



Control Number: 52227



Item Number: 35

DOCKET NO. 52227

APPLICATION OF THE CITY OF
BERTRAM TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN BURNET
COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

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OFFICE OF THE CLERK
PUBLIC UTILITY COMMISSION
AUSTIN, TEXAS

ORDER

This Order addresses the application of the City of Bertram to amend its certificate of convenience and necessity (CCN) number 10442 in Burnet County. The Commission amends Bertram’s CCN number 10442 as specified in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Bertram is a municipality located in Burnet County.
2. Bertram operates, maintains, and controls facilities for providing retail water service under CCN number 10442 in Burnet County.
3. Bertram owns and operates a public water system that is registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0270012.

Background

4. Currently, Bertram’s CCN number 10442 is a hybrid form of CCN. That is, the CCN has multiple, non-contiguous bounded geographic areas within which Bertram is obligated to provide service. The remainder of the existing CCN is a *facilities-plus-200-feet CCN*, meaning that the CCN only encompasses certain of Bertram’s water distribution lines plus a 200-foot wide buffer zone surrounding the distribution lines. The facilities-plus-200-feet portions of the CCN generally run between and connect the bounded geographic areas of the CCN.
5. The total acreage of the facilities-plus-200-feet portion of the CCN is not known.

Application and Amended Application

6. On June 10, 2021, Bertram filed the application at issue in this proceeding to amend its CCN number 10442 in Burnet County, seeking to add 10,977 acres to its current CCN service areas.
7. The primary goal of the application is to convert the facilities-plus-200-foot portion of the CCN into a bounded geographic area, such that the entire CCN is a single, bounded geographic area encompassing the utility's entire service area.
8. In the application, Bertram seeks to add to its CCN a bounded service area that would primarily encompass the area already served by the facilities-plus-200-foot portion of its CCN.
9. Bertram filed supplemental information on June 25, August 11, October 20, and November 22, 2021, and on January 19, 2022.
10. In Order No. 3 filed on September 8, 2021, the administrative law judge (ALJ) found the application administratively complete.
11. On March 14, 2022, Bertram amended its application. The effect of the amendment is to reduce the size of the acreage that Bertram is seeking to add to its CCN to include only areas inside Bertram's city limits, areas where there are current facilities operated and maintained by Bertram, current Bertram customers, areas where Bertram has received requests for service, and adjacent parcels.
12. With the amended application, Bertram is seeking to add 6,165 acres to the service area of the CCN.
13. The requested area extends up to approximately 10 miles west of downtown Bertram. The requested area is generally bounded on the north by TX-29 and County Road 260, on the east by the Burnet-Williamson county line, on the south by a line approximately three miles south of and parallel to TX-29, and on the west by County Road 340.

Notice

14. On September 10, 2021, Bertram mailed notice of the application to neighboring utilities, county authorities, municipalities, and affected parties.

15. In an affidavit filed by Bertram on October 20, 2021, Adan Rangel, Bertram's city engineer, attested to the mailing of notice of the application on September 10, 2021.
16. On September 15 and 22, 2021, notice of the application was published in the *Burnet County Citizens Gazette*, a newspaper of general circulation in Burnet County.
17. On October 20, 2021, Bertram filed a publisher's affidavit attesting to publication of notice in the *Burnet County Citizens Gazette*.
18. In Order No. 4 filed on November 2, 2021, the ALJ found the notice sufficient.

Opt Out Request

19. On October 15, 2021, Genevieve J. Johnson, a landowner in the area, filed a request to opt out of the requested area.
20. In its amended application filed on March 14, 2022, Bertram clarified that it has amended its application to exclude Ms. Johnson's land from the acreage it seeks to add to its certificated service area.

Map and Certificate

21. On January 7, 2022, Commission Staff emailed its proposed final map and certificate to Bertram.
22. On January 19, 2022, Bertram filed its consent to the proposed map and certificate.
23. On February 4, 2022, the proposed map and certificate were included as attachments to the parties' agreed motion to admit evidence.

Evidentiary Record

24. In Order No. 7 filed on February 16, 2022, the ALJ admitted the following evidence into the record of this proceeding: (a) the application and all attachments filed on June 10, 2021; (b) Commission Staff's first request for information filed on July 13, 2021; (c) Bertram's response to Commission Staff's first request for information filed on August 11, 2021; (d) Commission Staff's supplemental recommendation on administrative completeness, notice, and proposed procedural schedule filed on September 7, 2021; (e) Commission Staff's second request for information filed on September 8, 2021; (f) Bertram's response to Commission Staff's second request for information filed on October 20, 2021;

(g) Bertram's affidavits and proof of notice filed on October 20, 2021; (h) Commission Staff's recommendation on sufficiency of notice and request for extension of time filed on November 1, 2021; (i) Bertram's maps and digital data of revised boundary filed on November 22, 2021; (j) Bertram's signed consent form filed on January 19, 2022; (k) Commission Staff's final recommendation filed on January 21, 2022; and (l) the map and certificate as attached to the agreed motion to admit evidence and proposed notice of approval filed on February 4, 2022.

25. In Order No. 10 filed on April 22, 2022, the ALJ admitted the following evidence into the record of this proceeding: (a) Bertram's clarification to Order No. 8 filed on March 14, 2022; and (b) Commission Staff's supplemental final recommendation filed on April 12, 2022.

Adequacy of Existing Service

26. The majority of the requested area is already being adequately served by Bertram.
27. Bertram does not have any violations listed in the TCEQ database.
28. The Commission's complaint records, which go back to 2017, show only one complaint against Bertram.

Need for Additional Service

29. Bertram provides service to customers in the requested area who have an ongoing need for water service.
30. Bertram has received one request for service in the requested area.
31. The requested area is currently not within any other water utility's service area and is generally composed of areas already served by the facilities-plus-200-foot portions of Bertram's CCN.

Effect of Granting the Amendment

32. Granting the CCN amendment will obligate Bertram to provide service to customers in the requested area.
33. Landowners in the area will have a water provider available when they need to request water service.

34. Nearby water utilities were properly noticed, and no protests or motions to intervene were filed by any adjacent retail public utility.
35. There will be no effect on any other retail public utility servicing the proximate area.
36. Bertram and its customers will both benefit from the CCN amendment because, without it, Bertram would be required to repeatedly apply to amend its facilities-plus CCN as it extended its distribution lines to serve new customers.

Regionalization or Consolidation

37. It will not be necessary for Bertram to construct a physically separate water system to serve the requested area.
38. Because Bertram will not need to construct a physically separate water system to serve the requested area, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Managerial and Technical

39. Bertram has a public water system registered with the TCEQ under identification number 0270012.
40. Bertram has demonstrated its managerial and technical ability to serve the requested area because it is already serving most of the area through the facilities-plus-200-foot portions of its CCN.
41. No additional construction is necessary for Bertram to serve the requested area.
42. Bertram has access to 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.
43. Bertram employs a TCEQ-licensed operator who is responsible for operating its public water system.
44. Bertram has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Other Utilities

45. Bertram is currently serving customers in the requested area.

46. Bertram has TCEQ-approved facilities in the requested area to serve future customers and has sufficient capacity to serve the area.
47. It is not feasible to obtain service from an adjacent retail public utility.

Ability to Serve: Financial Ability and Stability

48. Bertram has sufficient unrestricted cash available as cushion for two years of Bertram's debt service, satisfying the leverage test.
49. Bertram has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after approval of the CCN amendment, satisfying the operations test.
50. Bertram has the financial ability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

51. There is no need to require Bertram to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Environmental Integrity and Effect on the Land

52. The proposed CCN amendment will not adversely affect the environmental integrity of the land or have an adverse effect on the land because no additional construction is needed to provide service to the requested area.

Improvement in Service or Lowering of Cost

53. No change in service is expected as a result of the amendment.
54. Bertram will continue to provide water service to the existing customers in the requested area with no change to the cost to customers.

Informal Disposition

55. More than 15 days have passed since the completion of notice provided in this docket.
56. No person filed a protest or motion to intervene.
57. Bertram and Commission Staff are the only parties to this proceeding.
58. No party requested a hearing, and no hearing is needed.
59. Commission Staff recommended approval of the application.

60. This 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 §§ 13.241, 13.242, 13.244, and 13.246.
2. Bertram is a retail public utility as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Notice of the application was provided in compliance with TWC § 13.246(a) and 16 TAC § 24.235.
4. The application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(a) and (e), Bertram demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and its current service area, as required by TWC § 13.241 and 16 TAC § 24.227.
7. It is not necessary for Bertram to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
8. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
9. Bertram 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 341 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-.903.

10. Bertram demonstrated that the amendment to CCN number 10442 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. Under TWC § 13.257(r) and (s), Bertram 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 Burnet County within thirty (30) days of receiving this Order and submit to the Commission evidence of the recording.
12. 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 Bertram's CCN number 10442 to add the requested area as described in this Order and shown on the map attached to this Order.
2. The Commission approves the map attached to this Order.
3. The Commission issues the certificate attached to this Order.
4. Bertram must provide service to every customer and applicant for service within the approved area under water CCN number 10442 who requests water service and meets the terms of Bertram's water service, and such service must be continuous and adequate.
5. Bertram must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Burnet County affected by this application and file in this docket proof of the recording no later than 45 days after the date of this Order.
6. 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 the 4th day of August 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELY, COMMISSIONER