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DOCKET NO. 53336

APPLICATION OF BIG EASY AGUA	§	PUBLIC UTILITY COMMISSION
LLC FOR A CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
COLORADO COUNTY	§	

COMMISSION STAFF’S SUPPLEMENTAL FINAL RECOMMENDATION

I. INTRODUCTION

On March 11, 2022, Big Easy Agua LLC (Big Easy) filed an application to obtain a water Certificate of Convenience and Necessity (CCN) in Colorado County. The requested service area consists of 1,039 acres and 0 connections.

On November 22, 2022, the administrative law judge filed Order No. 9 requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental final recommendation on the application by December 2, 2022. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

Staff has reviewed the application and supplemental information and, as detailed in the attached memoranda from Jolie Mathis of the Infrastructure Division and Fred Bednarski of the Rate Regulation Division, recommends that Big Easy’s application for a water CCN be approved. Staff’s review indicates that Big Easy 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 (TAC), and, therefore, is capable of providing continuous and adequate service. Additionally, Staff’s review suggests that approval of Big Easy’s application, and the issuance of water CCN No. 13303, is necessary for the service, accommodation, convenience, and safety of the public.

Big Easy filed consent forms concurring with the attached final map, certificate, and tariff on September 19, 2022.

Staff also recommends that Big Easy file a rate application with the Commission within 18 months from the date service begins pursuant to 16 TAC § 24.25(b)(1)(C).

III. CONCLUSION

Staff recommends that Big Easy's application for a water CCN be approved. Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

Dated: December 1, 2022

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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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 via electronic mail on December 1, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: December 1, 2022

RE: Docket No. 53336 – *Application of Big Easy Agua LLC for a Certificate of Convenience and Necessity in Colorado County*

1. Application

On March 11, 2022, Big Easy Agua LLC (Big Easy) filed with the Public Utility Commission of Texas (Commission) an application to obtain a water certificate of convenience and necessity (CCN) in Colorado County, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

Based on the mapping review by Dave Babicki, Infrastructure Division:

The requested area includes 0 customer connections and approximately 1,039 acres, comprised of uncertificated area.

The application proposes the addition of approximately 1,039 acres to Big Easy's new CCN No. 13303

The application indicates that the total acreage being requested is approximately 1,029 acres. Based on the mapping review by Mr. Babicki it was determined the requested area is approximately 1,039 acres.

2. Notice

The deadline to intervene was May 27, 2022; 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 are potential new customers in the requested area.

- 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)).***

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

The landowners in the area will have a water provider available when they need to request water service.

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)).***

The applicant is a new entrant to the utility service industry. However, the applicant will hire utility professionals to help operate the system and to assist in regulatory compliance.

- 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. The Texas Commission on Environmental Quality has approved plans for Big Easy 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)).***

Currently, there are no other water providers in the area.

- 3.7. ***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.

3.8. ***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.

3.9. ***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.

3.10. ***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.

During the Commission's January 27, 2022, open meeting, the tap fee for Docket No. 50944 was discussed. The resulting ruling was to not use the standard residential tap fees agreed to in the settlement and instead include a provision in the tariff to charge for the actual cost of each individual tap. Docket No. 50944 is for the Monarch I LP (Monarch) multi-county rate case. Monarch is a Class A utility with more than 30,000 customers. Currently there are only five Class A utilities regulated in Texas. There are many more Class D utilities, such as Big Easy, that are not as large and do not cover more than one county. Therefore, there is usually little difference between residential tap installations as the type of ground formations in their service areas and the parts, labor and equipment rental costs do not vary significantly.¹ In the case of Big Easy, water service will be provided to approximately 120 customers in Colorado County. The proposed tap fee for Big Easy's customers is \$1,000. I recommend that the proposed tap fee is reasonable. In order to true-up the proposed tap fees and rates, I recommend that Big Easy 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 Dave Babicki, Infrastructure Division, and my technical and managerial review, I recommend that Big Easy meets all of 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

¹ Road bores are an exception to a standard tap fee. This additional construction is addressed in a utility's tariff, such as the one included in the settlement in this docket, by a provision that allows the actual cost of the road bore and the tap fee. If the utility's main water line is across a public road, it is likely that a road bore is necessary to install a tap for a new customer.

application to obtain a water CCN No. 13303 is necessary for the service, accommodation, convenience and safety of the public.

Big Easy consented to the attached map, tariff, and certificate on September 19, 2022.

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: December 1, 2022

RE: Docket No. 53336 – *Application of Big Easy Aqua LLC for a Certificate of Convenience and Necessity in Colorado County*

On March 11, 2022, Big Easy Aqua LLC (Big Easy) filed an application for a water certificate of convenience and necessity (CCN) in Colorado 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. Big Easy 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

My analysis is based on three years of historical financial statements of Big Easy's affiliate—Billy Brown—ending February 16, 2022 and five-year financial projections of Big Easy,^{1,2 3} as required by 16 TAC § 24.11(e)(4)(B)(iii)(II).

Big Easy filed a Financial Guarantee stating that Billy Brown is capable, available, and willing to cover the expected temporary cash shortages of Big Easy.⁴

Based upon my review of the financial statements of Billy Brown, I calculate a debt-to-

¹ Confidential - Supplemental Financial Information at pdf page 4 through 27 (Mar. 11, 2022).

² Application at pdf pages 27 through 33 (Mar. 11, 2022).

³ Confidential - Financial information at pdf page 26 (Nov. 4, 2022).

⁴ Confidential - Supplemental Financial Information at pdf page 3 (Mar. 11, 2022).

equity ratio equal to 0.17 as provided in confidential attachment FB-1. Because the ratio is less than 1, I recommend a finding that Billy Brown meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through its affiliate—Big Easy meets the leverage test as 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; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by Billy Brown demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. Big Easy's financial projections show that there are projected operations shortages in the first year of operating, however Billy Brown's available cash is sufficient to cover the shortage as provide in confidential attachment FB-1 and as indicated on the letter provided from Billy Browns institution.⁵ Therefore, I recommend a finding that Big Easy meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan

New facilities to the serve the requested area will be paid for by the developer that is owned by Billy Brown.⁶ Billy Brown is capable, available, and willing to pay for the water plant and distribution lines⁷ with cash reserves as provided in confidential attachment FB-1. Therefore, I recommend a finding that Big Easy meets the requirements specified in 16 TAC § 24.11(e)(5).

Recommendation

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

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

⁵ Confidential - Financial information at pdf page 26 (Nov. 4, 2022).

⁶ Response to First RFI at pdf pages 6 through 8 (Nov. 9, 2022).

⁷ Updated financial guarantee at pdf page 2 (Nov. 11, 2022).