



Control Number: 52391



Item Number: 37

DOCKET NO. 52391

**APPLICATION OF LIBERTY COUNTY
UTILITIES, LLC FOR WATER AND
SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
LIBERTY COUNTY** §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER REMANDING PROCEEDING TO DOCKET MANAGEMENT

This Order addresses the application of Liberty County Utilities, LLC to obtain water and sewer certificates of convenience and necessity (CCNs) in Liberty County. The administrative law judge (ALJ) filed a proposed order on July 20, 2022 approving the application, which the Commission considered at its October 6, 2022 open meeting. For the reasons provided below, the Commission declines to approve the proposed order and remands this proceeding to Docket Management to allow Liberty County Utilities to file sufficient financial assurance and a capital improvements plan.

Commission rules require owners and operators of retail public utilities to demonstrate they have the financial resources to operate and manage a retail public utility and to provide continuous and adequate service.¹ Generally, an owner or operator may demonstrate financial assurance by satisfying financial tests or providing an irrevocable stand-by letter of credit.² However, the owner or operator of a retail public utility that requests to serve a new CCN area or new subdivision must provide additional financial assurance if more than \$100,000 in capital improvements are necessary to provide service.³ The additional financial assurance must be in the form of loan approval documents or firm capital commitments affirming that all funds are available to install the CCN applicant's proposed water and sewer utility systems for the requested service area.⁴

¹ 16 Tex. Admin. Code §§ 24.11(b), .227(f) (TAC).

² *Id.* § 24.11(c)–(e).

³ *Id.* § 24.11(e)(5).

⁴ *Id.* § 24.11(e)(5)(B)(ii).

Liberty County Utilities estimates that the cost to construct new water and sewer utility systems will be at least \$45 million.⁵ Because Liberty County Utilities requests to provide service to a new service area and subdivision requiring more than \$100,000 in capital improvements, it must submit additional financial assurance in the form of loan approval documents or firm capital commitments.⁶ These loan approval documents or firm capital commitments must affirm that all funds needed to install the CCN applicant's proposed water and sewer utility systems for the requested service area are available to Liberty County Utilities.⁷ Liberty County Utilities' financial guarantee letter filed on February 21, 2022 does not satisfy the Commission's rules.⁸

Additionally, Liberty County Utilities must file a capital improvements plan. The Texas Water Code states all CCN applications must include a capital improvements plan.⁹ Liberty County Utilities filed a pro forma budget with its application,¹⁰ but a pro forma budget is not a capital improvements plan under the Water Code and Commission rules. A capital improvements plan includes a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed area and must be keyed to a map showing where facilities will be located to provide service.¹¹

For these reasons, the Commission remands this proceeding to Docket Management for further processing consistent with this Order. On remand, Liberty County Utilities must file and seek admission of loan approval documents or firm capital commitments and a capital improvements plan. These filings and a motion to admit them into evidence must be submitted by Monday, October 24, 2022. After admitting the parties' filings into the evidentiary record, the ALJ shall prepare a revised proposed order for the Commission's consideration.

⁵ See Response to Commission Counsel's Request for Information Regarding Capital Commitments at 2 (Sept. 23, 2022).

⁶ See 16 TAC § 24.11(e)(5)(B).

⁷ See *id.* § 24.11(a), (e)(5)(B)(ii).

⁸ See Financial Guarantee Letter (Feb. 21, 2022).

⁹ Tex. Water Code § 13.244(d)(3) (TWC).

¹⁰ Response to Commission Counsel's Request for Information Regarding Capital Commitments at 1.

¹¹ TWC § 13.244(d)(3); 16 TAC § 24.233(a)(6).

Signed at Austin, Texas the 20th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER

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