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DOCKET NO. 50324

**APPLICATION OF COUNTY LINE
SPECIAL UTILITY DISTRICT TO
OBTAIN A SEWER CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
HAYS AND CALDWELL COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**



COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation. In support thereof, Staff would show the following:

I. BACKGROUND

On December 6, 2019, County Line Special Utility District (County Line) filed an application for a sewer certificate of convenience and necessity (CCN) in Hays and Caldwell counties pursuant to Texas Water Code (TWC) §§ 13.242–.250 and 16 Texas Administrative Code (TAC) §§ 24.225–.237. The requested area consists of approximately 17,942 acres, 2 existing connections, and 24,100 future connections. On February 6, 2020, County Line filed its response to Order No. 2, providing additional information. On August 19, 2020, County Line filed further information related to need for service and mapping.

On August 4, 2020, Order No. 5 was issued requiring Staff to file its final recommendation by August 24, 2020. On August 21, 2020, Staff requested an extension for its final recommendation to August 31, 2020. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

Staff is cognizant that the analysis used to evaluate applications to amend and obtain CCNs is evolving.¹ That evolution has focused on the type of evidence required to demonstrate need for service in the requested area as defined in TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(1) along with an applicant's ability to demonstrate capacity to provide service. At this point in the evolution

¹ See e.g., *Application of Jacobia Water Supply Corporation to Amend Certificates of Convenience and Necessity and For Dual Certification with the City of Greenville and Hickory Creek Special Utility District in Hunt County*, Docket No. 48784, Order No. 14 Restyling Application, Requiring Additional Information Regarding the Need for Service, and Other Procedural Matters (Aug. 19, 2020).

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of the standard of need for service, one important consideration is whether the applicant can demonstrate it has development agreements or other formal requests for service in the entirety of the proposed service area.² Also of importance is the timeframe contemplated in the requests for service—the number of months or years before service will actually be required.³ A further consideration is whether the applicant’s existing facilities have sufficient capacity to serve the requested area or whether the applicant has concrete, timely plans to expand the capacity of those facilities to serve the entire requested area.⁴

Applying these considerations to the present application, and as supported by the attached memorandum of Roshan Pokhrel of the Commission’s Infrastructure Division, Staff recommends that County Line’s requested area be reduced from 17,942 acres to 7,890 acres. Such a reduction to the requested area is in line with Commission decisions where need for service was at issue.⁵

In detailing need for service, County Line has provided requests and inquiries from developers and landowners totaling 7,085 acres, plus easements and municipal consent for service, totaling 7,890 acres.⁶ Some of the requests and inquiries lack a specific timeframe for when service would be needed.⁷ However, many of them do indicate the timeframe in which service is needed or express a desire to connect to County Line’s existing and proposed sewer mains, indicating a degree of immediacy.⁸ Additionally, the number of recent requests received by County Line speaks to an increase in growth and demand in the requested area. In the nine months since the application was filed, County Line has received fifteen additional requests for service.⁹

² *Application of City of Gregory to Obtain Certificates of Convenience and Necessity in San Patricio County*, Docket No. 45489, Commissioner memorandum (Mar. 12, 2019); *Application of City of Lavon for Sewer Certificate of Convenience and Necessity in Collin County*, Docket No. 46993, Order at 2 (Aug. 7, 2018).

³ Docket No. 46993, Commissioner memorandum (Jun. 27, 2018); Open Meeting Tr. at 15:5-9 (Jul. 16, 2020).

⁴ Docket No. 46993, Order at 2.

⁵ Docket No. 47795, Open Meeting Tr. at 16:9-12 (reducing the requested area from 14,250 acres to the area included in the applicant’s municipal boundaries), Docket No. 45489, Order at Finding of Fact No. 10 (Jul. 8, 2019) (reducing the requested area from 2,930 acres to 2,141 acres); Docket No. 46993, Order at 1-3 (reducing the requested area from 7,553 acres to the 1,623 acres included in the applicant’s municipal boundaries).

⁶ Supplemental Information of the Proposed Sewer CCN Boundary at Exhibit A (Aug. 19, 2020).

⁷ *Id.* at Exhibit B.

⁸ *Id.*

⁹ *Id.* at 1.

As for capacity to provide service, County Line has stated that it presently has installed sewer mains with a capacity of 8,500 living unit equivalents (LUE).¹⁰ Further, County Line has plans to develop another 2,700 LUEs of capacity.¹¹ Although one LUE does not directly correlate to one connection, it does not appear that County Line presently possesses the capacity to or has specific and immediate plans to expand said capacity to serve the proposed 24,100 connections in original requested area. Staff does recommend, however, that County Line has sufficient capacity to serve the reduced requested area of 7,890 acres. Additionally, County Line purchases all of its sewer treatment from Plum Creek Utility Company, LLC (Plum Creek).¹² Plum Creek has applications pending before the Texas Commission on Environmental Quality to expand its ability to meet future demand.¹³ Therefore, Staff's scaled-back recommendation encompasses an area for which County Line has demonstrated present or timely plans to expand capacity to provide service.

Finally, special utility districts are not required to possess a CCN to provide services unless the district plans to serve customers in an "area to which retail water or sewer utility service is being lawfully provided by another retail public utility."¹⁴ As such, County Line may serve customers as it receives additional requests for service in adjacent areas that are not within the sewer CCN of another retail public utility and constructs additional facilities, and County Line may request that its CCN be amended to include those areas.

Staff recommends that County Line meets the applicable financial, managerial, and technical requirements of TWC §§ 13.242 to 13.250 and the 16 TAC §§ 24.225 to 24.237, and therefore, is capable of providing continuous and adequate service to the reduced 7,980-acre area. Staff's review also indicates that approval of the application, as reduced by Staff's recommendation, is necessary for the service, accommodation, convenience, and safety of the public.

¹⁰ A living unit equivalent (LUE) is defined as the typical flow that would be produced by a single-family residence located in a typical subdivision. Such a single-family home would convert to 1 LUE. An apartment complex with 30 units would convert to 15 LUEs. *See*, <http://www.austintexas.gov/edims/document.cfm?id=109359>

¹¹ Supplemental Information of the Proposed Sewer CCN Boundary at 1-2.

¹² Application at 9 (Dec. 6, 2019).

¹³ *Id.* at Attachment C.

¹⁴ 16 TAC § 24.225(a).

III. CONCLUSION

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

Dated: August 28, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 August 28, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray

Public Utility Commission of Texas

Memorandum

To: Creighton McMurray, Attorney
Legal Division

From: Roshan Pokhrel, Engineering Specialist
Infrastructure Division

Date: August 28, 2020

Subject: **Docket No. 50324**, *Application of County Line Special Utility District to Obtain a Sewer Certificate of Convenience and Necessity in Hays and Caldwell County*

On December 6, 2019, County Line Special Utility District (Applicant or County Line SUD) filed an application to obtain a sewer Certificate of Convenience and Necessity in Hays and Caldwell County, under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Background

The requested area includes approximately 17,942 acres, 2 existing connections, and 24,100 future connections. The Applicant has received several requests for service. Service request letters from landowners and developers total approximately 7,085 acres. In addition, seven landowners have dedicated easements totaling approximately 445 acres to the Applicant for the construction of wastewater infrastructure. Moreover, the City of Uhland and the City of Niederwald have provided consent to the Applicant to overlap their municipal boundaries to serve their existing and future customers. Approximately 360 acres with 300 existing customers in the Uhland area that currently utilize septic system will be connected to the Applicant's centralized wastewater system. Altogether, the total acreage that incorporates all requests for service is approximately 7,890 acres. The Applicant filed an updated detail map¹ that shows all requests for service, landowners' easements, and existing City of Uhland residents.

County Line SUD purchases sewer treatment from Plum Creek Utility Company, LLC (Plum Creek) to meet 100% of customer demand. Plum Creek's sewer treatment plant and the associated water quality discharge permit have enough capacity to meet the current demand. The sewer treatment plant will be expanded as needed to meet future demands. An additional water quality discharge permit for Plum Creek is currently being processed by the Texas Commission on Environmental Quality (TCEQ).

Notice

The comment period ended on May 4, 2020, and no protests or opt-out requests were received.

¹ Supplemental Information of the Proposed Sewer CCN Boundary (Aug. 19, 2020).

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 is already serving a few customers in the requested area. The Applicant purchases sewer capacity from Plum Creek. Plum Creek has a water quality discharge permit registered with the Texas Commission on Environmental Quality (TCEQ).

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

There is need for additional service to serve potential future customers. The Applicant filed documentation showing requests for service. However, requests for service cover only 7,890 acres out of the requested 17,942 acres.

TWC § 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.

The landowners will benefit because they will not have to construct individual septic tanks. No effect is expected on other utilities as the requested area is uncertificated with no facilities available.

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

The Applicant purchases sewer capacity to meet 100% of customer demand from Plum Creek. Plum Creek has an existing water quality discharge permit registered with the TCEQ under WQ-0015635001. The sewer treatment provider does not have any violations listed in the TCEQ database.

TWC § 13.241(d) requires the Applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.

The Applicant purchases sewer capacity to meet 100% of the demand from Plum Creek.

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 sewer service providers in the adjacent area that can serve the requested area and the Applicant has received requests for service.

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.² The Applicant must demonstrate that it meets one of the five tests.³

The following shows that the Applicant meets one out of five leverage tests. This analysis is based on financial statements ending December 31, 2018. These financial statements contained an unqualified auditor's opinion from Williams, Crow, Mask, LLP which stated that the financial statements present fairly, in all material respects, the financial position of the County Line Special Utility District as of December 31, 2018. The audit and the related opinion indicate the transparency of the Applicant and indicate sound management capabilities.

The Applicant meets the first test with a debt to equity ratio less than one, calculated as follows: long term liabilities of \$6,141,575⁴ divided by total net assets of \$10,017,504⁵ equals 0.61.

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 did not submit projected financial statements in its application. However, based on the financial statements, the Applicant reported change in net assets of \$1,587,769⁶ for 2018, \$676,223⁷ for 2017, and \$521,662⁸ for 2016. Furthermore, the financial statements indicated \$1,578,626 in cash and cash equivalents for 2018.⁹ Also, the Applicant indicated Plum Creek Utility, LLC will provide the wastewater system to provide service to the Uhland Ranch Subdivision, Caldwell Valley Subdivision, the Uhland school and transportation buildings, and Las Estancias 2 subdivision with enough capacity to provide continuous and adequate service.¹⁰ Finally, the Applicant indicated impact fees will be collected as well as grants and loans for the new planned developments based on the Applicant's Capital Improvement Plan.¹¹ Therefore, the Applicant meets the operations test by having sufficient cash available for any shortages, and sufficient leverage capability for any required improvements.

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.

Staff does not recommend that the Applicant be required to provide a bond or other financial assurance to ensure continuous and adequate service.

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

² 16 TAC § 24.11(e)(2).

³ *Id.*

⁴ Application at page 270 of 304 (Dec. 6, 2019).

⁵ *Id.*

⁶ *Id.* at 301 of 304

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at page 270 of 304.

¹⁰ *Id.* at pages 42-73 of 304.

¹¹ County Line SUD's Response to Order No. 2 at pages 1 through 24 (Feb. 6, 2020).

There will be positive environmental impact as sewer service through a centralized wastewater collection system will eliminate the need for individual septic systems on each property. The Applicant has mentioned that the wastewater will be treated to a much higher standard and ultimately be reused for irrigation and other non-potable water needs.

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

The service will be better with the use of a centralized wastewater collection system and elimination of separate septic systems.

The Applicant anticipates additional service requests in the future. Fifteen additional requests for service were received after the Applicant filed this application.

Special Utility Districts are not required to hold a CCN to provide services unless the district wants to serve customers within the certificated service area of another retail public utility or within the boundaries of another district. As long as these requirements are met, the Applicant may provide sewer service outside their CCN area to meet additional requests for service. As County Line SUD receives additional requests for service and constructs additional facilities, County Line SUD may request that its CCN be amended to include those areas. Therefore, Staff recommends reducing the requested area to 7,890 acres and approving the application.

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 further recommends that approving a requested area limited to 7,890 acres and issuing sewer CCN No. 21119 is necessary for the service, accommodation, convenience and safety of the public.

A new final map and certificate will be produced once the appropriate service area is determined.