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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 RECOMMENDATION ON FINAL DISPOSITION

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.

On June 2, 2022, Order No. 10 in this proceeding was filed, requiring Commission Staff (Staff) to file a final recommendation on the application by August 1, 2022, if no hearing is requested. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the application and supplemental materials and, as detailed in the attached memoranda from Patricia Garcia of the Infrastructure Division and Ethan Blanchard of the Rate Regulation Division, recommends that Dos Aguas’ application for a water CCN be approved. Staff’s review indicates that Dos Aguas meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code (TWC) and Title 16, Chapter 24 of the Texas Administrative Code (TAC), and, therefore, is capable of providing continuous and adequate service. Additionally, Staff’s review suggests that approval of Dos Aguas’ application, and the issuance of water CCN No. 13295, is necessary for the service, accommodation, convenience, and safety of the public.

Dos Aguas filed consent forms concurring with the attached final map, certificate, and tariff on July 11, 2022.

Staff also recommends that 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).

II. CONCLUSION

Staff recommends that Dos Aguas’ application for a water CCN be approved. Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

Dated: August 1, 2022

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 1, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: August 1, 2022

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

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.

In the original application, Dos Aguas was 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.

At the Commission's open meeting on January 13, 2022, the application was denied. On February 4, 2022, Dos Aguas filed a motion for rehearing. The order denying the application was filed on March 15, 2022. The motion for rehearing was discussed at the open meeting on March 31, 2022 and the docket was remanded to Docket Management on April 21, 2022. On May 27, 2022, Dos Aguas filed an amended application with revised mapping which reduced the requested area to 2,753 acres.

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 currently 38 customers in the requested area. The water plants are capable of providing water service to up to 583 connections. Additionally, the distribution system is fully installed in the requested area. As the distribution system is fully installed, Dos Aguas has the ability to provide service to customers throughout the requested area. Customers are able to purchase any lot within 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 two subdivisions within the requested area, Deer Forest and Republic Grand Ranch which are owned by Republic Grand Ranch LLC. Republic Grand Ranch has sold 637 lots to date with 42 new home applications. Deer Forest has sold 58 lots. The homes on each lot are built out by each customer within their own timeline.

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.¹ Dos Aguas is expected to have 2,200 connections when both subdivisions are fully developed. Dos Aguas will need to file another CCN amendment application when they are ready to provide service to customers outside the requested area. Based on

¹ Application Responses to Question 11 c. & d.

the approval letter from the TCEQ for the distribution system² Dos Aguas will need to increase the water treatment plant capacity in order to provide service to the fully developed subdivisions. Dos Aguas will coordinate with the TCEQ on the additional approvals needed and submit a new CCN amendment application to the Commission prior to providing service to the additional areas within the subdivisions.

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.

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 Republic Grand Ranch, LLC, developer of the Republic Grand Ranch and Deer Forest subdivisions. Because the requested area would require the construction of a new water plant and facilities, Dos Aguas requested water service from three neighboring utilities. Two of the utilities did not provide a response to Dos Aguas. One utility submitted a letter stating they would not be able to serve the area and therefore were declining the request for service. TCEQ has approved plans for Dos Aguas to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the requested 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 be minimally affected as water plant number 1 has been completed and water plant number 2 is in construction. The distribution system has been installed throughout the requested area. Additionally, Dos Aguas stated in their

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

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 Ethan Blanchard (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, tariff, and certificate on July 11, 2022.

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: July 21, 2022

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

On January 26, 2022, Dos Aguas, LLC (Dos Aguas) filed an application for a water certificate of convenience and necessity in Walker and Montgomery Counties under Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Dos Aguas must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

My analysis is based on the personal financial statements of the owners of Dos Aguas: Roark Rohe, Scott Rohe, and Jaco Slott. These financial statements report a combined cash balance sufficient to cover two years of Dos Aguas' debt service.¹ Therefore, I recommend a finding that the owners meet the leverage test specified in 16 TAC § 24.11(e)(2)(C).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an

¹ The calculations for which can be found in confidential Attachment EB-1.

affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Dos Aguas' financial projections show projected cash shortages over the first five years of operations. However, the owners' financial statements demonstrate sufficient cash to cover these projected shortages.² Therefore, I recommend a finding that Dos Aguas meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan

The capital improvements needed to provide continuous and adequate service to the requested area will be paid for by the owners' cash reserves, net income, lines of credit, as well as the developer of the requested area.³ Therefore, I recommend that Dos Aguas meets the requirements outlined in 16 TAC § 24.11(e)(5).

Recommendation

Because Dos Aguas meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Dos Aguas demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Dos Aguas before the date of this memorandum and may not reflect any changes in Dos Aguas's status after this review.

² The calculations for which can be found in confidential Attachment EB-1.

³ The calculations for which can be found in confidential Attachment EB-1.