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DOCKET NO. 51407

APPLICATION OF DOS AGUAS,	§	PUBLIC UTILITY COMMISSION
LLC FOR A WATER CERTIFICATE	§	
OF CONVENIENCE AND	§	OF TEXAS
NECESSITY IN WALKER AND	§	
MONTGOMERY COUNTIES	§	

COMMISSION STAFF’S RESPONSE TO ORDER NO. 6

On October 9, 2020, Dos Aguas, LLC (Dos Aguas) filed an application with the Public Utility Commission of Texas (Commission) to obtain a water certificate of convenience and necessity (CCN) in Walker and Montgomery counties. The requested service area consists of approximately 5,386 acres to be developed into 292 one-acre lots in Walker County and 1,800 to 1,900 one and one-half to two acre-lots in Montgomery County. On June 14, 2021, Commission Staff (Staff) recommended approval of the application. On July 8, 2021, the parties filed a joint proposed motion to admit evidence and notice of approval.

On July 20, 2021, the administrative law judge (ALJ) filed Order No. 6, requiring Commission Staff to provide clarification on three issues addressed in Staff’s final recommendation and the parties’ proposed notice of approval by August 6, 2021. On August 6, the ALJ filed Order No. 7, extending Staff’s deadline to file a response to Order No. 6 until September 7, 2021. Therefore, this pleading is timely filed.

I. RESPONSE TO ORDER FOR CLARIFICATION

On July 20, 2021, the ALJ filed Order No. 6, requiring information and clarification. Specifically, Order No. 6 requested that Staff provide clarification regarding three issues: (1) the use of the phrase “non-public proposed water system” in finding of fact number two of the proposed notice of approval, (2) whether Dos Aguas has access to an adequate supply of water, and (3) whether the financial documentation submitted by Dos Aguas satisfies 16 Texas Administrative Code (TAC) § 24.11(e)(2) and (3).

Issue #1: Dos Aguas owns a proposed public water system

Order No. 6 notes that the phrase “non-public proposed water system” as used in finding of fact number two of the proposed notice of approval does not appear to be a defined term under

either the Commission's or the Texas Commission on Environmental Quality's (TCEQ) rules.

Staff has reviewed the information on the record and recommends that the use of the phrase "non-public proposed water system" should be replaced with the phrase "approved proposed water system." In support of this recommendation, Staff has attached a revised final recommendation memorandum from Patricia Garcia, Infrastructure Division. Ms. Garcia's revised memorandum does not change the outcome of Staff's recommendation on disposition of the application, but rather explains that Dos Aguas has a TCEQ-approved proposed water system that will become fully activated as a public water system once TCEQ is notified that the proposed water system is serving at least 15 connections or 25 customers.

Issue #2: Dos Aguas has adequate water supply to serve the requested area as it develops and will construct an additional well as necessary

Order No. 6 also requests clarification on whether Dos Aguas has an adequate supply of water to serve the requested area, which will include approximately 2,200 connections once fully developed. Specifically, the ALJ referenced a June 3, 2021 letter from TCEQ that conditionally approved Dos Aguas' plans to build two treatment plants at this time but required Dos Aguas to increase its approved water treatment plant capacity before the requested area is fully developed. As explained in its application, Dos Aguas' project plans include a plan to increase plant capacity and Dos Aguas has secured funding for and plans to build a third well site and treatment plant.¹

Dos Aguas detailed the capacity of its first two wells in its response to Staff's third request for information (RFI) filed on August 9, 2021. As explained in the RFI response, both of Dos Aguas' wells have a guaranteed minimum output level of 175 gallons per minute (gpm) each, with an expected actual output level between 300-350 gpm each. Assuming that each of the two wells produce only the absolute minimum flow of 175 gpm—roughly half of each well's expected actual production level—Dos Aguas calculated that it has sufficient capacity to serve up to 583 connections. Given the expected rate of development of the large-acreage lots in the requested area, Dos Aguas anticipates that it will not reach 583 active connections until 2027 or 2028. In order to ensure that Dos Aguas has adequate supply for its customers, Dos Aguas plans to have submitted plans for and begun construction on its third well by no later than 2025.

¹ Application at Response to Question 11(c) and (d).

While Dos Aguas will need to coordinate with TCEQ to secure the appropriate approvals for the third well site and treatment plant before the lots are fully developed, Staff notes that Commission precedent supports the approval of a CCN application when an applicant has received conditional approval from the TCEQ and satisfies all other applicable requirements.² Accordingly, Staff recommends that Dos Aguas has adequate water supply and technical capabilities for its expected level of demand and, once all three facilities are completed, Dos Aguas will have adequate water supply and technical capabilities to serve the fully developed requested area.

Issue #3: Dos Aguas' financial documentation satisfies the requirements of 16 TAC § 24.11(e)(2) and (3).

Order No. 6 further requests clarification on whether Dos Aguas' financial documentation meets the requirements of 16 TAC § 24.11(e)(2) and (3). Specifically, the ALJ requests clarification on whether Dos Aguas' affiliated interests have: (1) satisfied the leverage and operations tests; (2) demonstrated that they are capable, available, and willing to cover temporary cash shortages; and (3) provided a written guarantee of coverage of temporary cash shortages.

As detailed in the memorandum of Fred Bednarski, Rate Regulation Division, attached to Staff's June 14, 2021 recommendation on final disposition, Dos Aguas' financial documentation demonstrates that Dos Aguas' affiliates have satisfied the leverage and operations tests. Specifically, Dos Aguas' documentation demonstrates that the affiliates have met the leverage test with a cash amount is sufficient to cover two years of Dos Aguas' annual debt service amount. Additionally, Dos Aguas' documentation demonstrates that the affiliates have satisfied the operations test with sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations.

² See *Application of Summit Ridge, LLC for a Water Certificate of Convenience and Necessity in Medina County*, Docket No. 47463, Application at 113-114 (Aug. 1, 2017) (conditionally approving the project hinged on six additional requirements) and Notice of Approval (June 25, 2018); *Application of the Ridge at Frio River Water Company, LLC for a Water Certificate of Convenience and Necessity in Real County*, Docket No. 43783, Request to File TCEQ Approvals at 2 (Aug. 17, 2015) (conditionally approving the project hinged on four additional requirements) and Order at Finding of Fact No. 22 (May 6, 2016); *Application of Petra Firma Development Group, Inc. for a Water Certificate of Convenience and Necessity in Tom Green County*, Docket No. 47093, CCN Addendum—TCEQ Construction Plan Approval at 2-3 (Aug. 21, 2017) (conditionally approving the project hinged on two additional requirements) and Notice of Approval at Conclusion of Law No. 5 (June 14, 2018).

As further detailed in Mr. Bednarski's June 14, 2021 memorandum, Dos Aguas' affiliates have demonstrated that they are capable, available, and willing to cover temporary cash shortages as required under 16 TAC § 24.11(e)(2)(E).

Lastly, while the affiliates have not provided a written guarantee to cover cash shortages, such a written guarantee is not required. As stated under 16 TAC § 24.11(e)(3), "[a]n affiliated interest *may* provide a written guarantee of coverage of temporary cash shortages (emphasis added)." Staff did not require a written guarantee of coverage from Dos Aguas' affiliates because a written guarantee is not required under the rule and the affiliates have otherwise demonstrated their willingness to cover cash shortages.

II. CONCLUSION

Staff recommends that Dos Aguas' application for a water CCN be approved. Staff respectfully requests that a notice of approval be issued consistent with the proposed order filed on July 8, 2021, as modified by the above-discussed clarifications.

Dated: September 7, 2021

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 September 7, 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: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: September 7, 2021

RE: Docket No. 51407 – *Application of Dos Aguas, LLC for a Water Certificate of Convenience and Necessity in Walker and Montgomery County*

1. Application

Dos Aguas, LLC (Dos Aguas) filed with the Public Utility Commission of Texas (Commission) an application for a water certificate of convenience and necessity (CCN) in Montgomery, San Jacinto, and Walker Counties, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Dos Aguas is seeking to obtain a water CCN for the service area containing approximately 5,387 acres separated into 2,200 lots, this was previously identified as current customers, however there are no current customers in the requested area.

2. Notice

The deadline to intervene was April 21, 2021; there were no motions to intervene, protests, or opt-out requests received.

3. 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.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1); 16 TAC § 24.227(a) and (e)(1)).*

There are no customers in the requested area.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)).*

There is a need for service as there are expected to be 2,200 customers in the requested area.

3.3. *Consideration of 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 (TWC §§ 13.241(b) and 13.246(c)(3), 16 TAC § 24.227(e)(3)).*

Dos Aguas will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.

The landowners in the area will have a water provider available when they need to request water service.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC § 13.246(c)(4); 16 TAC § 24.227(a) and (e)(4)).*

Dos Aguas has a Texas Commission on Environmental Quality (TCEQ) approved proposed water system registered as Dos Aguas, PWS ID No. 1700917. The water system will be activated when Dos Aguas notifies TCEQ or when an investigation by the TCEQ determines the water system is providing service to at least 15 service connections or 25 individuals.

TCEQ has approved plans for Dos Aguas to build facilities in the requested area to serve future customers. Dos Aguas will be building two plant sites with wells in the first stage of the development and has funding available for construction of a third well for future development.³ Dos Aguas is expected to have 2,200 connections when both subdivisions are fully developed. Based on the approval letter from the TCEQ for the distribution system⁴ Dos Aguas will need to increase the approved water treatment plant capacity in order to serve the customers prior to the subdivisions being fully developed. Dos Aguas must coordinate with the TCEQ on the additional approvals needed.

3.5. *The applicants' demonstration 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. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

Service was requested from three neighboring utilities. Two of the utilities did not provide a response to Dos Aguas. One submitted a letter stating they would not be able to serve the area and therefore were declining the request for service. Therefore, concerns of regionalization or consolidation do not apply.

¹ Application Responses to Question 11 c. & d.

² TCEQ Approval Letter for Dos Aguas LLC (June 7, 2021).

3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)).*

Dos Aguas received a request for service for the requested area from two developers. Dos Aguas requested service from three neighboring utilities. Two of the utilities did not provide a response to Dos Aguas. One submitted a letter stating they would not be able to serve the area and therefore were declining the request for service. Dos Aguas has approved TCEQ plans to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

3.8. *Requirement of the 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 (TWC §§ 13.246(d); 16 TAC § 24.227(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC § 24.227(e)(7) and (9)).*

The environmental integrity of the land will be minimally affected as the water treatment plant is built and distribution lines are installed to provide service to the requested area. Additionally, Dos Aguas provided this statement in their application “All plans will be reviewed by the respective counties and all flood plain and drainage requirements met.”

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)).*

This factor is not applicable because there are no homes currently receiving service in the requested service area. Dos Aguas provided all the required documentation under 16 TAC § 24.25(b)(1) for the proposed tariff and rates. In order to true-up the proposed rates, I recommend that Dos Aguas file a rate application with the Commission within 18 months from the date service begins per 16 TAC § 24.25(b)(1)(C).

4. Recommendation

Based on the mapping review by Gary Horton, Infrastructure Division, the financial and managerial review by Fred Bednarski III (in his separate memo), Rate Regulation Division, and my technical and managerial review, I recommend that:

- Dos Aguas 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. I also recommend that approving this application to obtain water CCN No. 13295 is necessary for the service, accommodation, convenience and safety of the public; and

- Dos Aguas file a rate application with the Commission within 18 months from the date service begins pursuant to 16 TAC § 24.25(b)(1)(C).

Dos Aguas consented to the attached map and certificate on May 24, 2021.

Dos Aguas consented to the attached tariff on June 8, 2021.