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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	§	

**ORDER NO. 10
REQUIRING SUPPLEMENTAL JOINT MOTION TO ADMIT
EVIDENCE AND CLARIFICATIONS**

This Order addresses the December 16, 2022 joint motion to admit evidence and proposed notice of approval filed by Big Easy Agua LLC and Commission Staff and the need for clarifications.

I. Evidence

The parties did not request admission of Confidential – FB-1 Bate Stamp-1 to 1 filed on December 1, 2022 (AIS No. 31). Further, the parties requested that the proposed final map, certificate, and tariff attached to the joint motion to admit evidence filed on December 16, 2022 (AIS No. 31). However, the proposed final map, certificate, and tariff were filed on December 19, 2022 (AIS No. 32).

By February 10, 2023, the parties are required to file a supplemental motion to admit evidence.

II. Clarifications

A. Notice

In Commission Staff's Recommendation on Administrative Completeness, Proposed Notice, and Proposed Procedural Schedule filed on April 11, 2022, Commission Staff recommended notice of the application to be sent to each landowner of a tract of land that is at least 25 acres and is wholly or partly located in the requested area. On June 10, 2022, Big Easy filed proof of notice of its application. The notice is not clear as to whether notice was sent to each landowner of a tract of land that is at least 25 acres and is wholly or partly located in the requested area. Big Easy is seeking a certificate of convenience and necessity covering approximately 1,029 acres; however, it appears from the notice that only one possible landowner, BB Oak Creek Ranch LLC, may have been served with notice.

By February 10, 2023, Big Easy must clarify whether notice has been provided to each landowner of a tract of land that is at least 25 acres and is wholly or partly located in the requested area, as required under Texas Water Code (TWC) § 13.246(a-1) and 16 Texas Administrative Code (TAC) § 24.235(b)(2).

B. Need for Service

The administrative law judge is concerned as to whether Big Easy has sufficiently shown that there is a need for service, as required by TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2). Based on the application filed on March 11, 2022, it appears that The Big Easy Ranch is a private entity who has members with access to hunting and golfing and that there is a plan to develop 120 lots. Big Easy indicates it has received requests for service in the application that was filed on March 11, 2022. In its response to Commission Staff's first request for information filed on November 9, 2022, Big Easy attached a November 9, 2022 water system agreement between Big Easy and Big Easy Ranch Development, LLC requesting potable water service for future customers of Big Easy Ranch.

The applicant has the burden of proof in a CCN proceeding to show that certification of the requested service area is necessary for the service, accommodation, convenience, or safety of the public.¹ In particular, one factor is whether there is a need for service in the requested area, and this requires a clear and unambiguous understanding of the need for service within a requested service area.²

By February 10, 2023, Big Easy must file (1) any additional requests for service and (2) any reports, market studies, or other documents evidencing growth in the area and the need for service within the requested area.

By February 24, 2023, Commission Staff must file a supplement to its final recommendation addressing the need for service and move to admit the supplement to the final recommendation.

¹ See *Application of East Medina County Special Utility District to Amend a Water Certificate of Convenience and Necessity in Medina County*, Docket No. 52337, Order Remanding to Docket Management at 1 (Dec. 15, 2022).

² *Id.*

C. 16 TAC § 24.25(b)(1)(B) and (C)

Commission Staff's final recommendation filed on December 1, 2022 does not address 16 TAC § 24.25(b)(1)(B) and (C).

By February 24, 2023, Commission Staff must file a supplement to its final recommendation addressing these sections and move to admit the supplement to the final recommendation.

D. Other Clarifications

In its application filed on March 11, 2022, Big Easy states that as soon as approval to construct is received, construction on the well and water plant will begin.³ According to Texas Commission on Environmental Quality (TCEQ) correspondence dated November 9, 2022 and attached to Big Easy's responses to Commission Staff's first request for information, TCEQ approved construction. The ALJ requires Big Easy to clarify whether any construction on the well and water plant has begun and whether there is an anticipated completion date for the water system.

In its application filed on March 11, 2022, Big Easy states that it is a new entrant to the utility service industry, but "will hire utility professionals to help operate the system and to assist in regulatory compliance."⁴ The ALJ requires Big Easy to clarify whether it intends to employ TCEQ-licensed operators who will be responsible for operating its public water system.

In its application filed on March 11, 2022, Big Easy states that there are no retail public utilities within one half mile from the outer boundary of the requested area and therefore there were no requests for service from other water utilities,⁵ however, Commission Staff's final recommendation states that service was requested from neighboring utilities and none of them were able to provide service.⁶ The ALJ requires Big Easy to identify whether service was requested from any neighboring utility within one half mile from the outer boundary of the requested area and whether the neighboring utility responded that they were unable to provide service. The ALJ requires Big Easy to file any correspondence they received indicating that the neighboring utility was unable to provide service.

³ Application at 7.

⁴ *Id.* at 8.

⁵ *Id.* at 7.

⁶ Commission Staff's Supplemental Final Recommendation dated December 1, 2022, Memorandum of Jolie Mathis at 1.

By February 10, 2023, Big Easy must provide the requested clarifications and move to admit the clarifications and any supplemental evidence provided.

Signed at Austin, Texas the 27th day of January 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "Christina Denmark", written over a horizontal line.

**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**