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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 §

**COMMISSION STAFF’S CLARIFICATION, RECOMMENDATION ON NOTICE, AND
FINAL RECOMMENDATION**

I. BACKGROUND

On August 18, 2021, HydroTex, LLC (HydroTex) filed an application to obtain a water Certificate of Convenience and Necessity (CCN) in Liberty County. The application requests a service area that includes 88 acres and 120 proposed connections.

On July 5, 2023, the administrative law judge (ALJ) filed Order No. 16, establishing a deadline of July 14, 2023, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application and to file a clarification on re-styling the docket, and a recommendation on the supplemental notice. Therefore, this pleading is timely filed.

II. CLARIFICATION

In Staff’s supplemental recommendation filed on July 27, 2022, Staff requested that the 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."

On May 19, 2023, the ALJ filed Corrected Order No. 15, in which she required Staff to clarify whether the above request is still pending and whether the case should be re-styled. Staff confirms that the request is still pending and respectfully requests that the case be re-styled as above.

III. RECOMMENDATION ON NOTICE

Also in Corrected Order No. 15, the ALJ rescinded her previous finding that notice is sufficient. No landowner notice was provided. The ALJ stated that “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, then HydroTex must provide an affidavit confirming the same.”¹ The ALJ established a deadline of May 31, 2023, for HydroTex to file the requested affidavit.

On June 8, 2023, Hydrotex filed its response, including Exhibit A, the sworn affidavit of Kevin Browder, Operations Manager of Hydrotex, LLC.² Staff has reviewed Hydrotex’s response and respectfully recommends that it be found sufficient. Mr. Browder’s affidavit attested that “there are no owners of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Accordingly, there was no owner to which to provide notice and therefore no such notice was provided.”³ Because there are no owners of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified, no landowner notice is required. Therefore, Staff respectfully recommends approval of HydroTex’s notice.

IV. FINAL RECOMMENDATION

Staff has reviewed HydroTex’s application and, as supported by the attached memoranda of Jolie Mathis of the Infrastructure Division and Fred Bednarski of the Rate Regulation Division, respectfully recommends that it be approved. Staff’s review indicates that HydroTex meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code, and therefore, is capable of providing continuous and adequate service. Additionally, Staff’s review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully requests that the docket be restyled as above, that HydroTex’s notice be found sufficient, and that HydroTex’s application be approved.

¹ Corrected Order No. 15, Rescinding Finding of Notice Sufficient and Amending Procedural Schedule at 1 (May 19, 2023).

² Applicant’s Response to Corrected Order No. 15 Rescinding Finding of Notice Sufficient and Amending Procedural Schedule, Exhibit A at 5-6 (Jun. 8, 2023).

³ *Id.*

Dated: July 12, 2023

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Phillip Lehmann
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**DOCKET NO. 52445
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 on July 12, 2023 in accordance with the Second Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann

Public Utility Commission of Texas

Memorandum

TO: Phillip Lehmann, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: July 12, 2023

RE: Docket No. 52445 – *Application of HydroTex, LLC for a Certificate of Convenience and Necessity in Liberty County*

1. Application

On August 18, 2021, HydroTex, LLC (HydroTex) filed with the Public Utility Commission of Texas (Commission) an application to obtain a water certificate of convenience and necessity (CCN) and for the decertification of a portion of Southern Horizons' CCN No. 12863 in Liberty County, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

HydroTex is requesting a water CCN and the decertification of a portion of Southern Horizons' CCN No. 12863. Staff notes that the current style of this docket is "*Application of HydroTex, LLC for a Certificate of Convenience and Necessity in Liberty County.*" Staff requests that the style of the docket be changed 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.*"

Based on the mapping review by Tracy Montes, Infrastructure Division:

- The requested area includes 0 customer connections and approximately 88 acres comprised of decertified area from Southern Horizons (CCN No. 12863) and approximately 88 acres to amend (add) to HydroTex, LLC with the issuance of a New Water CCN Number.
- The application proposes the subtraction of approximately 88 acres from Southern Horizons (CCN No. 12863) and the addition of approximately 88 acres to HydroTex, LLC with the issuance of a New Water CCN Number.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, and groundwater conservation districts. An additional affidavit was provided attesting that there are no owners of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Therefore, no landowner notice was provided.

The deadline to intervene was March 28, 2023; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227, the Commission must consider certain factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1); 16 TAC § 24.227(a) and (e)(1)).*

There are no customers in the requested area.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)).*

There is a need for service as there will be a residential development of 120 homes.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC §§ 13.241(b) and 13.246(c)(3), 16 TAC § 24.227(e)(3)).*

HydroTex will be the certificated entity for the requested area and will be required to provide continuous and adequate service to the requested area.

There are no landowners in the area, therefore there will be no effect on landowners.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC § 13.246(c)(4); 16 TAC § 24.227(a) and (e)(4)).*

HydroTex is a developer with over 11 years of real estate experience and over 400 limited partner investors. One of the investor partners has 20 years of experience running a water system.

3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

Service was requested from neighboring utilities and none of them were able to provide service. TCEQ has approved plans for HydroTex to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the area. Therefore, concerns of regionalization or consolidation do not apply.

3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)).*

Service was requested from neighboring utilities and none of them were able to provide service. HydroTex has TCEQ approved plans to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

HydroTex is building a new water treatment plant to provide service to the requested area. Construction began in August 18, 2021. Estimated costs to build a new water system is expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

HydroTex provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

3.8. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

3.9. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d); 16 TAC § 24.227(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

3.10. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC § 24.227(e)(7) and (9)).*

The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.

3.11. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)).*

Future residents of the planned development will have water service.

In order to true-up the proposed tap fees and rates, I recommend that HydroTex file a rate application with actual financial information with the Commission within 18 months from the date service begins per 16 TAC § 24.25(b)(1)(C).

The Rate Regulation Division will be addressing the cost to customers in a separate memo.

4. Recommendation

Based on the mapping review by Tracy Montes, Infrastructure Division, and my technical and managerial review, I recommend that HydroTex meets all the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service. I further recommend that approving this application to obtain a water CCN No. 13309 is necessary for the service, accommodation, convenience and safety of the public.

Southern Horizons and HydroTex each consented to the attached map, tariff, and certificate on June 9, 2023 and July 7, 2023, respectively

Public Utility Commission of Texas

Memorandum

TO: Phillip Lehmann
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: July 12, 2023

RE: Docket No. 52445 *Application of HydroTex, LLC for a Certificate of Convenience and Necessity in Liberty County*

On August 18, 2021, HydroTex, LLC (HydroTex) filed an application to obtain a water certificate of convenience and necessity in Liberty County under Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. HydroTex must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

HydroTex filed an affidavit stating HydroTex's affiliate, SVAG Investments LLC (SVAG),¹ is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.²

My analysis is based on SVAG's financial statements ending December 31, 2022. Based upon my review of the financial statements, I calculate the debt-to-equity ratio to be 0.74, as

¹ Response to the PUC for Control No. 52445 at 2-36 (Sept. 16, 2022) and Additional Documents for Control #52445 at 2-40 (Sept. 20, 2022).

² Response to the PUC for Control No. 52445 at 4-5 (Sept. 16, 2022).

provided in confidential attachment FB-1. Because the ratio is less than one, I recommend a finding that, through its affiliates, HydroTex meets the leverage test specified in 16 TAC § 24.11(e)(2)(E).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

The affidavits provided by HydroTex demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. Even though HydroTex projects no shortages to cover for the first five years of operations, HydroTex's affiliate has secured a line credit and has sufficient cash reserves, as provided in confidential attachment FB-1, to pay for the shortages should they occur. Therefore, I recommend a finding that HydroTex meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

HydroTex provided invoices, payment information, and photos indicating the water well, plant, and system infrastructure needed to provide water service to the requested area has been purchased, installed, and paid for,³ as provided in confidential attachment FB-1. Capital improvements that need to be to be purchased and installed are water meters which cost less than \$100,000, which will be paid for with tap fees charged by HydroTex.⁴ Therefore, I recommend a finding that HydroTex is not required to meet the requirements specified in 16 TAC § 24.11(e)(5)(B).

Recommendation

Because HydroTex meets the financial tests, I do not recommend that the Commission require additional financial assurance.

³ Response to Commission Staff's Second Request for Information at 3-4 (Jan. 9, 2023):Infrastructure Photos to Applicant's Supplemental Response to Commission Staff's Request for Additional Documents, Bates labeled 073-091 at 2- 20 (Jun. 28, 2023).

⁴ Applicant's Supplemental Response to Commission Staff's Request for Additional Documents at 3 (Jun. 26, 2023).

Consequently, I recommend a finding that HydroTex demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by HydroTex before the date of this memorandum and may not reflect any changes in HydroTex's status after this review.