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DOCKET NO. 52445

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

**ORDER NO. 19
REQUIRING CLARIFICATION**

After review of Commission Staff's July 12, 2023 clarification, recommendation on notice, and final recommendation, the administrative law judge (ALJ) requires the following clarification or supplemental information.

I. Regionalization and Consolidation

Under Texas Water Code (TWC) § 13.241(d) and 16 Texas Administrative Code (TAC) § 24.227(b), before granting an amendment to a certificate of convenience and necessity (CCN), applicants must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. HydroTex, LLC's application includes a list of entities within two miles of the requested area from whom HydroTex requested service. However, HydroTex's application does not include all representative copies of the requests for service or an affidavit attesting that such requests were made. Specifically, representative copies from the requests for service from the Cities of Cleveland and Splendora could not be located.

By October 13, 2023, HydroTex must identify the location in the record of the representative copies from the requests for service from Cleveland and Splendora, file representative copies of the request for service it mailed to adjacent retail public utilities, or, alternatively, an affidavit attesting that requests for service were mailed to adjacent retail public utilities and that none offered to provide service.

II. Decertification

Under TWC § 13.254(a) and 16 TAC § 24.245(d)(1)(E) and (d)(2), a retail public utility may request in writing and consent to decertification of a portion of its certificated service area.

The Commission must consider the factors in 16 TAC § 24.245(d)(2) in determining whether to grant or deny the request for decertification.¹

By October 13, 2023, Commission Staff must evaluate Southern Horizons Development, Inc.'s request to decertify a portion of its certificated service area under CCN number 12863 using the factors in 16 TAC § 24.245(d)(2) and file a recommendation on the request.

III. Notice of Decertification

Under 16 TAC § 25.245(d)(2)(A), a certificate holder seeking to decertify a portion of its certificated service area must provide individual notice not only to affected customers but also to affected landowners at the time the request for decertification is made.²

By October 13, 2023, HydroTex must identify the location in the record of the proof of individual notice to all landowners in the certificated area that Southern Horizons seeks to decertify. If evidence in the record does not reflect that individual notice was provided to all landowners in the area that Southern Horizons seeks to decertify, HydroTex must file proof of the required notice and request a good cause exception, if necessary. If additional information is filed, the parties should file a motion to admit the additional information.

IV. Capital Improvements

Commission Staff's final recommendation stated that HydroTex provided documentation confirming that the water well, plant, and system infrastructure needed to provide water service to the requested area has already been purchased and installed and that capital improvements needed to purchase and install water meters will cost less than \$100,000. Commission Staff recommended that HydroTex is not required to meet the requirements of 16 TAC § 24.11(e)(5)(B).

The ALJ disagrees because 16 TAC § 24.11(e)(5) requires an applicant proposing to provide service to a new CCN area to provide loan approval documents or firm capital commitments affirming funds are available.

¹ See, e.g., *Application of the City of Burleson to Amend its Certificate of Convenience and Necessity in Johnson County*, Docket No. 51998, Order (June 29, 2023).

² See *Application of Skyline Drive Landowners Association to Decertify a Portion of its Water Certificate of Convenience and Necessity in Johnson County*, Docket No. 52453, Commission Counsel Memorandum (Sept. 21, 2022).

By October 13, 2023, Commission Staff must file a supplemental recommendation on whether HydroTex meets the requirements of 16 TAC § 24.11(e)(5)(B).

V. Evidence

On August 8 and 22, 2023, the parties filed a joint motion to admit evidence and a joint motion to admit supplemental evidence. The ALJ did not find a request to admit HydroTex's response to Commission Staff's request for information, Patricia Garcia, dated March 31, 2023. If the parties request this item to be admitted, they must file a motion to admit evidence by October 13, 2023.

VI. Certificate

The parties' joint motion to admit supplemental evidence filed on August 22, 2023 attached certificates for HydroTex and Southern Horizons. The certificate for Southern Horizons lists "Southern Horizons" as the CCN holder.

By October 13, 2023, the parties must clarify whether the name on the certificate should be "Southern Horizons Development, Inc." and, if necessary, file a revised certificate and move to admit the same.

Signed at Austin, Texas the 22nd day of September 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**