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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*
Administrative Law Judge

RE: **Docket No. 51170** – *Application of the City of Sweetwater to Amend a Certificate of Convenience and Necessity in Nolan County*

DATE: January 10, 2022

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by January 25, 2022.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 51170

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
SWEETWATER TO AMEND A	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN NOLAN COUNTY	§	

PROPOSED ORDER

This Order addresses the application of the City of Sweetwater to amend its certificate of convenience and necessity (CCN) number 10228 to add 234 uncertificated acres in Nolan County. The Commission amends Sweetwater's CCN number 10228 to add the requested area to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Sweetwater is a municipality located in Nolan County, Texas.
2. Sweetwater operates, maintains, and controls facilities for providing retail water service to customers in Nolan County under CCN number 10228.
3. Sweetwater owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1770002.

Application

4. On August 14, 2020, Sweetwater filed the application at issue in this proceeding.
5. Sweetwater's application requested to add 234 acres of uncertificated land and dual certification of 53 acres of land with Bitter Creek Water Supply Corporation.
6. Sweetwater supplemented its application on August 31, 2020, February 10 and 18, 2021, and May 10, 2021.
7. In Order No. 6 filed on March 10, 2021, the administrative law judge (ALJ) severed the

application into this docket and Docket No. 51882,¹ ordering that this docket only address Sweetwater's request to add 234 acres of uncertificated area to its CCN number 10228.

8. Sweetwater's application, as supplemented and severed, requests a water service area that is 234 acres, has zero current connections, and one potential future commercial connection (the requested area).
9. The requested area is located approximately four miles east of downtown Sweetwater, Texas, and is generally bounded on the north by Interstate 20, on the east by a line approximately 1/2 mile east of and parallel to Farm-to-Market Road 1856, on the south by County Road 220, and on the west by Farm-to-Market Road 1856.
10. In Order No. 8 filed on June 10, 2021, the ALJ found the application, as supplemented, administratively complete.

Notice

11. On July 26, 2021, Sweetwater filed the affidavit of Danielle Lam, attorney for Sweetwater, attesting that notice was mailed to current customers, landowners, neighboring utilities, and affected parties on June 25, 2021.
12. On July 26, 2021, Sweetwater filed a publisher's affidavit attesting to publication of notice in the *Sweetwater Reporter*, a publication of general circulation in Nolan County, on June 29 and July 6, 2021.
13. In Order No. 13 filed on August 6, 2021, the ALJ found the notice sufficient.

Intervention and Opt-Out Request

14. On September 11, 2020, Georgia-Pacific, LLC filed an opt-out request for the 234 acres of uncertificated land.
15. On October 22, 2020, Bitter Creek WSC filed a motion to intervene.
16. On January 6, 2021, Georgia-Pacific filed a motion to rescind its opt-out request and moved to intervene in this proceeding.

¹ *Application of the City of Sweetwater for Dual Certification with Bitter Creek Water Supply Corporation in Nolan County*, Docket No. 51882 (pending).

17. In Order No. 4 filed on January 13, 2021, the ALJ granted Bitter Creek WSC's motion to intervene.
18. In Order No. 5 filed on March 3, 2021, the ALJ granted Georgia-Pacific's motions.
19. On June 28, 2021, after the application had been severed, Bitter Creek WSC filed a second motion to intervene.
20. In Order No. 10 filed on July 6, 2021, the ALJ granted Bitter Creek WSC's second motion to intervene.

Evidentiary Record

21. On December 22, 2021, Commission Staff and Sweetwater filed a joint motion to admit evidence and proposed order.
22. In Order No. 18 filed on January 5, 2022, the ALJ granted the joint motion and admitted the following evidence into the record of this proceeding: (a) Sweetwater's application and all attachments filed on August 14, 2020; (b) Sweetwater's supplements to the application filed on August 31, 2020, February 10 and 18, 2021, and May 10, 2021; (c) Commission Staff's second supplemental recommendation on administrative completeness filed on June 9, 2021; (d) Sweetwater's proof of notice filed on July 26, 2021; (e) Commission Staff's recommendation on sufficiency of notice filed on August 5, 2021; (f) Sweetwater's consent form filed on November 18, 2021; (g) Commission Staff's final recommendation and all attachments filed on December 10, 2021; and (h) the map and certificate attached to the joint motion to admit evidence and proposed order filed on December 22, 2021.

Adequacy of Existing Service

23. There are no existing customers in the requested area.
24. Water service is not currently being provided to the requested area.

Need for Service

25. There is one commercial property owner, Georgia-Pacific, in the requested area that has requested service from Sweetwater.
26. Sweetwater filed a copy of the water supply agreement between itself and Georgia-Pacific, along with other supporting documentation, demonstrating the need for water service in the requested area.

Effect of Granting the Amendment

27. Granting the CCN amendment will obligate Sweetwater to provide water service to future customers in the requested area.
28. Granting the CCN amendment will enable Sweetwater to provide water service to Georgia-Pacific in accordance with their water supply agreement.
29. Nearby retail public water utilities were properly noticed and Bitter Creek was the only retail public utility to intervene.
30. The effects of granting the CCN amendment on Bitter Creek WSC are not adverse to such a degree that granting the CCN amendment would not be in the public interest.

Ability to Serve: Managerial and Technical

31. Sweetwater does not have any unaddressed violations listed in the TCEQ database.
32. The Commission's complaint records, which date back to 2014, show one complaint against Sweetwater.
33. Sweetwater will need to install a distribution line to serve the requested area.
34. Sweetwater employs TCEQ-licensed operators who are responsible for operating and maintaining the public water system through which Sweetwater will provide service to the requested area.
35. Sweetwater has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.
36. Sweetwater has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Other Utilities

37. While Bitter Creek WSC is capable of providing service to the requested area, Georgia-Pacific the owner of the requested area, requested service from Sweetwater and executed a water supply agreement with Sweetwater.

Regionalization or Consolidation

38. Because the requested area will not require construction of a physically separate water

system, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Financial Ability and Stability

39. Sweetwater demonstrated it has sufficient unrestricted cash available to cover two years of debt service, satisfying the leverage test.
40. Sweetwater demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after approval of the CCN amendment, satisfying the operations test. Capital improvements required to provide continuous and adequate service to the requested area will be paid for by George Pacific and the Sweetwater Enterprise for Economic Development-Municipal Development District.
41. Sweetwater demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

42. There is no need to require Sweetwater to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity and Effect on the Land

43. There will be minimal and temporary effects on environmental integrity and on the land as the distribution line is installed.

Improvement in Service or Lowering of Cost

44. Water service to the requested area will improve because Sweetwater will be obligated to serve future customers in the requested area.
45. No lowering of cost to customers in the requested area will result from granting the CCN amendment.

Map and Certificate

46. On November 4, 2021, Commission Staff emailed the proposed final map and certificate to Sweetwater.
47. On November 18, 2021, Sweetwater filed its consent to the proposed final map and certificate.

Informal Disposition

48. More than 15 days have passed since the completion of notice provided in this docket.
49. Georgia-Pacific withdrew its opt-out request.
50. Commission Staff, Sweetwater, Bitter Creek, and Georgia-Pacific are the only parties to this proceeding.
51. No party requested a hearing and no hearing is necessary.
52. Commission Staff recommended approval of the application, as supplemented.
53. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.242, 13.244, and 13.246.
2. Sweetwater is a retail public utility as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Sweetwater's application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.
4. Sweetwater provided notice of the application that complies with TWC § 13.246 and 16 TAC § 24.235.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,² the TWC, and Commission rules.
6. After considering the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(e), Sweetwater demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area and its current service area in Nolan County, as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. Sweetwater has access to an adequate supply of water to serve the requested area, and its public water system is capable of providing water that meets the requirements of

² Tex. Gov't Code §§ 2001.001–.903.

- chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the rules of the TCEQ in accordance with TWC § 13.241(b) and 16 TAC § 24.227(a)(1).
8. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
 9. It is not necessary for Sweetwater to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
 10. Sweetwater demonstrated that the amendment to CCN number 10228 to include the requested area is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
 11. Under TWC § 13.257(r) and (s), Sweetwater must record a certified copy of the approved map and certificate, along with a boundary description of the service area, in the real property records of Nolan County within 31 days of this Order and must submit evidence of the recording to the Commission.
 12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission amends Sweetwater's CCN number 10228 to add the requested area as described in this Order and shown on the map attached to this Order.
2. The Commission approves the map attached to this Order.
3. The Commission issues the certificate attached to this Order.
4. Sweetwater must provide service to every customer and applicant for service within the approved area under CCN number 10228 who requests water service and meets the terms of Sweetwater's water service, and such service must be continuous and adequate.
5. Sweetwater must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Nolan County affected by the application and file in this docket proof of the recording no later than 45 days after the date of this Order.

6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

City of Sweetwater
Portion of Water CCN No. 10228
PUC Docket No. 51170
Amended CCN No. 10228 in Nolan County



Water CCN

 10228 - City of Sweetwater

Water CCN Facilities +200'

 11149 - Bitter Creek WSC

0 325 650
Feet





Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Sweetwater

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Sweetwater is entitled to this

Certificate of Convenience and Necessity No. 10228

to provide continuous and adequate water utility service to that service area or those service areas in Fisher and Nolan Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51170 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Sweetwater to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.