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Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

All Parties of Record

FROM: John Kelly
Commission Advising

RE: *Application of HydroTex, LLC for a Certificate of Convenience and Necessity in Liberty County*, Docket No. 52445, Draft Preliminary Order, December 15, 2022 Open Meeting, Item No. XX.

DATE: November 21, 2022

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the December 15, 2022 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the December 15, 2022 open meeting.

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DOCKET NO. 52445

APPLICATION OF HYDROTEX, LLC	§	PUBLIC UTILITY COMMISSION
FOR A CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
LIBERTY COUNTY		

DRAFT PRELIMINARY ORDER

HydroTex, LLC filed an application to obtain a new water certificate of convenience and necessity (CCN) in Liberty County. The application requests a service area that includes 89 acres and 120 proposed connections. This preliminary order identifies the issues that must be addressed.

On August 18, 2021, HydroTex filed an application to obtain a new water CCN in Liberty County. In Order No. 2 filed on October 8, 2021, the Commission administrative law judge (ALJ) found the application administratively incomplete and gave HydroTex an opportunity to cure the deficiencies. On October 8, November 12, and December 10, 2021 and January 13, March 7, and May 6, 2022, the Commission ALJ granted extensions of time for HydroTex to cure the deficiencies in its application. On June 23, 2022, HydroTex supplemented its application. In Order No. 10 filed on July 27, 2022, the Commission ALJ found the application administratively complete. On September 22, 2022, Commission Staff filed a request for referral to the State Office of Administrative Hearings (SOAH).

HydroTex was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by October 27, 2022. Commission Staff timely filed a list of issues. HydroTex did not file a list of issues.

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

¹ Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2016).

A. Issues to be Addressed for Amendment of the Applicant's Water CCN**Applicant**

1. Does HydroTex possess the financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by Texas Water Code (TWC) § 13.241 and 16 Texas Administrative Code (TAC) § 24.227(a)?
2. Does HydroTex possess a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC in accordance with 16 TAC § 24.227(a)(1)(A)?
3. Does HydroTex have access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirements 16 TAC §24.227(a)(1)(A) in accordance with 16 TAC § 25.227(a)(2)(B)?

Affiliates

4. Is SVAG Investments, LLC an affiliated interest or an affiliate of HydroTex, LLC under 16 TAC § 24.3(3)? If so, has HydroTex satisfied both the leverage and operation tests under 16 TAC § 24.11(e)?
5. Is Landing II, LLC an affiliated interest or an affiliate of HydroTex, LLC under 16 TAC § 24.3(3)? If so, has HydroTex satisfied both the leverage and operation tests under 16 TAC § 24.11(e)?

Notice

6. Has HydroTex given notice as required by TWC § 13.246(a) and (a-1) and 16 TAC § 24.235(a) through (d)?

Application

7. Does HydroTex's application contain all relevant information required by TWC § 13.244(c) and (d) and 16 TAC §§ 24.233(a) and 24.257?
8. What modification to the application or mapping documents, if any, must be made to reflect the removal of opt-out properties from the requested area under TWC §§ 13.2541(b) and 13.246(h) and 16 TAC § 24.227(i)?

Requested Area

9. What is the total number of acres requested to be added to HydroTex's existing CCN?
10. Does the requested service area require construction of a physically separate water system? If so, has HydroTex proven that regionalization or consolidation with a retail public utility for public water service is not economically feasible as required by TWC § 13.241(d) and 16 TAC § 24.227(b).
11. Does HydroTex's requested area overlap with the certificated service area of a district, municipality, or other public authority under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
 - a. What specific areas, if any, will overlap?
 - b. Has HydroTex received the appropriate consent, franchise, permit, or license to provide water service within each affected entity's boundaries?
12. Does HydroTex's requested area overlap with the extraterritorial jurisdiction of any other municipality under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
 - a. What specific areas, if any, will overlap?
 - b. Does any municipality whose extraterritorial jurisdiction overlaps with the requested area have a population of 500,000 or more? If so, does the municipality consent to the Commission's granting of a CCN for those areas under TWC § 13.245 and 16 TAC § 24.233(c)?

Effect of Granting a New Water CCN

13. Is HydroTex's proposal to obtain a new water CCN for the requested area necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d)?
14. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(e) weigh in favor of granting HydroTex a CCN to include the requested area? In answering this issue, please address the following sub-issues:
 - a. Is the requested area currently receiving adequate water service in accordance with TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?

- b. Does the requested area need water service or additional water service in accordance with but not limited to the following considerations under TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2)?
 - i. Have any landowners, prospective landowners, tenants, or residents in the requested area requested water service?
 - (1) If so, where are they, or where will they be located?
 - (2) If so, were the requests for water service for the entire requested area?
 - ii. Are there economic needs for additional water service in the requested area?
 - iii. Are there environmental needs for additional water service in the requested area?
 - iv. Are there written applications or requests for water service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the requested area?
 - vi. Have any development agreements been reached between HydroTex and another entity or person regarding the development of any portion of the requested area? Please answer the following sub-issues separately for each development agreement.
 - (1) What portion of the requested area is covered by the development agreement?
 - (2) Who are the parties to the development agreement?
 - (3) Are there any current timetables for when development under the agreement will begin and be completed? If not, when does HydroTex contemplate development under the agreement will begin?
- c. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3), what are the effects—including but not limited to regionalization, compliance, and economic effects—of granting HydroTex a CCN for the requested area on the following:
 - i. HydroTex;
 - ii. landowners in the requested area; and
 - iii. any retail public utility that provides water service and that is already serving any area within two miles of the boundary of the requested area?

- d. Taking into consideration the current and projected density and land use of the area, does HydroTex have the ability to provide adequate service, including meeting the standards of the TCEQ and the Commission, in accordance with TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4)?
- e. What is the feasibility of obtaining water service in the requested area from an adjacent retail public utility in accordance with TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5)?
- f. Is HydroTex financially capable of paying for the facilities necessary to provide continuous and adequate water service in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)?
 - i. Does HydroTex have existing facilities adequate to provide continuous and adequate water service to the requested area? If not, are additional facilities needed to ensure that HydroTex can provide continuous and adequate service to the requested area?
 - ii. Is HydroTex planning to build facilities for the requested area? If so, please address the following sub-issues:
 - (1) What facilities is HydroTex planning to build, and where will HydroTex construct the facilities?
 - (2) Has HydroTex entered into any agreements regarding the construction of the facilities?
 - (3) Does HydroTex have a timetable or plan for when construction of the facilities will actually begin? When does HydroTex contemplate construction will begin and conclude?
 - (4) Who will construct any water infrastructure necessary to serve the requested area? How will HydroTex finance that construction? Has HydroTex created budget projections for the construction of any necessary water infrastructure?
 - (5) Has HydroTex completed an engineering plan for any water infrastructure necessary to serve the requested area? If so, what are the parameters of that plan? If not, when will HydroTex engage an engineering firm to develop such a plan?

- (6) How will the addition of new facilities affect the bills of HydroTex's existing customers?
- iii. What is the amount of credit available to HydroTex?
- iv. Should HydroTex be required to provide an irrevocable stand-by letter of credit under 16 TAC § 24.11(d)?
- v. Does HydroTex possess the ability to finance facilities or upgrades to existing facilities through its retained earnings? How will HydroTex finance new facilities or upgrades to existing facilities?
- g. Is HydroTex financially stable in accordance with TWC § 13.246(c)(6) and 16 TAC §§ 24.11(e) and 24.227(e)(6)? If applicable, is HydroTex's debt-to-equity ratio adequate?
- h. How, if at all, would environmental integrity be affected by granting HydroTex a CCN for the requested area in accordance with TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
- i. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from granting HydroTex the CCN in accordance with TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?
- j. How, if at all, would the land in the requested area be affected by granting HydroTex a CCN for the requested area in accordance with TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?
15. Should the Commission require HydroTex, in accordance with TWC § 13.246(d) and 16 TAC § 24.227(f), to provide a bond or other financial assurance to ensure that it provides continuous and adequate service?
16. If applicable, what were HydroTex's efforts to:
- a. extend water service to any economically distressed area, within the meaning of TWC § 15.001(11), located within HydroTex's certificated service area, as required by TWC § 13.246(e)(1) and 16 TAC § 24.227(g); and
- b. enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply as required by TWC § 13.246(e)(2)?

17. Does HydroTex provide water service to the requested area or plan to provide water service to the requested area in the future? If not, and if the Commission grants HydroTex a CCN for all or part of the requested area, what effect will the CCN have on future access to water service for landowners in the requested area?
18. If the Commission grants HydroTex a water CCN, should the service area include only the area in which it currently has facilities and is providing water service, if any, and areas where it has a definite plan to construct facilities to provide water service?
19. If the Commission grants HydroTex a water CCN, will HydroTex plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer users in accordance with 16 TAC § 24.205?

B. Issues to be Addressed for Decertification of Any Other Certificated Service Areas within the Boundaries of HydroTex's Requested CCN

1. To the extent it is necessary to decertify any portion of the certificated service area of Southern Horizons Development, Inc., please answer the following.
 - a. What is the number of the CCN that needs to be amended by decertification?
 - b. What are the boundaries of the portion of Southern Horizons' certificated service area that will be decertified if HydroTex's application is granted?
 - c. What is the acreage of the portion of Southern Horizons' CCN that will be decertified?
 - d. Did HydroTex provide notice by first class mail to Southern Horizons and to all landowners within the portion of Southern Horizons' certificated service area that will be decertified if HydroTex's application is granted?
2. If HydroTex is seeking decertification of a portion of the certificated service area of Southern Horizons, under which provision or provisions of TWC § 13.254(a) and 16 TAC § 24.245(d)(1) should the Commission decertify and amend Southern Horizons' CCN?
 - a. Has Southern Horizons never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area?

- b. Is Southern Horizons in an affected county as defined in TWC §16.341, and is the cost of providing service by Southern Horizons so prohibitively expensive as to constitute denial of service?
- c. Has Southern Horizons agreed in writing to allow HydroTex to provide service within its service area, except for an interim period, without amending its CCN?
- d. Has Southern Horizons failed to apply for a cease-and-desist order under TWC § 13.252 and § 24.255 (relating to content of request for cease and desist order by the Commission under TWC § 13.252) within 180 days of the date that Southern Horizons became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the other utility proves that good cause exists for its failure to timely apply for a cease-and-desist order?
- e. Has Southern Horizons consented in writing to the revocation or amendment?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

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

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER