



Filing Receipt

Filing Date - 2023-08-08 02:26:04 PM

Control Number - 52445

Item Number - 75

DOCKET NO. 52445

APPLICATION OF HYDROTEX, LLC FOR	§	PUBLIC UTILITY COMMISSION
A CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY AND FOR DECERTIFICATION	§	OF TEXAS
OF A PORTION OF SOUTHERN	§	
HORIZONS' CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
LIBERTY COUNTY	§	

**JOINT MOTION TO ADMIT EVIDENCE AND
PROPOSED NOTICE OF APPROVAL**

COME NOW HydroTex, LLC (HydroTex or Applicant), together with the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following:

I.

BACKGROUND

On August 18, 2021, Applicant filed an application for a Certificate of Convenience and Necessity (CCN) in Liberty County. On July 26, 2023, the application was re-styled to include decertification of a portion of Southern Horizons Development Inc.'s (Southern Horizons) CCN.

Applicant seeks approval for retail public water services to its proposed development located in Liberty County. The proposed development will consist of 120 single family connections on approximately 89 acres requiring water service.

On December 13, 2022, the application was referred to the State Office of Administrative Hearings. On February 7, 2023, the case was remanded to the Commission.

On July 26, 2023, the Administrative Law Judge (ALJ) issued Order No. 17, establishing a deadline of August 8, 2023, for the Parties to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

II.

JOINT MOTION TO ADMIT EVIDENCE

The Parties respectfully request that the following documents be admitted into evidence in this proceeding:

- a. The application to obtain a water certificate of convenience and necessity, filed on August 18, 2021 (AIS Item No. 1);
- b. Applicant's submittal of documents requested per PUC review, filed on June 23, 2022 (AIS Item No. 19);
- c. Applicant's proof of notice, filed on August 22, 2022 (AIS Item No. 24);
- d. Staff's first request for information to HydroTex Question Nos. Staff 1-1 through 1-5, filed on August 29, 2022 (AIS Item No. 25);
- e. Applicant's response to Staff's first request for information, filed on September 16, 2022 (AIS Item Nos. 26-27);
- f. HydroTex's supplemental response to Staff's first request for information, filed on September 20, 2022 (AIS Item No. 28);
- g. Applicant's revised water utility tariff, filed on November 28, 2022 (AIS Item No. 33);
- h. Staff's second request for information to HydroTex Question Nos. Staff 2-1 through 2-3, filed on December 20, 2022 (AIS Item No. 37);
- i. Applicant's response to Staff's second request for information, filed on January 9, 2023 (AIS Item Nos. 38-39);
- j. Applicant's supplemental financial information, filed February 9 and 13, 2023 (AIS Item Nos. 44 and 46);
- k. Staff's third request for information to HydroTex Question Nos. Staff 3-1 through 3-3, filed on December May 18, 2023 (AIS Item No. 56);
- l. Applicant's response to Corrected Order 15, filed on June 8, 2023 (AIS Item No. 59);
- m. Applicant's response to Staff's third request for information, filed on June 9, 2023 (AIS Item Nos. 60-61);
- n. Southern Horizons' consent form, filed on June 9, 2023 (AIS Item No. 62);
- o. Applicant's supplemental response to Staff's request for additional documents, filed on June 26 and 28, 2023 (AIS Item Nos. 63-65);
- p. HydroTex's consent form, filed on July 10, 2023 (AIS Item No. 68); and

- q. Staff's clarification, recommendation on notice, and final recommendation, including the attached tariff, certificate, and map, and Attachment EB-1, filed on July 12, 2023 (AIS Item Nos. 70 and 72);

III.

JOINT PROPOSED NOTICE OF APPROVAL

Commission Staff and HydroTex have agreed to the attached Joint Proposed Notice of Approval, which would grant Applicant's application for a water CCN and decertification of a portion of Southern Horizons' CCN in Liberty County. Additionally, the Parties have attached the final map, water certificate, and proposed tariff that were provided by Staff on June 9, 2023 to the Applicant and Southern Horizons, and subsequently approved by Southern Horizons and HydroTex via filed consent forms on June 9, 2023 and July 7, 2023.

IV.

CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Notice of Approval.

Respectfully submitted,


PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Marisa Lopez Wagley
Division Director

/s/ Phillip Lehmann

Phillip Lehmann
State Bar No. 24100140
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7385
(512) 936-7268 (facsimile)
Phillip.Lehmann@puc.texas.gov

Gregg Law PC



Peter T. Gregg
State Bar No. 00784174
910 West Ave., No. 3
Austin, Texas 78701
Phone: 512-522-0702
Fax: 512-727-6070
pgregg@gregglawpc.com

Attorneys for HydroTex, LLC

DOCKET NO. 52445

CERTIFICATE OF SERVICE

I, Peter Gregg, certify my signature above 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 August 8, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

DOCKET NO. 52445

APPLICATION OF HYDROTEX, LLC FOR	§	PUBLIC UTILITY COMMISSION
A CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY AND FOR DECERTIFICATION	§	OF TEXAS
OF A PORTION OF SOUTHERN	§	
HORIZONS' CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
LIBERTY COUNTY	§	

JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval addresses the application of HydroTex, LLC (HydroTex or Applicant) for a water Certificate of Convenience and Necessity (CCN) and for Decertification of a portion of Southern Horizons Development, Inc.'s (Southern Horizons) CCN in Liberty County. The Commission approves HydroTex's CCN application and the decertification of a portion of Southern Horizons' CCN.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. HydroTex is a domestic for-profit corporation registered with the Texas secretary of state under file number 803832324.
2. HydroTex has a Texas Commission on Environmental Quality (TCEQ) approved public water system with plans to build facilities in the requested area to serve future customers.

Application

3. On August 18, 2021, HydroTex filed an application for a water CCN in Liberty County.
4. The application affects approximately 89 acres and 0 current customers in Liberty County, Texas.
5. The requested area is located approximately 1.6 miles south/southeast of downtown Cleveland, Texas, and is generally bounded on the north by Midline Road; on the east by County Road 3737; on the south by County Road 373; and on the west by King Oak Drive (County Road 3740).

6. Southern Horizons agreed to the decertification of a portion of its water CCN 12863.
7. In Order No. 10 issued on July 27, 2022, the administrative law judge (ALJ) found the application administratively complete.

Notice

8. Notice of the application appeared in the August 4 and 11, 2022 issues of *The Vindicator*.
9. On August 22, 2022, Roy Rodriguez, Director, filed an affidavit on behalf of HydroTex, attesting that notice was provided to all cities, districts, customers, neighboring utilities, and affected parties on August 1, 2022.
10. On June 8, 2023, Kevin Browder, Operations Manager, filed an affidavit on behalf of HydroTex, 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.
11. In Order No. 17, issued on July 26, 2023, the ALJ found the notice, as supplemented, of the application sufficient.

Evidentiary Record

12. On August 8, 2023, the parties filed a joint motion to admit evidence.
13. In Order No. ____, issued on _____, 2023, the ALJ admitted the following evidence into the record:
 - a. The application to obtain a water certificate of convenience and necessity, filed on August 18, 2021 (AIS Item No. 1);
 - b. Applicant's submittal of documents requested per PUC review, filed on June 23, 2022 (AIS Item No. 19);
 - c. Applicant's proof of notice, filed on August 22, 2022 (AIS Item No. 24);
 - d. Staff's first request for information to HydroTex Question Nos. Staff 1-1 through 1-5, filed on August 29, 2022 (AIS Item No. 25);
 - e. Applicant's response to Staff's first request for information, filed on September 16, 2022 (AIS Item Nos. 26-27);
 - f. HydroTex's supplemental response to Staff's first request for information, filed on September 20, 2022 (AIS Item No. 28);

- g. Applicant's revised water utility tariff, filed on November 28, 2022 (AIS Item No. 33);
- h. Staff's second request for information to HydroTex Question Nos. Staff 2-1 through 2-3, filed on December 20, 2022 (AIS Item No. 37);
- i. Applicant's response to Staff's second request for information, filed on January 9, 2023 (AIS Item Nos. 38-39);
- j. Applicant's supplemental financial information, filed February 9 and 13, 2023 (AIS Item Nos. 44 and 46);
- k. Staff's third request for information to HydroTex Question Nos. Staff 3-1 through 3-3, filed on December May 18, 2023 (AIS Item No. 56);
- l. Applicant's response to Corrected Order 15, filed on June 8, 2023 (AIS Item No. 59);
- m. Applicant's response to Staff's third request for information, filed on June 9, 2023 (AIS Item Nos. 60-61);
- n. Southern Horizons' consent form, filed on June 9, 2023 (AIS Item No. 62);
- o. Applicant's supplemental response to Staff's request for additional documents, filed on June 26 and 28, 2023 (AIS Item Nos. 63-65);
- p. HydroTex's consent form, filed on July 10, 2023 (AIS Item No. 68); and
- q. Staff's clarification, recommendation on notice, and final recommendation, including the attached tariff, certificate, and map, and Attachment EB-1, filed on July 12, 2023 (AIS Item Nos. 70 and 72);

Adequacy of Existing Service

- 14. Water service is currently not being provided in the requested area.

Need for Additional Service

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

Effect of Approving the Transaction and Granting the Certificates

- 16. There are no landowners in the area, therefore there will be no effect on landowners.
- 17. 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 this proceeding and did not request to intervene.

18. Granting HydroTex the certificate would enable HydroTex to provide adequate and continuous water service to the requested area.

Ability to Serve: Managerial and Technical

19. 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.
20. HydroTex is expected to have 120 connections when the area is fully developed. The proposed design capacity of the water system will be sufficient for the expected 120 connections.
21. HydroTex will be capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341, and TWC, Chapter 13, and will have access to an adequate supply of water.
22. HydroTex has the managerial and technical ability to serve the requested area.

Ability to Serve: Financial Ability and Stability

23. HydroTex filed an affidavit stating HydroTex's affiliate, SVAG Investments, LLC (SVAG), is capable, available, and willing to cover and temporary cash shortages and operating expense windfalls. The affidavits provided by HydroTex demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. SVAG's debt-to-equity ratio is less than one which satisfies 16 TAC § 24.11(e)(2)(A). Therefore, through its affiliate HydroTex meets the leverage test specified in 16 TAC § 24.11(e)(2)(E).
24. Even though HydroTex projects no shortages to cover for the first five years of operations, HydroTex's affiliate has secured a line of credit and has sufficient cash reserves to pay for the shortages should they occur. HydroTex meets the operations test specified in 16 TAC § 24.11(e)(3).
25. 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. Capital improvements that need 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. Therefore, HydroTex is not required to meet the requirements specified in 16 TAC § 24.11(e)(5)(B).

26. HydroTex demonstrated adequate financial and managerial capability to provide continuous and adequate service to the requested area.

Financial Assurance

27. There is no need to require HydroTex to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

28. 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.
29. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

30. TCEQ has approved plans for the public water system that will provide water service to the requested area. The water system is The Landing II Subdivision, public water system number 1460200.
31. 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.

Environmental Integrity and Effect on the Land

32. The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.
33. When new construction is planned, proper construction protocols will be followed to ensure that the environmental integrity of the land will not be disrupted or negatively affected.

Improvement of Service or Lowering Cost to Consumers

34. Future residents of the planned development will have water service.
35. HydroTex will provide water service to approximately 120 customers in Liberty County.
36. In order to true-up the proposed tap fees and rates, HydroTex must 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).

Map, Certificate and Tariff

37. On June 9, 2023, Commission Staff emailed to HydroTex the proposed final map, certificate, and proposed tariff related to this docket.
38. On June 9, 2023, Commission Staff emailed to Southern Horizons the proposed final map, revised certificate, and proposed tariff related to this docket.
39. On June 9, 2023, Southern Horizons filed the consent form concurring with the proposed final map, the revised certificate, and the proposed tariff.
40. On July 7, 2023, HydroTex filed the consent form concurring with the proposed final map, the revised certificate, and the proposed tariff.
41. The final proposed map, revised certificate, and proposed tariff were filed as attachments to the joint motion to admit evidence and proposed notice of approval.

Informal Disposition

42. More than 15 days have passed since the completion of notice provided in this docket.
43. No person filed a protest or motion to intervene.
44. HydroTex, Southern Horizons, and Commission Staff are the only parties to this proceeding.
45. No party requested a hearing, and no hearing is needed.
46. Commission Staff recommended approval of the application.
47. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. HydroTex is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. HydroTex provided notice of the application as required by TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission Rules.

¹ Tex. Gov't Code Ann. § 2001.

5. After consideration of the factors in TWC § 13.246(c) and 16 TAC § 24.227(e), HydroTex has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC § 13.246(b).
6. HydroTex meets the requirements set forth in TWC § 13.244 and 16 TAC §§ 24.25 and 24.277.
7. It is not necessary for HydroTex to provide a bond or other financial assurance under TWC § 13.246(d).
8. HydroTex has demonstrated that granting CCN number 13309 is necessary for the service, accommodation, convenience, or safety of the public. TWC § 13.241 and 16 TAC § 24.277
9. HydroTex must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Liberty County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC §13.257(r), (s).
10. Under 16 TAC § 24.25(b)(1)(C), HydroTex must file a rate application with actual financial information with the Commission within 18 months from the date service begins.
11. The requirements for informal disposition under 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 HydroTex's water CCN No. 13309 as described in this Notice of Approval and as shown on the attached map.
2. The Commission approves the map, certificate, and tariff attached to the Joint Motion to Admit Evidence and Proposed Notice of Approval filed on August 8, 2023.

3. HydroTex must serve every customer and applicant for service within the approved area under water CCN No. 13309 that requests sewer service and meets the terms of HydroTex's water service, and such service must be continuous and adequate.
4. HydroTex must comply with the recording requirements in TWC §13.257(r) and (s) for the area in Liberty County affected by the application and file in this docket proof of the recording no later than 45 days after the receipt of this Notice of Approval.
5. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved in this Notice of Approval to Central Records to be marked *Approved* and filed in the Commission's tariff book.
6. HydroTex must file a rate application with actual financial information with the Commission within 18 months from the date service begins.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE