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DOCKET NO. 52391

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

**COMMISSION STAFF’S MOTION TO ABATE
AT THE FEBRUARY 16, 2023, OPEN MEETING**

I. INTRODUCTION

Staff moves for abatement of this docket at the February 16, 2023, open meeting, before the Commission acts on the judge’s proposed final order. Alternatively, Staff requests the Commission allow Staff to supplement the evidence with additional explanation supporting its recommendation that Liberty has demonstrated firm capital commitments for its capital-improvements plan.

Staff requests this docket be abated until the Commission resolves certified issues in another docket, because the Commission’s resolution of one of those issues could have a key impact on the resolution of this docket. The Commission previously remanded this docket to allow Liberty to provide a sufficient capital-improvements plan for its requested service-area expansion and demonstrate firm capital commitments to fund that plan, as required by the Commission’s water utility financial assurance rule—16 TAC 24.11, specifically subparagraph (e)(5)(B). Staff’s goal in filing this motion is to provide the Commission the big picture on firm capital commitments before it makes further decisions on that issue or, alternatively, to provide a robust explanation for its recommendation on remand that Liberty has demonstrated firm capital commitments in this docket.

II. STAFF REQUESTS THE COMMISSION ABATE THIS DOCKET UNTIL THE COMMISSION RESOLVES A CERTIFIED ISSUE IN ANOTHER DOCKET OR, ALTERNATIVELY, REQUESTS THE OPPORTUNITY TO SUPPLEMENT THE EVIDENCE WITH ADDITIONAL EXPLANATION SUPPORTING ITS RECOMMENDATION ON FIRM CAPITAL COMMITMENTS

Staff filed a motion to certify issues last Friday, February 10, 2023, and the three issues in the motion—as shown in the motion, which is attached—are:

1. Under what circumstances does 16 TAC § 24.11(e)(5)(A) apply to an application filed under TWC § 13.301 and 16 TAC § 24.239?¹
2. Assuming 16 TAC § 24.11 applies to an application under TWC § 13.301 and 16 TAC § 24.239, may the applicant meet the requirements of 16 § TAC 24.11(e)(5)(A) by demonstrating firm capital commitments other than loan approval documents?
3. If an applicant may meet the requirements of 16 § TAC 24.11(e)(5)(A) by demonstrating firm capital commitments other than loan approval documents, what other types of firm capital commitments are sufficient?

The docket in which Staff filed its motion for certified issues is for a service-area expansion through facility acquisition by Central States—acquisition expansion—whereas this docket is for a service-area expansion without facility acquisition by Liberty—organic expansion. Although the two named tests in the financial assurance rule apply to both types of dockets—the leverage test in paragraph (e)(2) and the operations test in paragraph (e)(3)—the unnamed “capital-improvements test” in paragraph (e)(5) has two components, one that applies

¹ Staff has various disputes with utilities about the applicability of the financial assurance rule to service-area expansions, and such a dispute exists in the docket in which Staff is requesting certification of this issue.

to an acquisition expansion—subparagraph (A)—and the other to an organic expansion—subparagraph (B). And there is a key difference between these two particular “subtests”: the capital-improvements test for an acquisition expansion literally and inexplicably limits demonstration of financial capability to loan-approval documents, whereas the capital-improvements test for an organic acquisition gives the utility the flexibility to demonstrate financial capability not only with loan-approval documents but also other forms of firm capital commitments. In the CSWR acquisition-expansion docket, Staff intends to take the position the Commission should grant a good-cause exception—until such time as the rule can be amended—to what Staff asserts is an anachronistic and overly restrictive requirement to demonstrate financial capability for capital improvements only through loan-approval documents for an acquisition expansion, in contrast to the more flexible demonstration required for an organic expansion—through loan-approval documents or other forms of firm capital commitments. If the Commission agrees with Staff's recommendation in that CSWR expansion docket, then demonstration of firm capital commitments through means other than loan-approval documents—issue 3 in Staff's motion for certification—will be in play in both the Central States expansion docket and this Liberty expansion docket, as well as many other pending water-utility service-area expansion dockets.

As the remand in this Liberty expansion docket has shown, what types of firm capital commitments should be considered sufficient is unclear. This vagueness is causing gridlock in the processing of the numerous pending dockets for water-utility service-area expansions, as utilities, Staff, and Docket Management struggle to process the dockets under the cloud of uncertainty as to what types of capital commitments a utility may use to meet the capital-improvements test. Staff has resultingly contacted attorneys who represent utilities in a number

of dockets where this issue is in play, including the attorney who represents the trade association for privately owned water utilities in Texas—Texas Association of Water Companies, with the intention of working with the industry and also the Office of Public Utility Counsel to develop options for the Commission's consideration for demonstration of firm capital commitments for service-area expansions involving capital improvements "in excess of \$100,000".²

Staff therefore respectfully requests the Commission delay action in this Liberty service-area expansion docket until the Commission resolves certified issues in the Central States docket—to address a key question, in this docket and that one, of what types of firm capital commitments may a utility use to fund capital improvements for a service-area expansion. Alternatively, Staff requests the Commission allow Staff to supplement the evidence in this docket with additional explanation supporting its recommendation that Liberty has demonstrated firm capital commitments for capital improvements for the service-area expansion it seeks Commission approval to make.

² 16 § TAC 24.11(e)(5).

Dated: February 15, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52391

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 February 15, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Keith Rogas
Keith Rogas



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DOCKET NO. 53721

APPLICATION OF CSWR-TEXAS	§	PUBLIC UTILITY COMMISSION
UTILITY OPERATING COMPANY,	§	
LLC AND PATTERSON WATER	§	
SUPPLY, LLC FOR SALE, TRANSFER,	§	OF TEXAS
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN DALLAS,	§	
DENTON, PARKER, TARRANT, AND	§	
WISE COUNTIES	§	

**COMMISSION STAFF'S MOTION FOR CERTIFICATION OF ISSUES
AND FOR SUSPENSION OF THE PROCEDURAL SCHEDULE**

I. INTRODUCTION

Staff moves under 16 TAC § 24.127 for certification of issues about the financial capability an applicant must demonstrate under TWC § 13.301 and 16 TAC 24.239. The lack of clear standards for demonstration of financial capability has resulted in gridlock in the processing of the numerous pending dockets of this type. Applicants and Staff as well as Docket Management cannot efficiently process these dockets without guidance from the Commission now. Staff consequently also moves for suspension of the procedural schedule so that a revised one may be ordered after the Commission answers the certified questions.

II. DISCUSSION

TWC § 13.301(b) states: "The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person." 16 TAC 24.239(e) states: "A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title, relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity." 16 TAC 24.227(e) states: "In considering whether to grant or amend a CCN, the commission will also consider: ... (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and

the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio....”

16 TAC 24.11(a) states: “(a) Purpose. This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.” 16 TAC 24.11(e)(5) applies if “the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000”. Subpart (A) of this “capital needs test” applies “if the application is a sale, transfer, or merger”—an application filed under TWC § 13.301 and 16 TAC 24.239—and literally limits demonstration of financial capability to loan approval documents. In contrast, subpart (B) of the “capital needs test” applies to applications not involving an STM and permits demonstration of financial capability not only through loan approval documents but also through other unprescribed “firm capital commitments”.

III. REQUESTED CERTIFIED QUESTIONS

Staff requests certification of the following issues:

1. Under what circumstances does 16 TAC § 24.11(e)(5)(A) apply to an application filed under TWC § 13.301 and 16 TAC § 24.239?
2. Assuming 16 TAC § 24.11 applies to an application under TWC § 13.301 and 16 TAC § 24.239, may the applicant meet the requirements of 16 § TAC 24.11(e)(5)(A) by demonstrating firm capital commitments other than loan approval documents?
3. If an applicant may meet the requirements of 16 § TAC 24.11(e)(5)(A) by demonstrating firm capital commitments other than loan approval documents, what other types of firm capital commitments are sufficient?

Dated: February 10, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 53721

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 February 10, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Keith Rogas
Keith Rogas