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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 §

ORDER NO. 15
RESCINDING FINDING OF NOTICE SUFFICIENT
AND AMENDING PROCEDURAL SCHEDULE

The administrative law judge (ALJ) rescinds her finding that notice is sufficient in Order No. 14 and requires Commission Staff to address the capital improvement plan, as required under Texas Water Code (TWC) § 13.244(d)(3), and financial assurances, under 16 Texas Administrative Code (TAC) § 24.11(e)(5), in the final recommendation.

I. Notice

On August 22, 2022, HydroTex, LLC filed proof of publication of notice in the *Liberty Vindicator*, and an affidavit confirming notice was provided to cities, districts, neighboring retail public utilities, and the Liberty County judge.

On March 13, 2023, HydroTex filed a response to Commission Staff's supplemental recommendation on the sufficiency of notice and stated that there are no landowners of 25 acres or greater.

In light of Commissioner Jackson's memorandum in Docket No. 51651,¹ the ALJ requires HydroTex to confirm by affidavit that notice has been mailed by first class mail to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the amendment or new certificate. If there are no landowners of a tract of land that is at least 25 acres and *is wholly or partially included in the area proposed to be certified*,² then HydroTex must provide an affidavit confirming the same.

Accordingly, the ALJ rescinds her finding in Order No. 14 that notice is sufficient. By May 31, 2023, HydroTex must file the requested affidavit.

¹ *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Commissioner Jackson Memorandum (May 10, 2023).

² Emphasis added.

II. Commission Staff's Final Recommendation

HydroTex is requesting a new certificate of convenience and necessity (CCN) and is proposing to provide service to a residential development of 120 homes situated on 88 acres located in Liberty County.

TWC § 13.244(d)(3) requires that an application for an amendment or a new CCN to a CCN must contain a capital improvement plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area. 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.³

Under 16 TAC § 24.11(e)(5):

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, the applicant must provide the following: . . . (B): The owner must submit loan approval documents or firm capital commitments affirming funds are available to install: (i) the plant and equipment necessary to serve projected customers in the first two years of projections; or (ii) a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision.⁴

Based on the foregoing and in light of the recent remands and memoranda from the Commissioners,⁵ the ALJ requires Commission Staff to address HydroTex's capital improvement plan and financial assurances under 16 TAC § 24.11(e)(5) in the final recommendation.

III. Requiring Clarification

In Commission Staff's July 27, 2022 supplemental recommendation on administrative completeness and notice and proposed procedural schedule, Commission Staff requested that the

³ See *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management at 2 (Oct. 20, 2023).

⁴ *Id.*

⁵⁵ See, e.g., *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management at 2 (Oct. 20, 2023) and *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Commissioner Jackson's Memo at 1-2 (May 10, 2023).

case be re-styled to “Application of HydroTex, LLC for a Certificate of Convenience and Necessity and for the Decertification of a Portion of Southern Horizons' " Certificate of Convenience and Necessity in Liberty County.”

The ALJ requires Commission Staff to clarify whether this request is still pending and whether the case should be re-styled. Commission Staff may file its clarification with its final recommendation, which is due July 3, 2023.

IV. Amending Procedural Schedule

The following procedural schedule is established for further processing:

| Event | Date |
|--|----------------|
| Deadline to intervene | March 28, 2023 |
| HydroTex affidavit on notice | May 31, 2023 |
| Deadline for Commission Staff to provide final maps, certificate, and tariff (if applicable) to HydroTex for review and consent | June 9, 2023 |
| Deadline for HydroTex to file signed consent forms with the Commission | June 23, 2023 |
| If no hearing is requested, deadline for Commission Staff to file a final recommendation on the application and to file a clarification on re-styling the docket | July 3, 2023 |
| If no hearing is requested, deadline for parties to file a joint motion to admit evidence and proposed findings of fact, conclusions of law, and ordering paragraphs | July 14, 2023 |

Signed at Austin, Texas the 17th day of May 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE