



Control Number: 50042



Item Number: 30

Addendum StartPage: 0



DOCKET NO. 50042

**APPLICATION OF TRI TRY WATER
SUPPLY CORPORATION TO OBTAIN
A WATER CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
STONEWALL COUNTY**

§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF'S AMENDED RECOMMENDATION ON FINAL DISPOSITION
OF THE APPLICATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Amended Recommendation on Final Disposition of the Application. Staff recommends that the application be approved. In support thereof, Staff would show the following:

I. BACKGROUND

On September 23, 2019, Tri Try Water Supply Corporation (Tri Try WSC) filed an application to obtain a water certificate of convenience and necessity (CCN) in Stonewall County under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237. Tri Try WSC's initial application requested a service area containing approximately 21,171 acres of sparsely populated agricultural farmland and 64 existing customers, a requested area which Tri Try WSC has been providing water service to since 1999. On June 18, 2020, the acreage of the requested area was reduced to approximately 19,260 acres and 64 existing customers. On September 3, 2020, Tri Try WSC filed signed consent forms concurring with the final map and certificate provided for review by Staff.

On September 11, 2020, Staff filed a recommendation on final disposition in accordance with the procedural schedule detailed in Order No. 8, issued August 19, 2020. Staff now files this amended recommendation to correct a misstatement in the memorandum attached to Staff's September 11, 2020 recommendation.

II. STAFF'S AMENDED RECOMMENDATION

The memorandum attached to Staff's September 11, 2020 final recommendation from Patricia Garcia, Infrastructure Division, recommended that Tri Try WSC "file a rate application with the Commission within 18 months from the date service begins pursuant to 16 TAC

20

§ 24.25(b)(1)(C).” Because Tri Try WSC is a water supply corporation, it is not governed by 16 TAC § 24.25(b)(1)(C). Accordingly, for purposes of clarity, Staff has attached an amended memorandum from Ms. Garcia to this pleading to correct the misstatement. Staff notes that the error does not materially change Staff’s recommendation on the application. Accordingly, Staff recommends that the application be approved.

III. CONCLUSION

Staff recommends that Tri Try WSC’s application be approved. Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

Dated: September 22, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

/s/Courtney Dean

Courtney N. Dean
State Bar No. 24116269
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7235
(512) 936-7268 (facsimile)
courtney.dean@puc.texas.gov

DOCKET NO. 50042

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 September 22, 2020, 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: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

Fred Bednarski III, Financial Analyst
Rate Regulation Division

Date: September 17, 2020

Subject: **Docket No. 50042**, *Application of Tri Try Water Supply Corporation to Obtain a Water Certificate of Convenience and Necessity in Stonewall County*

On September 23, 2019, Tri Try Water Supply Corporation (Tri Try WSC or Applicant) filed an application to obtain a water certificate of convenience and necessity (CCN) in Stonewall County under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Background

The Applicant submitted the CCN application to obtain a water CCN for the service area containing approximately 20,171 total acres and 64 current customers. The Articles of Incorporation for Tri Try WSC indicate that the non-profit corporation was established in 1999 and has provided service to the area since that time. The requested area has sparsely distributed residential structures surrounded by agricultural cropland. A majority of the existing customers have large lots.¹ There is little or no commercial activity within the subject area other than farming. The application was submitted because Tri Try WSC does not have an established CCN and is required to have a CCN by TWC § 13.242.

After notice was provided a neighboring entity requested that the Applicant scale back the requested area. Additionally, a customer was concerned about his property being included in the CCN area due to taxation (a water supply corporation does not have the ability to tax). The Applicant scaled back the requested area in order to appease both concerned parties. Neither party formally requested an opt out. The entry point to the customer's property is included in the requested area, but a portion of his property was removed. After the adjustments were made by the Applicant the requested area was reduced to approximately 19,260 total acres and 64 current customers.² The 64 current customer connections are spread across the requested area in a rural farming community and therefore Staff believes the request for the large number of acres is justified.

Notice

The comment period ended May 15, 2020 and no protests or opt-out requests were received. As stated above the Applicant did revise their requested area after discussions with a customer and a neighboring entity.

¹ Response (Mar. 31, 2020) at page 14.

² Modification of Mapping Data (June 18, 2020) at page 4.

Criteria Considered

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider certain criteria when granting or amending a water or sewer CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The Applicant has a Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) Identification No. 2170004, PWS Name: Tri Try Water System. The Applicant does not have any violations listed in the TCEQ database. No additional construction is necessary for the Applicant to serve the requested area.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.

There is a need for service as there are 64 existing customers in the requested area. The 64 current customer connections are spread across the requested area in a rural farming community. A majority of these customers have large lots. There is a small cluster of customers at the top of the requested area who own small lots. All of the requested area currently receives service from Tri Try WSC.

TWC §§ 13.241(b) and 13.246(c)(3) requires 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.

There will be no effect on any retail public utility servicing the proximate area. There will be no effect on landowners as the landowners in the area are customers of Tri Try WSC.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.

The Applicant has a TCEQ approved PWS Identification No. 2170004, PWS Name: Tri Try Water System. The Applicant does not have any violations listed in the TCEQ database. No additional construction is necessary for the Applicant to serve the requested area.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

There are no other water providers in the area.

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.

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. The Commission rules identify five leverage tests.³ The Applicant must demonstrate that it meets one of the five tests.⁴

The following shows that the Applicant meets one out of five leverage tests. This analysis is based on the Applicants historical and projected financial statements.

The Applicant meets the first test with a debt to equity ratio less than one, as the Applicant has no

³ See 16 TAC § 24.11(e)(2).

⁴ *Id.*

long-term debt and owners' equity of \$473,151.⁵

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Applicant submitted projected financial statements in its application which show there are no shortage to cover.⁶ Additionally the Applicant reported cash of \$65,992 year to date for 2019.⁷ No improvements are needed to facilities to provide continuous and adequate service to the requested area. Therefore, the Applicant meets the operations test.

TWC § 13.246(d) 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.

The Applicant meets the financial tests. Staff does not recommend that the Commission require additional financial assurance.

TWC §§ 13.246(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 not be affected as no additional construction is needed to provide service to the requested area.

TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

The Applicant will continue to provide water service to the existing customers in the area.

Staff recommends that the Applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service and approving this application to obtain the water CCN No. 13291 is necessary for the service, accommodation, convenience and safety of the public.

The Applicant consented to the attached map and certificate on September 3, 2020.

Based on the above information, Staff recommends the Commission approve the application, issue an order and provide the attached map and certificate to Tri Try Water Supply Corporation. Staff further recommends that the Applicant file certified copies of the CCN maps along with a written description of the CCN service area in the county clerk's office pursuant to TWC §§ 13.257 (r)-(s).

Recommendation

Based on the above information, Staff recommends that:

- The Applicant 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. Staff also recommends that approving this application to obtain water CCN No. 13291 is necessary for the service, accommodation, convenience and safety of the public; and
- The Commission issue an order approving the application and provide the attached map, and certificate to the Applicant. Staff further recommends that the Applicant file certified

⁵ Comment Response at page 21 (1/23/2020).

⁶ *Id* at page 24.

⁷ Comment Response at page 21 (1/23/2020).

copies of their CCN maps along with a written description of the CCNs service area in the county clerk's office pursuant to TWC §§ 13.257 (r)-(s).