



Control Number: 51407



Item Number: 48

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

ORDER

This Order addresses the application of Dos Aguas, LLC to obtain a certificate of convenience and necessity (CCN) in Walker, Montgomery, and San Jacinto counties. The Commission denies Dos Aguas' request to obtain a water CCN number for the requested area described in its application, for the reasons stated in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Dos Aguas is a Texas limited liability company registered with the Texas secretary of state under filing number 803354857.
2. Dos Aguas has received conditional approval from the Texas Commission on Environmental Quality (TCEQ) to construct a public water system and water facilities under public water system registration identification number 1700917.

Application

3. On October 9, 2020, Dos Aguas filed the application at issue in this proceeding.
4. On October 21 and 29, November 10 and 19, and December 1 and 3, 2020, Dos Aguas filed supplements to the application.
5. Dos Aguas' application, as supplemented, requests a service area that is 5,387 acres and would serve 2,200 potential future connections.
6. The requested area is owned by two developers: Deer Forest LLC and Republic Grand Ranch LLC.

7. The requested area will be developed as follows: (1) a subdivision consisting of 292 one-acre lots called Deer Forest; and (2) a subdivision consisting of 1,800 to 1,900 one and one-half to two acre-lots in Montgomery County.¹
8. The requested area is located approximately six miles northeast of downtown Willis, Texas, and is generally bounded on the north by State Highway 150; on the east by Peach Creek; on the south by Tanyard Road; and on the west by Farm-to-Market Road 1097.
9. The requested area overlaps the district boundaries of the San Jacinto River Authority.
10. In Order No. 3 filed on January 19, 2021, the administrative law judge (ALJ) found the application administratively complete.

Notice

11. On March 1, 2021, Dos Aguas filed the affidavit of Scott Rohe, Dos Aguas' president, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on January 28, 2021.
12. On March 1, 2021, Dos Aguas filed publishers' affidavits attesting to the publication of notice of the application as follows:
 - i. In the *Huntsville Item*, a newspaper of general circulation in Walker County, on February 4 and 11, 2021;
 - ii. In the *Montgomery County News*, a newspaper of general circulation in Montgomery County, on February 3 and 10, 2021; and
 - iii. In the *San Jacinto News Times*, a newspaper of general circulation in San Jacinto County, on February 4 and 11, 2021.
13. On March 23, 2021, Dos Aguas filed the supplemental affidavit of Mr. Rohe, attesting that supplemental notice, including corrected maps, was mailed to neighboring utilities, county authorities, municipalities, and affected parties on March 22, 2021.
14. On March 23, 2021, Dos Aguas filed copies of the tear sheets for the published notices.

¹ The requested area is bounded on the east by Peach Creek, which is located on the border between and including land from Montgomery and San Jacinto counties. Because the only portion of San Jacinto County included in the requested area is the Peach Creek waterway, this portion of the requested area will not be developed into lots.

15. In Order No. 4 filed on April 1, 2021, the ALJ found notice sufficient.

Evidentiary Record

16. On July 8, 2021, the parties filed an agreed motion to admit evidence and proposed notice of approval.
17. On September 9, 2021, the parties filed a joint motion to admit supplemental evidence.
18. In Order No. 8 filed on September 10, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) Dos Aguas' application and all attachments filed on October 9, 2020; (b) Dos Aguas' supplemental attachments and information filed on October 21 and 29, November 10 and 19, and December 1 and 3, 2020; (c) Dos Aguas' proposed tariff, in response to Commission Staff's first requests for information, filed on February 10, 2021; (d) Dos Aguas' proof of direct and published notice filed on March 1 and 23, 2021; (e) Dos Aguas' responses to Commission Staff's second requests for information filed on April 23 and 26, 2021; (f) Dos Aguas' executed consent form filed on May 24, 2021; (g) Dos Aguas' supplemental letters from the TCEQ, authorizing the construction of Dos Aguas' proposed water system, filed on June 3 and 7, 2021; (h) Dos Aguas' executed consent form concurring with Commission Staff's revised proposed tariff filed on June 8, 2021; (i) Commission Staff's recommendation on final disposition of the application and all attachments filed on June 14, 2021; (j) the final map, certificate, and tariff, attached to the parties' joint motion to admit evidence and proposed notice of approval, filed on July 8, 2021; (k) Dos Aguas' response to Order No. 6 filed on July 29, 2021; (l) Dos Aguas' response to Commission Staff's third requests for information filed on August 18, 2021; and (m) Commission Staff's response to Order No. 6, including all attachments, filed on September 7, 2021.

Need for Service

19. There are no existing customers in the requested area.
20. Water service is not currently being provided to anyone within the requested area.
21. The requested area is currently being developed into two subdivisions with a projected total of 2,200 customer connections.
22. The developers of the requested area requested water service from Dos Aguas.

Effect of Approving the Application and Issuing the Certificate

23. Issuing the CCN would obligate Dos Aguas to provide water service to any future customers in the requested area.

Ability to Serve: Managerial

24. Dos Aguas has employed a licensed and experienced water operator to operate the public water system.

Ability to Serve: Technical

25. Dos Aguas has plans to construct up to three plant sites with wells to serve up to 2,200 connections in the requested area.
26. Dos Aguas provided an estimated completion date for plants one and two of its public water system which, combined, will serve a minimum of 583 connections. Dos Aguas estimated that plant one and well one would be completed by September 20, 2021, and that plant two and well two will be completed by March 31, 2022.
27. Dos Aguas does not have an estimated completion date for the third plant or well. Dos Aguas intends to submit plans to the TCEQ and construct plant three in the future if growth warrants it.
28. Dos Aguas did not file record evidence that any of the three plants or wells have been constructed.
29. In a letter dated June 3, 2021, the TCEQ stated that it conditionally approved Dos Aguas' water system. The TCEQ stated that Dos Aguas' public water system does not have adequate plant capacity approved by the TCEQ for the number of connections proposed in its submitted distribution systems. The TCEQ further stated that Dos Aguas must increase the approved water treatment plant capacity in accordance with TCEQ rules before the lots are developed in order to meet capacity requirements.
30. Dos Aguas did not provide evidence to demonstrate that it has access to an adequate supply of water and is capable of providing drinking water to 2,200 connections 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.

31. Dos Aguas did not provide sufficient evidence to demonstrate that it has the technical capability to provide continuous and adequate service to up to 2,200 connections in the requested area.

Maps and Facilities

32. Dos Aguas did not provide a subdivision plat, engineering planning map, or other large scale maps that show all its facilities and illustrate, separately, facilities for production, transmission, and distribution of its services.

Ability to Serve: Financial

33. The capital improvement plan filed by Dos Aguas did not include a detailed budget and estimated timeline for construction of all facilities necessary to provide full service to the requested area, keyed to a map showing where such facilities will be located to provide service.
34. Dos Aguas stated they would self-fund wells one and two which will service a combined 583 connections. Dos Aguas did not provide sufficient evidence to demonstrate that they have the financial capability to fund the construction of the remaining facilities necessary to serve and to provide continuous and adequate service to the requested area of 2,200 connections.
35. Dos Aguas did not provide documentation of loan approval documents or firm capital commitments affirming funds are available to install a new water system for service to a new CCN area or the two new subdivisions.
36. Dos Aguas filed documentation to address two years of debt service; however, Dos Aguas did not provide sufficient evidence that it, or its affiliates, have unrestricted cash available for two years of debt service.
37. Dos Aguas provided financial statements that include projected income and cash flow to demonstrate that it has the ability to cover any projected operations and maintenance shortages for the first five years of operations. However, Dos Aguas did not provide evidence of sufficient available cash to cover any projected operations and maintenance shortages in the first five years of operations.

38. Dos Aguas did not provide a written guarantee that its affiliates are willing to cover any temporary cash shortages or that they have sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations.
39. Dos Aguas' filed affiliates' letters of credit, under confidential seal, and several of the letters of credit expired during the pending proceeding.

Informal Disposition

40. More than 15 days have passed since the completion of notice provided in this docket.
41. No person filed a protest or motion to intervene.
42. Dos Aguas and Commission Staff are the only parties to this proceeding.
43. No party requested a hearing, and no hearing is needed.
44. Commission Staff recommended approval of the application.
45. 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. Dos Aguas provided notice of the application that complies with TWC § 13.246 and 16 TAC § 24.235.
3. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) along with 16 TAC § 24.227(a) and (e), Dos Aguas failed to demonstrate that it has the technical capability to provide continuous and adequate service for up to 2,200 connections in the requested area in Walker, Montgomery, and San Jacinto counties.
4. Dos Aguas did not demonstrate that it is capable of providing drinking water, for up to 2,200 connections in the requested area, that meets the requirements of Chapter 341, Health and Safety Code and the requirements of the TWC in accordance with TWC § 13.241(b)(1), and 16 TAC §§ 24.227(a)(1)(A) and (e)(4).

5. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) along with 16 TAC § 24.227(a) and (e), Dos Aguas failed to demonstrate that it has the financial capability to provide continuous and adequate service for up to 2,200 connections in the requested area in Walker, Montgomery, and San Jacinto counties.
6. Dos Aguas failed to provide sufficient evidence that it has the financial resources to operate and manage the utility and to provide continuous and adequate service for up to 2,200 connections in the requested area in accordance with 16 TAC § 24.11(e)(2)-(e)(3).
7. Dos Aguas failed to provide sufficient evidence to demonstrate that it has the financial ability to pay for the facilities necessary to provide continuous and adequate service for up to 2,200 connections in accordance with 16 TAC § 24.227(e)(6).
8. Dos Aguas failed to provide sufficient evidence of loan approval documents or firm capital commitments affirming funds are available to install a new water system for service to a new CCN area or the new subdivisions in accordance with 16 TAC § 24.11(e)(5)(B)(ii).
9. Dos Aguas failed to provide sufficient evidence of a capital improvement plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the requested area, keyed to a map showing where such facilities will be located to provide service, in accordance with TWC § 13.244(d)(3) and 16 TAC § 24.233(a)(6).
10. Dos Aguas failed to provide a subdivision plat, engineering planning map, or other large scale maps that show all its facilities and illustrate, separately, facilities for production, transmission, and distribution of its services in accordance with TWC § 13.244(b) and 16 TAC § 24.257(a)(4).
11. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,² the TWC, and Commission rules.
12. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

² Tex. Gov't Code §§ 2001.001--.903.

III. Ordering Paragraphs

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

1. The Commission denies Dos Aguas' request to obtain a water CCN number for the requested area described in its application.
2. This docket is restyled as reflected in this Order.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 15th day of March 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER