



Control Number: 50041



Item Number: 16

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PUC Interoffice Memorandum



To: Kourtnee Jinks, Attorney
Legal Division

From: Patricia Garcia, Engineering Specialist
Infrastructure Division

Date: March 24, 2020

Subject: **Docket No. 50041**, *Application of North Custer Road Plant to Obtain a Water Certificate of Convenience and Necessity in Collin County*

On September 23, 2019, North Custer Road Plant (Applicant) filed with the Public Utility Commission of Texas (Commission) an application to obtain a water Certificate of Convenience and Necessity (CCN) number in Collin County, Texas pursuant to Texas Water Code §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237. In the supplemental filing provided on December 6, 2019, the Applicant stated that its name was changed to AIRW 2017-7, L.P.

Staff has reviewed the information provided by the Applicant. The public water system that will be serving the area is North Custer Road Plant. This water system will provide service to two master meters. The Applicant filed supplemental information on February 18, 2019 indicating in Attachment 3 that 462 duplex units would be served by each master meter.

The Applicant's proposed rate design shows a minimum monthly charge of \$3,604.80 for an 8" meter and does not include minimum charges for any other meter size. The proposed rate design also indicates that each master meter will serve 462 duplex units. The developer of these units will pay the rates contained in the proposed tariff and the tenants of the duplexes will be charged using an allocation method established by the duplex building owners.

Staff recommends that a duplex does not meet the requirements for the allocation of master metered water utility service because a duplex only consists of two dwelling units. Therefore, Staff recommends the application be deemed administratively incomplete and not accepted for filing because the proposed rate design and tariff do not comply with Commission rules. To cure this deficiency, Staff recommends that the Applicant submit a proposed rate design that does not rely on the allocation of master metered usage. Staff also requests that the Applicant provide signed agreements between AIRW 2017-7, L.P. and the developers regarding the development of the duplex units and the agreements for the master meter and allocation to tenants.

Note: Any confidential items should be submitted as confidential filings with the PUC. The instructions for filing confidential documents can be found on our website at: (<http://www.puc.texas.gov/industry/filings/FilingProceed.aspx>).

DOCKET NO. 50041

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|-------------------------------------|----------|----------------------------------|
| APPLICATION OF NORTH CUSTER | § | PUBLIC UTILITY COMMISSION |
| ROAD PLANT TO OBTAIN A WATER | § | |
| CERTIFICATE OF CONVENIENCE | § | OF TEXAS |
| AND NECESSITY IN COLLIN | § | |
| COUNTY | § | |

**COMMISSION STAFF'S SECOND SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS AND MOTION TO REQUIRE ELECTRONIC
SERVICE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this second supplemental recommendation on administrative completeness. Staff recommends that the application continue to be deemed administratively incomplete and that the applicant be ordered to address the identified deficiencies. In support thereof, Staff shows the following:

I. BACKGROUND

On September 23, 2019, North Custer Road Plant (Applicant) filed an application to obtain a water Certificate of Convenience and Necessity (CCN) in Collin County. The requested service area consists of 138 acres and currently has no customers.

On February 12, 2020, Order No. 4 was issued establishing a deadline of March 24, 2020 for Staff to file a supplemental recommendation on the administrative completeness of the application, along with a proposed a procedural schedule. Applicant filed a supplement to the application on February 18, 2020. Therefore, this pleading is timely filed.

II. DEFICIENCY RECOMMENDATION

As detailed in the attached memorandum of Patricia Garcia in the Commission's Infrastructure Division, Staff has reviewed the supplemental information filed on February 18, 2020, and continues to recommend that the application be found administratively incomplete and deficient. Although the applicant has addressed the application issues identified in Staff's previous recommendation, filed January 7, 2020, Staff's review of the supplemental information filed on February 18, 2020, has led Staff to identify an issue with the Applicant's proposed use of allocated utility billing for duplexes.

The Applicant proposed a rate that includes a minimum monthly charge for a single meter size, specifically an 8” meter, and tiered gallonage rates. The rate design also shows that each 8” master meter will serve 462 duplex units. The developer of the duplex units will be charged using the minimum monthly charge and tiered gallonage rates and then allocate the bill among the tenants of the duplexes. Staff recommends that a duplex does not qualify for allocated utility service, which is defined as “service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.”¹ A tenant is defined as “as a person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others.”² Further, Commission rules define a dwelling unit as “one or more rooms in an apartment house or condominium,... a unit in a multiple use facility, ... or a manufactured home;” an apartment house is defined as, “as a building or buildings containing five or more dwelling units... including a residential condominium.”³

Traditionally, a duplex consists of two dwelling units that are contained in one building, and therefore, a duplex does not meet the definition for apartment house. Duplexes also do not meet the definitions for “multiple use facility” or “manufactured home” because they do not contain five or more dwelling units within the same building and are not commercial or industrial parks, office complexes, marinas, or properties on which spaces are rented for the occupancy of manufactured homes.⁴ Therefore, the Applicant has not proposed a rate design that complies with Commission rules. Staff recommends that the applicant be ordered to propose a rate design that is consistent with Commission rules.

¹ 16 TAC § 24.275(c)(1).

² 16 TAC § 24.275(c)(15).

³ 16 TAC § 24.275(c)(5); 16 TAC § 24.275(c)(2).

⁴ 16 TAC § 24.275(c)(9); 16 TAC § 24.275(c)(7).

III. PROCEDURAL SCHEDULE

Staff recommends that the applicant be ordered to cure the deficiencies identified in Ms. Garcia's memorandum by April 24, 2020 and that Staff be given a deadline of May 22, 2020, to file a supplemental recommendation on the administrative completeness of the application. Staff notes that the applicant should not issue notice until the application is found administratively complete.

IV. REQUEST TO RESTYLE DOCKET

Staff requests that this docket be restyled as *Application of AIRW 2017-7, L.P. to Obtain a Water Certificate of Convenience and Necessity in Collin County*. The application as filed listed AIRW 2017-7, L.P. as the applicant and included a Certificate of Formation Limited Partnership executed in May 2017 under Texas Secretary of State filing number 802720661. In the memorandum of Patricia Garcia filed on October 21, 2019, Staff asked the Applicant to confirm that AIRW 2017-7, L.P. is intended to be the applicant in this docket. The Applicant's supplemental filing submitted on December 6, 2019, included a request to change the name of the Applicant to AIRW 2017-7, L.P. Accordingly, Staff recommends restyling the docket to reflect the correct name of the Applicant.

V. MOTION TO REQUIRE ELECTRONIC SERVICE

Pursuant to 16 Texas Administrative Code (TAC) § 22.74(c), the presiding officer may require service by email on motion of a party. On March 16, 2020, the Commission issued an Order Suspending Rules in Docket No. 50664, Issues Related to the State Disaster for the Coronavirus Disease 2019. The Order stated in relevant part: "all parties must file any pleading or document with the Commission solely through the Interchange on the Commission's website and provide notice, by email, to all other parties that the pleading or document has been filed with the Commission, unless otherwise ordered by the presiding officer." Accordingly, Staff requests that the Commission Administrative Law Judge issue an order requiring service by electronic mail in this docket. Staff further requests that the Order direct any party to this proceeding who has not previously provided an email address to file a notice informing the parties of the email address to be used for service.

VI. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing.

Dated: March 24, 2020

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Rachelle Nicolette Robles
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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 March 24, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

s/ Kourtnee Jinks
Kourtnee Jinks