



Control Number: 52391



Item Number: 59

DOCKET NO. 52391

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

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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ORDER

This Order addresses the application of Liberty County Utilities, LLC to obtain a new water and a new sewer certificate of convenience and necessity (CCN) for 2,035.5 uncertificated acres in Liberty County. The Commission grants Liberty County Utilities water CCN number 13300 and sewer CCN number 21129, each covering the same 2,035.5 acres, to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Liberty County Utilities is a domestic limited liability company registered with the Texas secretary of state under filing number 0803597398.
2. Liberty County Utilities does not currently hold a CCN to provide water or sewer service to customers in Texas.
3. Liberty County Utilities has been granted a permit by the Texas Commission on Environmental Quality (TCEQ), under public water system identification number 1460197, to construct, operate, maintain, and proposed water wells, water treatment and water distribution systems to provide water service to sections seven, eight, and nine of the Santa Fe subdivision in Liberty County.
4. Liberty County Utilities has been granted a permit by the TCEQ, under Texas Pollutant Discharge Elimination System permit number WQ-0015967001, to construct, operate, maintain, and control wastewater collection and treatment facilities to provide sewer service to sections seven, eight, and nine of the Santa Fe subdivision in Liberty County.

Application

5. On August 5, 2021, Liberty County Utilities filed the application at issue in this proceeding.
6. Liberty County Utilities seeks to obtain a new water CCN and a new sewer CCN in Liberty County.
7. Liberty County Utilities filed supplements to the application on August 6, October 5 and 6, and November 29, 2021, and February 21 and March 2 and 30, 2022.
8. The requested certificated areas include the same 2,035.5 total acres and no connections.
9. The requested areas are located approximately 3.3 miles east of downtown Plum Grove, Texas, and is generally bounded on the north by a line one mile north of and parallel to County Road 5018; on the east by Luce Bayou; on the south by Community Drive; and on the west by Las Vegas Drive.
10. In Order No. 3 filed on November 9, 2021, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

11. On November 29, 2021, Liberty County Utilities filed the affidavit of Shelly Young, Liberty County Utilities' authorized representative, attesting that notice was mailed to neighboring systems, landowners, customers, and cities on November 8, 2021.
12. On November 29, 2021, Liberty County Utilities filed a publisher's affidavit attesting that notice was published in *The Vindicator*, a newspaper of general circulation in Liberty County, on November 11 and 18, 2021.
13. In Order No. 4 filed on January 13, 2022, the ALJ found the notice sufficient.

Remand to Docket Management

14. On July 20, 2022, the ALJ filed a proposed order for the Commission's consideration.
15. On October 20, 2022, the Commission declined to adopt the proposed order and, instead, remanded the proceeding to Docket Management, requiring Liberty County Utilities to file and request admission of loan approval documents or firm capital commitments and a capital improvements plan.

Following Remand

16. In response to the remand order, Liberty County Utilities filed on November 21, 2022 a financial guaranty signed by John Harris, president of Colony Ridge, Inc., dated November 18, 2022; the 2021 final audit of Colony Ridge; and a capital improvements plan that included a budget, estimated timeline for construction, and a map showing where facilities will be located.
17. On January 6, 2023, Commission Staff recommended that Liberty County Utilities' filing be found sufficient and recommended that the application be approved.
18. On January 13, 2023, Commission Staff filed a supplemental final recommendation, including a memorandum of Ethan Blanchard and a confidential worksheet. Commission Staff recommended that Liberty County Utilities demonstrated the financial and managerial capability needed to provide adequate service to the requested areas.

Map, Certificates, and Tariffs

19. On February 28, 2022, Commission Staff emailed the proposed maps, certificates, and tariffs to Liberty County Utilities.
20. On March 2, 2022, Liberty County Utilities filed its consent to the proposed maps, certificates, and tariffs.
21. On June 15, 2022, Commission Staff filed the proposed maps, certificates, and tariffs as attachments to the agreed motion to admit evidence and proposed notice of approval.

Evidentiary Record

22. On June 15, 2022, Liberty County Utilities and Commission Staff filed an agreed motion to admit evidence.
23. In Order No. 8 filed on June 29, 2022, the ALJ admitted the following evidence into the record of this proceeding:
 - (a) Liberty County Utilities' application and all attachments filed on August 5, 2021;
 - (b) Liberty County Utilities' confidential financial information filed on August 6, 2021;

- (c) Liberty County Utilities' supplemental information filed on October 5, 2021;
 - (d) Liberty County Utilities' confidential 2019 and 2020 financial statement for Colony Ridge, Inc. filed on October 6, 2021;
 - (e) Commission Staff's recommendation on administrative completeness and proposed notice filed on November 8, 2021;
 - (f) Liberty County Utilities' proof of notice filed on November 29, 2021;
 - (g) Commission Staff's recommendation on sufficiency of notice filed on January 10, 2022;
 - (h) Liberty County Utilities' financial guarantee letter filed on February 21, 2022;
 - (i) Liberty County Utilities' consent form filed on March 2, 2022;
 - (j) Liberty County Utilities' response to Commission Staff's first request for information filed on March 30, 2022;
 - (k) Commission Staff's final recommendation and all attachments filed on June 3, 2022; and
 - (l) final maps, certificates, and tariffs attached to the joint motion to admit evidence and proposed notice of approval filed on June 15, 2022.
24. On July 18, 2022, Liberty County Utilities and Commission filed a supplemental agreed motion to admit evidence.
25. In Order No. 10 filed on July 20, 2022, the ALJ admitted into the record of this proceeding Commission Staff's final recommendation filed on July 7, 2022, and Commission Staff's memorandum of Ethan Blanchard filed confidentially on July 7, 2022.
26. In Order No. 11 filed on September 27, 2022, the ALJ admitted Liberty County Utilities' response to Commission Counsel's request for information regarding capital improvements filed on September 23, 2022.
27. In Order No. 12 filed on December 5, 2022, the ALJ admitted Liberty County Utilities' November 21, 2022 response to the Commission's order remanding proceeding to Docket Management.

28. In Order No. 15 filed on January 11, 2023, the ALJ admitted Commission Staff's January 6, 2023 response to Order No. 13.
29. In Order No. 16, filed on January 17, 2023, the ALJ admitted Commission Staff's January 13, 2023 supplemental final recommendation.

Adequacy of Existing Service

30. There are no customers in the requested areas, so water and sewer services are not currently being provided in the requested areas.

Need for Additional Service

31. The Santa Fe subdivision is currently comprised of sections one through six.
32. Colony Ridge is the developer of the Santa Fe subdivision and contracted with Utilities Investment Company to be the only provider of water and sewer services for the Santa Fe subdivision, sections one through six.
33. Colony Ridge plans to develop Santa Fe Sections seven, eight, and nine.
34. Colony Ridge created a new company, Liberty County Utilities, which is owned by Colony Ridge's owners and Shannon Marsh, owner of Utilities Investment Company, to provide water and sewer service to the Santa Fe subdivision, planned sections seven, eight, and nine.
35. As sections seven, eight, and nine are built out, water and sewer service will be required for new customers in these sections.

Effect of Approving the Application and Granting the Certificates

36. Liberty County Utilities will be the certificated water and sewer utility for the requested areas and will be required to provide adequate and continuous water and sewer service to the requested areas.
37. The landowners in the areas will benefit from having a water and sewer provider available when they need to request water and sewer service.
38. There will be no effect on any retail public utility servicing the proximate area.
39. All retail public utilities in the proximate area were provided notice of the application.

40. None of the retail public utilities in the proximate area offered to provide service to the requested areas, protested this application, or requested to intervene.

Ability to Serve: Managerial and Technical

41. Liberty County Utilities has received approval from TCEQ to construct the public water system registered as Liberty County Utilities, public water system identification number 1460197 and the wastewater treatment plant registered as Liberty County Utilities, wastewater discharge permit number WQ-0015967001 to serve the requested areas.
42. The application included a TCEQ approval letter for the public water system and water treatment plant distribution system to serve the requested areas.
43. The application included a TCEQ approval letter for the wastewater system to serve the requested areas.
44. Liberty County Utilities is a new utility and has no violations listed in the TCEQ databases.
45. Liberty County Utilities has TCEQ-licensed water and sewer operators that will be responsible for the operations of the water and sewer services provided in the requested areas.
46. Liberty County Utilities has the managerial and technical capability to provide continuous and adequate service to the requested areas.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

47. Currently, there are no other water or sewer providers in the requested areas.
48. It is not feasible to obtain water or sewer services from other retail public utilities.

Ability to Serve: Financial Ability and Stability

49. Colony Ridge is an affiliate and majority owner of Liberty County Utilities.
50. In support of the application, Liberty County Utilities filed on November 18, 2022, the 2021 final audit of Colony Ridge.
51. In the application, Liberty County Utilities is proposing to service new CCN areas and a subdivision which will require capital improvements in excess of \$100,000.
52. On November 18, 2022, Colony Ridge executed a written guaranty agreement in favor of Liberty County Utilities. In the guaranty agreement, Colony Ridge guarantees all funds

needed to design, construct, operate, and maintain the proposed water and sewer utility systems for the requested areas are available to Liberty County Utilities.

53. Colony Ridge has a debt-to-equity ratio of less than one and provided a written guaranty that it is capable, available, and willing to cover temporary cash shortages, therefore through its affiliate, Liberty County Utilities satisfies the leverage test.
54. Colony Ridge has sufficient cash available to cover Liberty County Utilities' projected cash shortages during the first five years of operations. Colony Ridge has provided a written guaranty to cover projected operations and maintenance shortages during the first five years of operations and Colony Ridge has a debt-to-equity ratio of less than one. Therefore, Liberty County Utilities satisfies the operations test.
55. Liberty County Utilities submitted firm capital commitments from Colony Ridge, affirming funds are available to install the new water and sewer systems.
56. Liberty County Utilities submitted a capital improvement plan that included a budget and an estimated timeline for construction of all facilities necessary to provide full service to the requested areas, keyed to a map showing where such facilities will be located.
57. Liberty County Utilities demonstrated the financial ability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested areas.

Financial Assurance

58. On November 21, 2022, Liberty County Utilities filed a financial guaranty executed by its majority owner, Colony Ridge.
59. Under the guaranty, Colony Ridge guarantees the performance of Liberty County Utilities' obligations to design, construct, operate, and maintain water and sewer facilities to serve the requested service areas.
60. Under the guaranty, Colony Ridge guarantees to fund any temporary cash shortages of Liberty County Utilities.
61. The guaranty is a primary, irrevocable, and unconditional guaranty of payment and performance that will remain in full force and effect and is binding on Colony Ridge and

its successors and assigns until the completion of all the facilities required to provide water and sewer service to the requested service areas.

Regionalization or Consolidation

62. The TCEQ has approved plans for Liberty County Utilities to build water and wastewater facilities in the requested areas to serve future customers and Liberty County Utilities will have sufficient capacity to serve; therefore, concerns of regionalization or consolidation do not apply.

Environmental Integrity and Effect on the Land

63. The environmental integrity and effect on the land will be temporary as facilities are constructed to provide service to the requested areas.

Improvement in Service or Lowering Cost to Consumers

64. No lowering of cost to customers in the requested areas will result from granting the requested CCNs because there are no current customers.
65. New customers requiring service in the requested areas will benefit by being able to receive water and sewer services from Liberty County Utilities.
66. Liberty County Utilities will file a rate application with actual financial information with the Commission within 18 months from the date service begins under 16 Texas Administrative Code (TAC) § 24.25(b)(1)(C).

Informal Disposition

67. More than 15 days have passed since the completion of notice provided in this docket.
68. No person filed a protest or motion to intervene.
69. Liberty County Utilities and Commission Staff are the only parties to this proceeding.
70. No party requested a hearing and no hearing is needed.
71. Commission Staff recommended approval of the application.
72. 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 Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, and 13.246.
2. Liberty County Utilities is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Notice of the application complies with TWC § 13.246 and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
5. The application meets the requirements set forth in TWC § 13.244 and 16 TAC § 24.227.
6. The Commission considered the factors in TWC § 13.246(c) and 16 TAC § 24.227(e) when evaluating Liberty County Utilities' application.
7. Liberty County Utilities possesses the financial, managerial, and technical capability to provide continuous and adequate water and sewer service to the requested service areas as required by TWC § 13.241 and 16 TAC § 24.227.
8. It was necessary for Liberty County Utilities to provide additional financial assurance under 16 TAC § 24.11(e)(5)(B).
9. The guaranty filed by Liberty County Utilities on November 18, 2022 is a sufficient firm capital commitment under 16 TAC § 24.11(e)(5)(B).
10. Liberty County Utilities demonstrated that granting CCN numbers 13300 and 21129 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 § 13.250, Liberty County Utilities is required to serve every consumer within its certificated service areas and to render continuous and adequate service within its service areas.

¹ Tex. Gov't Code §§ 2001.001–.903.

12. Under TWC § 13.257(r) and (s), Liberty County Utilities is required to record a certified copy of the approved maps and certificates, along with a boundary description of the service areas, in the real property records of Liberty County within 31 days of receiving this Order and to submit evidence of the recording.
13. Under 16 TAC § 24.25(b)(1)(B)(vi), Liberty County Utilities is required to file notice with the Commission once billing for water service begins and once billing for sewer service begins.
14. Under 16 TAC § 24.25(b)(1)(C), Liberty County Utilities is required to file a rate application with actual financial information with the Commission within 18 months from the date service begins.
15. The requirements for informal disposition in 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 grants Liberty County Utilities water CCN number 13300 and sewer CCN number 21129 as described in this Order and shown on the attached maps.
2. The Commission approves the maps attached to this Order.
3. The Commission issues the certificates attached to this Order.
4. The Commission approves the tariffs attached to this Order.
5. Liberty County Utilities must serve every customer and applicant for service within the approved area under CCN number 13300 who requests water service and meets the terms of Liberty County Utilities' water service, and such service must be continuous and adequate.
6. Liberty County Utilities must serve every customer and applicant for service with the approved area under CCN number 21129 who requests sewer service and meets the terms of Liberty County Utilities' sewer service, and such service must be continuous and adequate.


7. Liberty County Utilities must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Liberty County affected by this application and file in this docket proof of the recording no later than 45 days after receipt of this Order.
8. Within 10 days of the date of this Order, the parties must provide the Commission with a clean copy of Liberty County Utilities tariffs for CCNs 13300 and 21129 to be stamped *Approved* and retained by Central Records.
9. Liberty County Utilities must comply with 16 TAC § 24.25(b)(1)(B)(vi) and file notice to the Commission once billing for water service and once billing for sewer service begins.
10. Liberty County Utilities must file a rate application with actual financial information with the Commission within 18 months from the date service begins.
11. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 14th day of February 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER