Acres seeks to amend its water CCN to add approximately 816 acres of water service area across two distinct bounded areas. Area 1, located west of the existing CCN boundary, is undeveloped property that is soon expected to become a single-family residential development. Area 2, located south of FM 624, is currently undeveloped except for one commercial establishment currently receiving water service from River Acres. The expected land use for the remaining property in Area 2 is mixed use development.

Comment Period

The comment period ended on September 17, 2020, and no protests or opt-out requests were received.

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 factors 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.

River Acres currently provides adequate service to one customer in the requested areas. River Acres has an existing TCEQ approved Public Water System (PWS) under PWS Identification No. 1780013 and PWS Name – River Acres WSC. River Acres does not have any violations listed in the TCEQ database

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.

There is a need for service as there are potential new customers in the requested areas. River Acres also has existing infrastructure in the requested areas. River Acres has a 12” distribution main that passes along Area 1 and has a 6” distribution main that passes along Area 2¹. River Acres has been approached by developers wanting to develop the requested areas. River Acres filed maps² showing the request for utility services in the requested areas.

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.

River Acres will be the certificated entity for the requested areas and be required to provide adequate and continuous service to the requested areas. The landowners in the areas will have a water provider available when they need to request water service. The requested areas overlap or are within the municipal boundaries of the City of Corpus Christi (City). A copy of a written statement from the City permitting River Acres to provide water service in the requested area was filed in the docket. There will be no effect on any other retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of this application and did not 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.

River Acres has a TCEQ approved Public Water System (PWS) under PWS Identification No. 1780013 and PWS Name – River Acres WSC. River Acres does not have any violations listed in the TCEQ database. Additional construction is not necessary for River Acres to serve the requested area. Existing facilities have enough capacity to serve the requested areas.

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.

Currently, there are no other water providers that could serve in the requested area. Therefore, it is not feasible to obtain service to meet customer requests for service from an adjacent retail public utility.

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.

Leila Guerrero, Regulatory Accountant in the Rate Regulation Division, provided me the following.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC §24.11. The applicant must demonstrate that it meets one of the five leverage tests under 16 TAC §24.11(e)(2) as well as an operations test.

¹ River Acres’ response to Staff second RFI (November 16, 2020).

² River Acres’ response to Staff’s first RFI (October 12, 2020).

Leverage tests

My analysis is based on financial statements ending December 31, 2019. These financial statements contain an unqualified auditor's opinion from Lovvorn & Kieschnick, LLP stating that the financial statements present fairly, in all material respects, the financial position of the applicant as of December 31, 2019.

The applicant's 2019 financial statements report \$1,532,243 in unrestricted cash. The amount is sufficient to cover two years of the applicant's annual debt service amount of \$413,819 (\$220,617 for 2019 and \$193,202 for 2020). Therefore, the applicant meets the test specified in 16 TAC § 24.11(e)(2)(C).

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

The applicant's financial statements include operating income of \$97,669 as of 12/31/2019, and a cash and cash equivalents balance of \$1,532,243. These amounts indicate the applicant will have sufficient cash to cover projected shortages. In 2018, the applicant received a loan from the Texas Water Development Board of \$3,620,000. Those funds are kept in an investment account to be used for a water system project and are restricted for that purpose. The balances of those funds were \$3,343,383 in 2019 and \$3,289,973 in 2018. Sufficient cash and net operating income are available to cover possible future shortages, and provide an indication of financial stability and financial and managerial capability. Therefore, the applicant meets the operations test specified in 16 TAC § 24.11(e)(3).

TWC § 13.246(d) and 16 TAC § 24.227(f) allow 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.

Leila Guerrero provided the following.

Because the applicant meets the financial tests, I do not recommend that the Commission require additional financial assurance.

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.

Future developments may change land from vacant pastures to developed lands with houses, roadways, and detention ponds for residential communities.

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.

Future customers will benefit from water service.

River Acres consented to the attached map, tariff, and certificate on December 16, 2020.

Recommendation

Based on the above information, I recommend that:

- River Acres meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service.
- Approving this application to amend River Acres' water CCN No. 11084 is necessary for the service, accommodation, convenience, and safety of the public.