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DOCKET NO. 52132

APPLICATION OF LUMBERTON	§	PUBLIC UTILITY COMMISSION
MUNICIPAL UTILITY DISTRICT TO	§	
AMEND ITS CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
HARDIN COUNTY	§	

JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL

On May 17, 2021, Lumberton Municipal Utility District (Lumberton MUD) filed an application to amend its water Certificate of Convenience and Necessity (CCN) No. 10929 in Hardin County. On June 2, 2021, Lumberton MUD filed an amended application. On July 21, 2021, Lumberton MUD filed to amend its sewer CCN No. 20367 as well. The requested service area consists of approximately 89 acres and 11 current customers.

On January 20, 2022, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of January 24, 2022 for Lumberton MUD and the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, the Parties) to file joint proposed findings of fact, conclusions of law, and ordering paragraphs. Therefore, this pleading is timely filed.

I. JOINT MOTION TO ADMIT EVIDENCE

The Parties respectfully request that the following items be admitted into evidence:

1. Lumberton MUD's Application and all attachments, filed on May 17, 2021 (Interchange Item No. 1);
2. Lumberton MUD's Amended Application and all attachments, filed on June 2, 2021 (Interchange Item No. 3);
3. Lumberton MUD's Supplemental Filing to Address Deficiencies , filed on July 21, 2021 (Interchange Item No. 6);
4. Lumberton MUD's Requested Mapping and Additional Mapping, filed on July 22, 2021 (Interchange Item Nos. 7 and 8);
5. Commission Staff's Supplemental Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule, filed on August 25, 2021 (Interchange Item No. 9);
6. Lumberton MUD's Supplemental Filing with Notice Proof, filed on October 5, 2021

- (Interchange Item No. 11);
7. Lumberton MUD's Pleading with Publisher's Affidavit, filed on October 13, 2021 (Interchange Item No. 12);
 8. Lumberton MUD's Supplemental Filing with Attachments Regarding Notice, filed on November 4, 2021 (Interchange Item No. 16);
 9. Commission Staff's Supplemental Recommendation on Sufficiency of Notice and Proposed Procedural Schedule, filed on November 15, 2021 (Interchange Item No. 17);
 10. Lumberton MUD's signed Consent Form, filed on December 29, 2021 (Interchange Item No. 19); and
 11. Commission Staff's Final Recommendation and all attachments, filed on January 12, 2022 (Interchange Item No. 20).

II. JOINT PROPOSED NOTICE OF APPROVAL

The Parties have agreed on the attached Joint Proposed Notice of Approval to amend Lumberton MUD's CCN Nos. 10929 and 20367 in Hardin County, Texas. The Parties respectfully request that the Commission adopt the jointly proposed findings of fact, conclusions of law, and ordering paragraphs.

III. CONCLUSION

For the reasons detailed above, the Parties respectfully request that the Commission grant the Joint motion to Admit Evidence and adopt the attached Joint Proposed Notice of Approval.

Dated: January 24, 2022

Respectfully submitted,

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Respectfully submitted,

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DOCKET NO. 52132

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 24, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles

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AMEND ITS CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
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JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval addresses the application of the Lumberton Municipal Utility District (Lumberton MUD) to amend its water and sewer Certificates of Convenience and Necessity Nos. 10929 and 20367 in Hardin County. The Commission amends Lumberton MUD's CCN Nos. 10929 and 20367 to include the requested area, to the extent provided in this Notice of Approval.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicant

1. Lumberton MUD is a municipal utility district operating under Chapters 49 and 54 of the Water Code.
2. Lumberton MUD operates, maintains, and controls facilities for providing retail water and sewer service under water and sewer CCN Nos. 10929 and 20367 in certain areas of Hardin County.
3. Lumberton MUD owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1000035.
4. Lumberton MUD owns and operates a sewer system that is permitted with the TCEQ under Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0011709002.

Application

5. On May 17, 2021, Lumberton MUD filed an application to amend its water CCN No. 10929 in Hardin County.
6. On June 2, 2021, Lumberton MUD filed an amended application.

7. On July 21, 2021, Lumberton MUD filed supplemental information and requested to amend its sewer CCN No. 20367 in addition to its water CCN.
8. On July 22, 2021, Lumberton MUD filed supplemental mapping information.
9. Lumberton MUD's application, as amended and supplemented, seeks to amend its water and sewer CCN Nos. 10929 and 20367 to add approximately 89 acres and 11 customers to its certificated service area.
10. The requested area is located approximately 2.3 miles northwest of downtown Lumberton, Texas and is generally bounded on the north by the intersection of U.S. Highway 69 and Beaumont Drive; on the east by Bryan Lane; on the south by the intersection of U.S. Highway 69 and Hampshire Lane; and on the west by Ellis Drive.
11. In Order No. 3, filed on August 26, 2021, the administrative law judge (ALJ) found the application, as amended and supplemented, administratively complete.

Notice

12. On October 5, 2021 and October 13, 2021, Lumberton MUD filed tear sheets and a publisher's affidavit attesting to the publication of notice in the *Beaumont Enterprise*, a newspaper designated by Lumberton MUD as its newspaper of general circulation, on September 25, 2021 and October 2, 2021. The publisher's affidavit attested that the *Beaumont Enterprise* is a newspaper of general circulation in Jefferson County. Further, Lumberton MUD filed evidence of the notices that were mailed out to each property owner affected on September 23, 2021.
13. On November 4, 2021, Lumberton MUD filed the affidavit of Kate Leverett, Legal Counsel for Lumberton MUD, attesting that notice was mailed to current customers, landowners, neighboring utilities, county authorities, municipalities, and affected parties on September 23, 2021 and October 22, 2021. Lumberton MUD also provided proof of revised notices that were provided on October 27, 2021.
14. On November 4, 2021, Lumberton MUD requested a good cause exception to the requirement in 16 Texas Administrative Code (TAC) § 24.235(c) that notice be published in Hardin County.

15. In support of its good cause exception request, Lumberton MUD included a resolution adopted on August 16, 2021, designating the *Beaumont Enterprise* as its newspaper of general circulation. Lumberton MUD argued that the *Beaumont Enterprise* is the largest newspaper in the area and that numerous Hardin County residents receive the newspaper.
16. In Order No. 5, filed on November 16, 2021, the ALJ granted the good cause exception and found the notice sufficient.

Maps and Certificates

17. On December 15, 2021, Commission Staff emailed the proposed final maps and certificates to Lumberton MUD.
18. On December 29, 2021, Lumberton MUD filed its consent to the proposed final maps and certificates.
19. On January 12, 2022, Commission Staff filed the proposed final maps and certificates as attachments to its final recommendation.
20. On January 24, 2022, Lumberton MUD and Commission Staff filed the proposed final maps and certificates as attachments to the joint motion to admit evidence and joint proposed notice of approval.

Evidentiary Record

21. On January 24, 2022, Lumberton MUD and Commission Staff filed a joint motion to admit evidence.
22. In Order No. __ filed on January, __2022, the ALJ admitted the following evidence into the record of this proceeding: (a) Lumberton MUD's application and all attachments, filed on May 17, 2021; (b) Lumberton MUD's amended application and all attachments, filed on June 2, 2021; (c) Lumberton MUD's supplemental filing to address deficiencies , filed on July 21, 2021; (d) Lumberton MUD's requested mapping and additional mapping, filed on July 22, 2021; (e) Commission Staff's supplemental recommendation on administrative completeness and notice and proposed procedural schedule, filed on August 25, 2021; (f) Lumberton MUD's supplemental filing with notice proof, filed on October 5, 2021; (g) Lumberton MUD's pleading with publisher's affidavit, filed on October 13, 2021; (h) Lumberton MUD's supplemental filing with attachments regarding notice, filed on

November 4, 2021; (i) Commission Staff's supplemental recommendation on sufficiency of notice and proposed procedural schedule, filed on November 15, 2021; (j) Lumberton MUD's signed consent form, filed on December 29, 2021; and (k) Commission Staff's final recommendation and all attachments, filed on January 12, 2022.

Adequacy of Existing Service

- 23. Lumberton MUD currently provides retail water and sewer service in the requested area.
- 24. Lumberton MUD does not have any active violations listed in the TCEQ database.
- 25. The Commission's complaint records, which date back to 2017, show one complaint against Lumberton MUD.

Need for Service

- 26. There is a need for service in the requested area because there are 11 existing customers and potential new customers.
- 27. Lumberton MUD has received one request for service in the requested area.

Effect of Granting the Amendments

- 28. Granting the CCN Amendments will obligate Lumberton MUD to provide continuous and adequate water and sewer service to the requested area.
- 29. Landowners in the requested area, who do not currently receive service from Lumberton MUD, will benefit from granting the CCN amendments because they will be able to receive water and sewer service from Lumberton MUD when they request such service.
- 30. All retail public utilities in the proximate area were provided notice of the CCN amendments requested in this proceeding and none requested to intervene.
- 31. Water Necessities, Inc., filed a letter protesting the CCN Amendments on November 1, 2021, but did not present any evidence on how it will be affected by the CCN Amendments.
- 32. There will be no effect on any retail public utility servicing the proximate area.

Feasibility of Obtaining Service from Other Utilities

- 33. Lumberton MUD's water and sewer services are adjacent to the requested area.
- 34. Water Necessities, Inc.'s water service is also adjacent to the requested area.

- 35. Lumberton MUD already services 11 customers in the requested area.
- 36. Water Necessities, Inc. did not provide evidence for how it would be feasible for potential customers in the requested area to obtain service from Water Services, Inc. instead of Lumberton MUD.
- 37. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

- 38. Because construction of a physically separate water or sewer system is not required for Lumberton MUD to serve the requested area, concerns of regionalization or consolidation are not applicable.

Ability to Serve: Managerial and Technical

- 39. Lumberton MUD will serve the requested area through its TCEQ-registered public water system number 1000035 and TCEQ-permitted TPDES permit number WQ0011709002.
- 40. No additional construction is necessary for Lumberton MUD to serve the requested area.
- 41. Lumberton MUD does not have any active violations listed in the TCEQ database.
- 42. The Commission's complaint records, which date back to 2017, show one complaint against Lumberton MUD.
- 43. Lumberton MUD has an adequate supply of water and is capable of providing water 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.
- 44. Lumberton MUD's sewer system meets the TCEQ's design criteria for sewer treatment plans and the requirements of chapter 13 of the TWC.
- 45. Lumberton MUD has the managerial and technical capability to provide continuous and adequate service to the requested area.

Ability to Serve: Financial Ability and Stability

- 46. Lumberton MUD has a debt-to-equity ratio that is less than 1.0, satisfying the leverage test.
- 47. Lumberton MUD demonstrated that it has sufficient cash and net operating income available to cover any projected operations and maintenance shortages during the first five years of operations after approval of the CCN amendments, satisfying the operations test.

48. Lumberton MUD has the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

49. There is no need to require Lumberton MUD to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity and Effect on the Land

50. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

Improvement in Service or Lowering of Cost

51. Lumberton MUD will continue to provide water and sewer service to the existing customers in the requested area and be able to provide service to future customers.
52. There will be no change in costs to customers.

Informal Disposition

53. More than 15 days have passed since the completion of notice provided in this docket.
54. Water Necessities, Inc. filed a letter of protest.
55. No person filed a motion to intervene.
56. Lumberton MUD and Commission Staff are the only parties to this proceeding.
57. No party requested a hearing and no hearing is needed.
58. Commission Staff recommended that the application be approved.
59. The 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. Lumberton MUD is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).

3. Notice of the application was provided in compliance with TWC § 13.246(a) and 16 TAC § 24.235, except for the requirements of 16 TAC § 24.235(c), which requires notice to be published in a newspaper having a general circulation in the county where the CCN amendments are being requested.
4. Under 16 TAC § 24.2(b), good cause exists for an exception to the notice requirement in 16 TAC § 24.235(c).
5. The application meets the requirements of TWC § 13.244 and 16 TAC §§ 24.227 and 24.233.
6. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC and Commission rules.
7. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(e), Lumberton MUD demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area in Hardin County and its current service area, as required by TWC § 13.241(a) and 16 TAC § 24.227.
8. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water or sewer system is not required.
9. It is not necessary for Lumberton MUD to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
10. Lumberton MUD has demonstrated that the amendments to water and sewer CCN Nos. 10929 and 20367 is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
11. Lumberton MUD has access to an adequate supply of water to serve the requested area, and its public water system is capable of providing water that meets the requirements of chapter 241 of the Texas Health and Safety Code, chapter 13 of the TWC, and the rules of the TCEQ in accordance with TWC § 13.241(b) and 16 TAC § 24.227(a)(1).

¹ Tex. Gov't Code §§ 2001.001–2001.903.

12. Under TWC § 13.257(r) and (s), Lumberton MUD must record a certified copy of the approved maps and certificates, along with a boundary description of the service area, in the real property records of Hardin County, Texas within thirty (30) days of receiving this Notice of Approval and submit to the Commission evidence of the recording.
13. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The Commission amends Lumberton MUD's CCN Nos. 10929 and 20367 to include the requested area, as described in this Notice of Approval, and shown on the map attached to this Notice of Approval.
2. The Commission approves the maps attached to this Notice of Approval.
3. The Commission issues the certificates attached to this Notice of Approval.
4. Lumberton MUD must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Hardin County affected by this application and submit to the Commission evidence of the recording no later than forty-five (45) days after receipt of this Notice of Approval.
5. The Commission denies all other motions and any other requests for general and specific release that have not been expressly granted.

Signed at Austin, Texas _____ **day of** _____ **2022.**

PUBLIC UTILITY COMMISSION OF TEXAS

CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE

