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DOCKET NO. 51657

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
ANNA TO AMEND ITS CERTIFICATE	§	
OF CONVENIENCE AND NECESSITY	§	OF TEXAS
IN COLLIN COUNTY	§	

COMMISSION STAFF'S FINAL RECOMMENDATION

On December 28, 2020, the City of Anna (Anna) filed an application to amend its sewer certificate of convenience and necessity number 20898 in Collin County, Texas. The requested service area consists of 105 acres with no current customers.

On November 17, 2023, the administrative law judge filed Order No. 13, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or final recommendation by January 5, 2024. Therefore, this pleading is timely filed.

I. FINAL RECOMMENDATION

Staff has reviewed the application and supplemental information and, as supported by the attached memoranda of Jolie Mathis, Infrastructure Division and Fred Bednarski III, Rate Regulation Division, recommends approval of the application. Staff's review indicates that Anna meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code and, therefore, is capable of providing continuous and adequate service. Additionally, Staff's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

II. CONCLUSION

For the reasons discussed above, Staff respectfully requests that Anna's application be approved.

Dated: January 5, 2024

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

Andrew Aus
Managing Attorney

/s/ Arnett D. Caviel
Arnett D. Caviel
State Bar No. 24121533
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7245
(512) 936-7268 (facsimile)
Arnett.Caviel@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that, unless ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 5, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Arnett D. Caviel
Arnett D. Caviel

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: January 5, 2024

RE: Docket No. 51657 – *Application of the City of Anna to Amend its Certificate of Convenience and Necessity in Collin County*

1. Application

The City of Anna (Anna) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer certificate of convenience and necessity (CCN) No. 20898 in Collin County, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Based on the mapping review by Gary Horton, Infrastructure Division:

- Anna is seeking to amend a sewer CCN for the service area containing 0 current customers and approximately 105 acres, comprised of 105 acres of uncertificated area.
- The application proposes the addition of approximately 105 acres to CCN No. 20898.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and that there is one landowner in the requested area. The landowner requested service from Anna. A map indicating the location of the landowner's three properties was also provided.¹

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

3. Factors Considered

Under TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227, the Commission must consider certain factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered.

¹ Response to Staff 1-2 (Mar. 3, 2021).

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)).*

Anna received a request for sewer service from the property owner of the entire requested area. There is currently no sewer service 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)).*

Anna 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 sewer provider available when they need to request sewer 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)).*

TCEQ rule, 30 TAC §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Anna will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Anna will have licensed operators to run the system operations. Class B, C, and D operators will be responsible for the system.

Anna has two Texas Commission on Environmental Quality (TCEQ) approved public wastewater treatment plants (WWTP) registered as Slayer Creek WWTP, Wastewater Discharge Permit No. WQ0011283001 and Collin County Adventure Camp WWTP Wastewater Discharge Permit No. WQ0014486001. Anna does not have any violations listed in the TCEQ database. No additional construction is necessary for Anna to serve the requested area. In addition, the Commission's complaint records, which go back to 2016, show no complaints against Anna.

Anna has submitted a TCEQ approval letter for the Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016043001 – Hurricane Creek Regional Wastewater Treatment Plant which will provide service to the requested area.

- 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)).***

TCEQ has approved Anna's TPDES permit No. WQ0016043001 – Hurricane Creek Regional Wastewater Treatment Plant to serve future customers and will have sufficient capacity to serve the area. Regionalization or consolidation with another retail public utility is not economically feasible.

- 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)).***

The requested area will receive service through from Anna's approved TPDES permit No. WQ0016043001 – Hurricane Creek Regional Wastewater Treatment Plant.

- 3.7. ***An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).***

Anna is extending an existing sewer treatment plant to provide service to the requested area. Anna provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located. Estimated costs to build a new sewer system is expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

- 3.8. ***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.

- 3.9. ***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.

- 3.10. ***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)).***

Adding the proposed area to the sewer CCN is not expected to have any adverse effect on the environmental integrity of the land.

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

There are no customers or sewer service available in the requested area, however, the landowner has requested sewer service.

4. Recommendation

Based on the mapping review by Gary Horton, Infrastructure Division, the financial and managerial review by Fred Bednarski, Rate Regulation Division, and my technical and managerial review, I recommend that Anna meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service. I further recommend that approving this application to amend a sewer CCN No. 20898 is necessary for the service, accommodation, convenience and safety of the public.

Anna consented to the attached map and certificate on December 7, 2023.

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: January 5, 2024

RE: Docket No. 51657 *Application of the City of Anna to Amend its Certificate of Convenience and Necessity in Collin County*

On December 28, 2020, the City of Anna (Anna) filed an application to amend its sewer certificate and convenience and necessity number 20898 in Collin County 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. Anna 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 Anna's financial statements ending September 30, 2022. These financial statements contain an unqualified auditor's opinion from Weaver and Tidwell, L.L.P. stating that the financial statements present fairly, in all material respects, the financial position of Anna as of September 30, 2022.¹

Based upon my review of Anna's financial statements, I calculate the debt-to-equity ratio equal to 0.32. The debt-to-equity ratio is based on long term debt of \$64,846,267² divided by net

¹ Docket No. 51657 Supplemental Information at 421, 422, & 423 (Oct. 2, 2023).

² *Id.* at 428.

assets of 199,906,272.³ Because the ratio is less than 1.00, I recommend a finding Anna meets the leverage test as specified in 16 TAC § 24.11(e)(2)(A).

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 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).

Anna projects no operating, maintenance, or cash shortages to cover.⁴ Additionally, Anna's financial statements include \$30,827,769⁵ in net income and \$30,747,096⁶ in cash and cash equivalents. Therefore, I recommend a finding that Anna meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Capital improvements required to provide continuous and adequate sewer service to the area subject to this application are estimated to exceed \$100,000, per the recommendation provided by Jolie Mathis, Infrastructure Analyst. The capital improvements are estimated to cost \$25,450,000.⁷

Staff notes that 16 TAC § 24.11(e)(5)(B) allows the owner to meet the test by providing loan approval documents or firm capital commitments. At the February 16, 2023 open meeting⁸, the Commission elaborated upon its previous discussion regarding these requirements at the October 6, 2022 open meeting. The Commissioners clarified that audited financial statements showing an adequate cash surplus were sufficient proof of financial assurance.

Anna provided its audited financial statements containing \$30,747,096⁹ in unrestricted cash and cash equivalents demonstrating a firm capital commitment and adequate cash funding of the planned system improvements. Therefore, I recommend a finding that Anna meets the

³ *Id.*

⁴ *Id.* at 185 thru 187.

⁵ *Id.* at 428.

⁶ *Id.* at 437.

⁷ *Id.* at 94.

⁸ Open Meeting at 39:40 (Feb. 16, 2023), Item No. 3 (available at https://www.adminmonitor.com/tv/puct/open_meeting/20230216/).

⁹ *Id.* at 437.

requirements specified in 16 TAC § 24.11(e)(5)(B) and if necessary, a good cause exception should be granted.

Recommendation

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

Consequently, I recommend a finding that Anna 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 Anna before the date of this memorandum and may not reflect any changes in Anna's status after this review.