



Filing Receipt

Filing Date - 2023-11-14 02:08:58 PM

Control Number - 52445

Item Number - 86

DOCKET NO. 52445

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

COMMISSION STAFF'S RESPONSE TO ORDER NO. 21

I. INTRODUCTION

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.

On September 11, 2023, the ALJ filed Order No. 19, directing Staff to file an evaluation of Southern Horizons Development, Inc.'s (Southern Horizons) request to decertify a portion of its certificate service area under certificate of convenience and necessity (CCN) number 12863 using the factors in 16 Texas Administrative Code (TAC) § 24.245(d)(2) and to file a supplemental recommendation on whether HydroTex met the requirements of 16 TAC § 24.11(e)(5)(B) by October 13, 2023. On October 12, 2023, Staff filed its response to Order No. 19. On October 16, 2023, the ALJ filed Order No. 20, requiring Staff to supplement its response to Order No. 19 and to submit a revised certificate by October 31, 2023. On October 31, 2023, Staff submitted a revised certificate and requested an extension for its supplemental response to Order Nos. 19 and 20 to November 14, 2023.

On November 1, 2023, the ALJ filed Order No. 21 extending Staff's deadline to file a response to Order Nos. 19 and 20 to November 14, 2023. Therefore, this pleading is timely filed.

II. RESPONSE TO ORDER NOS. 19 AND 20

As detailed in the attached memorandum from Jolie Mathis in the Commission's Infrastructure Division, Staff has reviewed the factors in 16 TAC § 24.245(d)(2) and respectfully recommends that HydroTex has met the requirements of 16 TAC § 24.245(d)(2).

III. MOTION TO ADMIT ADDITIONAL EVIDENCE

Staff respectfully requests that the following items be admitted into the record of this proceeding:

- A) HydroTex's Response to Order No. 19 (Filed on October 11, 2023);
- B) Commission Staff's Response to Order No. 19 (Filed on October 12, 2023);
- C) Confidential Attachment FB-1.1 (Filed on October 12, 2023);
- D) Commission Staff's Response to Order No. 20 including attached certificate (Filed on October 31, 2023); and
- E) This pleading and the attached memorandum of Jolie Mathis dated November 14, 2023.

IV. CONCLUSION

For the reasons specified above, Staff respectfully requests that HydroTex be found to have met the requirements of 16 TAC § 24.245(d)(2) and respectfully recommends that the aforementioned items be admitted into evidence.

Dated: November 14, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

John York Harrison
Senior Managing Attorney

/s/ Tyler Xu
Tyler Xu
State Bar No. 24137713
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7251
(512) 936-7268 (facsimile)
Tyler.Xu@puc.texas.gov

DOCKET NO. 52445

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on November 14, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Tyler Xu
Tyler Xu

Public Utility Commission of Texas

Memorandum

TO: Tyler Xu, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: November 14, 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. As there are no customers there isn't going to be a lowering of cost to consumers.

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. Additional Factors Considered

Staff was directed to specifically address the factors in 16 TAC § 24.245(d)(2). Staff has reviewed the documents, information, and photos provided in light of the factors in 16 TAC § 24.245(d)(2). In Item No. 62, Southern Horizons consented to the map, tariff, and certificate provided by HydroTex as part of decertifying a portion of Southern Horizons' CCN. Therefore, filings by HydroTex qualify in lieu of a separate application filed by Southern Horizons to amend its own CCN.

16 TAC § 24.245(d)(2)(A) – Notice of Request to Each Customer and Landowner

Per HydroTex's application, the area of land in question does not have any customers, and The Landing II, the sole landowner of the area being decertified from Southern Horizons' CCN, is owned by applicant HydroTex.¹ Therefore, under 16 TAC § 24.2(b), there exists good cause to grant an exception to the requirement.

16 TAC § 24.245(d)(2)(B) – Specified Area to be Revoked or Removed from CCN Area

Per HydroTex's application, the area of land in question to be decertified from Southern Horizons' CCN was sufficiently described in maps and digital mapping data submitted by HydroTex.² Therefore, Southern Horizons meets the requirement set in 16 TAC § 24.245(d)(2)(B).

16 TAC § 24.245(d)(2)(C) – Effect of Decertification on Current CCN Holder, Existing Customers, and Landowners

Per HydroTex's application, there are no existing customers. HydroTex did not include information about the effect of decertification on Southern Horizons or The Landing II, the landowner. However, given that Southern Horizons has consented to HydroTex's application for decertification based on the consent to maps, tariff, and certificate provided by HydroTex³ and that The Landing II is owned by HydroTex, there exists good cause under 16 TAC § 24.2(b) to grant an exception to the requirement.

¹ Item No. 54, p. 6.

² Item No. 48, p. 6.

³ Item No. 62.

16 TAC § 24.245(d)(2)(D) – Required Mapping Information

HydroTex’s initial application was deficient with respect to 16 TAC § 24.245(d)(2)(D) and 16 TAC § 24.257 due to the lack of digital mapping data. In Item No. 19, HydroTex supplemented its application with various digital mapping data submissions, including shapefile format files. In Item No. 48, Staff reviewed the maps and digital mapping data and found them sufficient. Therefore, Southern Horizons meets the requirement set in 16 TAC § 24.245(d)(2)(D).

16 TAC § 24.245(d)(2)(E) – Commission May Deny Request if Customers or Landowners are Adversely Affected

Per HydroTex’s application, there are no current existing customers on the area of land to be decertified. Per Item No. 54, the sole landowner, The Landing II, is owned by applicant HydroTex. Therefore, there are no customers or landowners that can be adversely affected by Southern Horizons’ decertification via HydroTex.

16 TAC § 24.245(d)(2)(F) – No Compensation under this Paragraph

HydroTex has not shown evidence demonstrating compensation to Southern Horizons as part of the decertification amendment, and Southern Horizons has consented to and has not contested this application. Accordingly, Staff respectfully recommends that HydroTex has met the requirements of 16 TAC § 24.245(d)(2)(F).

5. 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 and is capable of providing continuous and adequate service. I further recommend that approving this application to obtain water CCN No. 13309 is necessary for the service, accommodation, convenience, and safety of the public.

HydroTex consented to the attached map, tariff, and certificate on June 9, 2023.