



Filing Receipt

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DOCKET NO. 51864

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| APPLICATION OF THE CITY OF | § | PUBLIC UTILITY COMMISSION |
| MIDLOTHIAN TO AMEND ITS | § | |
| WATER CERTIFICATE OF | § | OF TEXAS |
| CONVENIENCE AND NECESSITY IN | § | |
| ELLIS COUNTY | § | |

COMMISSION STAFF’S FINAL RECOMMENDATION

On March 2, 2021, the City of Midlothian (Midlothian) filed an application to amend its certificate of convenience and necessity (CCN) No. 11706 in Ellis County. Midlothian also seeks to decertify a portion of Mountain Peak Utility District’s water CCN No. 10908 in Ellis County.

On November 29, 2021, the administrative law judge (ALJ) filed Order No. 6, requiring the Staff (Staff) of the Public Utility Commission (Commission) to file a final recommendation on the application on or before January 4, 2021. Therefore, this pleading is timely filed.

I. FINAL RECOMMENDATION

As detailed in the attached memoranda of Patricia Garcia of the Commission’s Infrastructure Division and Fred Bednarski III of the Commission’s Rate Regulation Division, Staff has reviewed the application and recommends that it be approved. Staff’s review indicates that Midlothian 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), which therefore illustrates that Midlothian 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.

The parties will file joint proposed findings of fact and conclusions of law in accordance with the procedural schedule outlined in Order No. 6.

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends approval of Midlothian’s application.

Dated: January 4, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

/s/ Kevin R. Bartz
Kevin R. Bartz
State Bar No. 24101488
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7203
(512) 936-7268 (facsimile)
kevin.bartz@puc.texas.gov

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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 January 4, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz
Kevin R. Bartz

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: January 4, 2021

RE: Docket No. 51864 – *Application of the City of Midlothian to Amend its Water Certificate of Convenience and Necessity in Ellis County*

1. Application

On March 2, 2021, the City of Midlothian (Midlothian) filed with the Public Utility Commission of Texas (Commission) an application to amend its water certificate of convenience and necessity (CCN) No. 11706 and to decertify a portion of Mountain Peak Special Utility District's water CCN No. 10908 in Ellis County, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

The notice portion of the application indicated the requested area included 201 customer connections. This was also indicated in the published notice and the notice provided to neighboring systems, landowners, customers, and cities, however the responses in the application correctly indicates that there are no current customers in the requested area. The requested area includes no customer connections and approximately 53 acres, comprised of 41 acres of uncertificated area and 12 acres of decertified area from CCN No. 10908.

The application proposes the addition of approximately 53 acres that lie within Midlothian's city limits, to CCN No. 11706 and the subtraction of approximately 12 acres from CCN No. 10908.

2. Notice

The deadline to intervene was November 14, 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:

- 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 requests for service from a developer and a school district 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)).*

Midlothian 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. Midlothian stated that they have an agreement with the neighboring utilities to service areas that best utilize the resources available to meet the needs of service of the requested area. Additionally, 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)).*

Midlothian has a Texas Commission on Environmental Quality (TCEQ) approved public water system(s) (PWS) registered under PWS ID number 0700005. Midlothian does not have any violations listed in the TCEQ database. The Commission's complaint records, which go back to 2014, show one complaint against Midlothian.

- 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)).*

Midlothian stated that they have an agreement with the neighboring utilities to service areas that best utilize the resources available to meet the needs of service of the requested area. TCEQ has approved plans for Midlothian to extend service to the requested area by installing distribution lines and building facilities to serve future customers. The additional facilities will provide sufficient capacity to serve the requested area at full build out. 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)).*

Midlothian received a request for service for the requested area from a developer and a school district. Midlothian has an agreement with the neighboring utilities to service areas that best utilize the resources available to meet the needs of service of the requested area. Because of this agreement, it was determined Midlothian would be the best retail utility to provide service to the requested area. Midlothian has approved TCEQ plans to extend service to the requested area by building facilities 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 additional facilities are constructed to provide service to the requested area.

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)).*

Future residents of the planned development and students attending the school to be built in the requested area will have water service available.

4. Recommendation

Based on the mapping review by Gary Horton, Infrastructure Division and my technical and managerial review, I recommend that Midlothian meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. I further recommend that approving this application to amend a water CCN No. 11706 and decertifying a portion of Mountain Peak Special Utility District's water CCN No. 10908 is necessary for the service, accommodation, convenience, and safety of the public.

Midlothian and Mountain Peak Special Utility District consented to the attached map and respective certificates on December 15, 2021.

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: January 4, 2022

RE: Docket No. 51864 - *Application of the City of Midlothian to Amend its Water Certificate of Convenience and Necessity in Ellis County*

On March 2, 2021, the City of Midlothian (Midlothian) filed an application to add approximately 53 acres to its certificate of convenience and necessity (CCN) No. 11706 to provide water service and to decertify a portion of Mountain Peak Utility District's water CCN No. 10908 in Ellis county.

I recommend that Midlothian demonstrated 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 Midlothian before the date of this memorandum and may not reflect any subsequent changes in Midlothian's status after this review.

Ability to serve: Financial ability and stability (Texas Water Code (TWC §§ 13.241(a) and 13.246(c)(6))

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. Midlothian 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 Midlothian's financial statements ending September 30, 2019. These financial statements contain an unqualified auditor's opinion from Pattillo, Brown & Hill, L.L.P. stating that the financial statements present fairly, in all material respects, the financial position of Midlothian as of September 30, 2019.

Midlothian's 2019 financial statements report long-term debt of \$122,548,387 and equity of \$285,442,822. The debt-to-equity ratio is 0.43. Because the ratio is less than 1.0, Midlothian meets the leverage test 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, as required by 16 TAC § 24.11(e)(3).

Midlothian's financial statements include \$26,208,120 in net income and \$55,979,417 in cash and cash equivalents, which indicates that Midlothian will have sufficient cash to cover projected shortages.

Midlothian already has facilities installed adjacent to the requested area. Additional capital improvements required to serve the requested area will be paid for with tax levies, impacts fees, and developer contributions. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, Midlothian meets the operations test specified in 16 TAC § 24.11(e)(3).

Financial assurance (TWC § 13.246(d))

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