



Control Number: 51646




Item Number: 77

Public Utility Commission of Texas

Commissioner Memorandum

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TO: Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

FROM: Commissioner Kathleen Jackson 

DATE: May 10, 2023

RE: May 11, 2023 Open Meeting – Item No. 2
Docket No. 51646 – *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*

I recommend that the Commission remand this proceeding to Docket Management for further processing. There are several evidentiary issues that I believe should be resolved on remand before the Commission can approve the application.

First, it is unclear from the record whether certificate of convenience and necessity (CCN) number 12927 is a facilities-only CCN, which only encompasses its existing water lines and infrastructure or a bounded service area of 681 acres. The parties' joint proposed notice of approval states that "[Waters of Vista Ranch's] CCN service area is a facilities-only CCN, which only encompasses its existing water lines and infrastructure."¹ However, the order originally granting CCN number 12927 to Waters of Vista Ranch's predecessor states, "It is further ordered that Bert Dickens, Inc. aka Vista Water shall serve every customer and applicant for service *within the area certified* under Certificate of Convenience and Necessity No. 12927 and that such service shall be continuous and adequate."² The parties should clarify whether Waters of Vista Ranch's CCN number 12927 is a facilities-only CCN or a bounded service area CCN consisting of 681 acres.

Second, Texas Water Code (TWC) § 13.244(d)(3) requires that an application for an amendment to a CCN must contain a capital improvement plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area. Here, the applicants provided a capital improvement plan that did not include an estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area. For areas where additional facilities are needed to provide the requested service but are not yet fully constructed, Aqua must file a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary, as required by the Texas

¹ Joint Proposed Notice of Approval at 6, Proposed Finding of Fact 54 (Mar. 17, 2023).

² Tex. Nat'l Res. Conservation Comm'n, *In the Matter of the Application of Bert Dickens, Inc. aka Vista Water to Obtain a Water Certificate of Convenience and Necessity in Fayette County, Texas*, Application No. 33172-C, Order (Jun. 1, 2001).

Water Code. For any remaining portions within its requested service area Aqua must address the need for additional service, including whether any landowners, prospective landowners, tenants, or residents have made written application or requests for service.³

Third, TWC § 13.246(a-1) and 16 TAC 24.235(b)(2) require that notice of an application for an amendment to a CCN must be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. There is insufficient evidence in the record to support a finding that notice has been mailed by first class mail to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the amendment. The applicants provided a proof of notice that included the names and mailing addresses of 63 landowners.⁴ However, the record does not show which tracts of land in the requested area are at least 25 acres and who owns those tracts of land. Further, there is no affidavit attesting that notice was mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Therefore, the record does not show that notice has been mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. The applicants should supplement the evidentiary record sufficiently to show that the requirements of TWC § 13.246(a-1) and 16 TAC 24.235(b)(2) have been met.

Fourth, the applicants should supplement the record to provide maps of the 5,496-acre requested area that are consistent in detail with what the administrative law judge required in Order No. 2. In Order No. 2, the administrative law judge found the original maps requesting 16,642 acres insufficient and required the applicants to supplement the application to cure the deficiencies as described in the January 21, 2021 memorandum of Jolie Mathis.⁵ The applicants supplemented the application in response to Order No. 2,⁶ but the applicants later filed revised maps to reduce the requested area to 5,496 acres.⁷ The revised maps have the same deficiencies as the maps in the original application and should be revised to comply with Order No. 2.

Finally, the Commission should delegate to the Office of Policy and Docket Management staff the authority to modify the order to conform to the Citation and Style Guide for the Public Utility Commission of Texas and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.

³ TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2)

⁴ Applicants' Proof of Notice, Attachment B (Jul. 26, 2021).

⁵ Order No. 2 (Jan. 22, 2021).

⁶ Waters of Vista Ranch WSC's and Aqua WSC's Response to Order No. 2 and Supplement to Application, Attachment A (Mar. 10, 2021).

⁷ Waters of Vista Ranch WSC's and Aqua WSC's Response to Order No. 7 and Supplement to Application, Attachment A (May 28, 2021).