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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Christina Denmark 
Administrative Law Judge

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

DATE: May 24, 2023

On April 4, 2023, I filed a Proposed Order in the above-styled and numbered docket.

In light of the additional information requested by the Office of Policy and Docket Management and additional evidence submitted, the administrative law judge provides this Revised Proposed Order.

The attached Revised Proposed Order is ready for the Commission's consideration.

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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	§	

REVISED PROPOSED ORDER

This Order addresses the application of Big Easy Agua LLC to obtain a water certificate of convenience and necessity (CCN) in Colorado County. The Commission issues Big Easy CCN number 13303 for the requested area described in this Order and shown on the attached map.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Big Easy is a Texas limited liability company registered with the Texas secretary of state under filing number 0804293314.
2. Big Easy has received conditional approval from the Texas Commission on Environmental Quality (TCEQ), under identification number 0450113, to construct, operate, maintain, and control the Big Easy Ranch water system to provide water service in Colorado County.

Application

3. On March 11, 2022, Big Easy filed the application at issue in this proceeding.
4. Big Easy's application, as supplemented, requests a service area comprised of 1,039 acres, no current customer connections, and 120 potential future connections.
5. The requested service area is being developed by Big Easy Ranch Development, LLC, and will include a 120-lot subdivision, the Big Easy County Club, the Big Easy restaurant, a large gathering entertainment area, a golf pro shop, overnight accommodations, and offices.
6. The requested area is located approximately 6.5 miles northwest of downtown Columbus, Texas, and is generally bounded on the north by a line approximately one mile south of Brunes Mill Road; on the east by Brunes Mill Road; on the south by a line

approximately 3.25 miles north of Highway 71; and on the west by a line approximately one mile east of Brushy Road.

7. In Order No. 2 filed on April 11, 2022, the administrative law judge (ALJ) found the application administratively complete.
8. On August 18 and 19, and November 4, 9, and 11, 2022, and February 8 and April 3, 2023, Big Easy filed supplemental information.

Notice

9. On June 10, 2022, Big Easy filed the affidavit of Shelly Young, engineer for Big Easy, attesting that notice was mailed to affected parties, landowners, and neighboring utilities on April 13, 2022.
10. On June 10, 2022, Big Easy filed a publisher's affidavit attesting to publication of notice in the *Colorado County Citizen*, a newspaper of general circulation in Colorado County, on April 20 and 27, 2022.
11. On July 19, 2022, Big Easy filed a letter explaining the delay in filing the notice affidavits on time.
12. In Order No. 4 filed on July 21, 2022, the ALJ found the notice sufficient.
13. On February 8, 2023, Big Easy filed a clarification confirming that each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area received notice.

Evidentiary Record

14. In Order No. 12 filed on March 2, 2023, the ALJ admitted the following evidence into the record of this proceeding:
 - a. Big Easy's application and all attachments filed on March 11, 2022;
 - b. Commission Staff's recommendation on administrative completeness, proposed notice, and proposed procedural schedule, filed on April 11, 2022;
 - c. Big Easy's proof of notice, along with letter explaining delay in submitting proof of notice, filed on June 10 and July 19, 2022;

- d. Commission Staff's supplemental recommendation on notice filed on July 21, 2022;
 - e. Big Easy's supplemental information filed on August 18 and 19, 2022;
 - f. Big Easy's consent form filed on September 19, 2022;
 - g. Big Easy's supplemental financial information filed on November 4, 2022;
 - h. Big Easy's response to Commission Staff's first request for information filed on November 9, 2022;
 - i. Big Easy's updated financial guarantee filed on November 11, 2022;
 - j. Commission Staff's final recommendation and confidential FB-1 Bate Stamp-1 to 1 attachment filed on December 1, 2022;
 - k. The proposed final map, certificate, and tariff filed on December 19, 2022;
 - l. Letter of clarification and all attachments filed on February 8, 2023; and
 - m. Commission Staff's supplemental final recommendation filed on February 24, 2023.
15. In Order No. 16 filed on April 4, 2023, the ALJ admitted Big Easy's letter of clarification, including attachments, filed with the motion to admit evidence on April 3, 2023, into the record.
16. In Order No. 17 filed on May 23, 2023, the ALJ admitted Big Easy's letter answering request, including attachments, filed on May 19, 2023, into the record.
17. In Order No. 18 filed on May 24, 2023, the ALJ admitted the following additional evidence into the record:
- a. The PDF map attached to the motion to admit evidence filed on May 23, 2023;
 - b. The shp file of the area attached to the motion to admit evidence filed on May 23, 2023; and
 - c. The executed contract between Big Easy Agua and FlowWatch, Inc. filed on May 23, 2023.

Adequacy of Existing Service

18. There are no existing customers in the requested area.
19. Water service is not currently being provided to the requested area.
20. The water plant and distribution system has been constructed.

Need for Additional Service

21. The requested area is currently being developed to include a 120-acre subdivision and will also include the Big Easy County Club, the Big Easy restaurant, a large gathering entertainment area, a golf pro shop, overnight accommodations, and offices.
22. Big Easy received a request for service from the developer.
23. Big Easy filed a copy of the water system agreement between itself and the developer, demonstrating the need for water service in the requested area.

Effect of Issuing the Certificate

24. Big Easy will be the certificated water utility for the requested area and will be obligated to provide adequate and continuous water service to future customers in the requested area.
25. Issuing the CCN will enable Big Easy to provide water service to the developer in accordance with their water system agreement.
26. Landowners in the requested area will have access to a water provider when they need to request water service and will not have to install or operate individual water wells.
27. No protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility in this docket.
28. There will be no effect on any retail public utility providing service to the proximate area.

Ability to Serve: Managerial and Technical

29. Big Easy has received conditional approval from the TCEQ to construct the Big Easy Ranch water system under identification number 0450113.
30. Big Easy provided subdivision plats, engineering planning maps, and other large-scale maps that show all its water facilities and illustrate, separately, facilities for production, transmission, and distribution of its services.

31. Big Easy is a new utility and does not have any violations listed in the TCEQ database.
32. Big Easy has filed the executed contract with FloWatch, Inc., a utility management service, that employs a TCEQ-licensed operator who will operate and maintain the water system that will serve the requested area.
33. Big Easy has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

34. Big Easy received a request for service from the developer of the requested area and executed a water system agreement with the developer.
35. There are no other retail water service providers within one half mile from the outer boundary of the requested area.
36. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

37. It is necessary for Big Easy to build a physically separate water system in order to provide service to the requested area.
38. There are no other retail public water utilities within one half mile from the outer boundary of the requested area.
39. Big Easy demonstrated that regionalization or consolidation with an adjacent retail public utility is not economically feasible.

Ability to Serve: Financial Ability and Stability

40. Big Easy demonstrated that its affiliate, Billy Brown is capable, available, and willing to cover temporary cash shortages and has a debt-to-equity ratio that is less than one, satisfying the leverage test.
41. Big Easy demonstrated that its affiliate has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after issuance of the CCN, satisfying the operations test.
42. Big Easy provided a written guarantee from its affiliate to pay for cash shortages and capital improvement costs. The guarantee additionally states the distribution system has already

been installed and most of the water plant equipment has been ordered and paid for. Big Easy's affiliate also provided a letter from its bank indicating funds are available to cover the projected cash shortages and capital improvement costs as indicated in confidential attachment FB-1, attached to Commission Staff's supplemental final recommendation.

43. The developer will pay for any capital improvements needed to provide continuous and adequate service to the requested area.
44. The water plant and distribution system has been constructed and paid for.
45. Big Easy demonstrated the financial capability and stability to pay for facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

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

Environmental Integrity and Effect on the Land

47. Future construction will be necessary for Big Easy to provide service to the requested area.
48. Big Easy has received conditional approval from the TCEQ for the construction of the water system and related facilities.
49. The effects on the land and on environmental integrity will not be to such a degree that the CCN should not be issued.

Improvement in Service or Lowering Cost to Consumers

50. Water service to the requested area will improve because Big Easy will be obligated to serve future customers in the requested area.
51. No lowering of cost to customers will result from issuance of the CCN.

Proposed Tariff, Rate Study, Supporting Documentation, and Timelines

52. Big Easy filed a proposed tariff.
53. Big Easy filed a rate study and pro forma financial statements in support of its proposed rates.
54. Big Easy provided all calculations supporting its proposed rates.

55. Big Easy provided all assumptions for projections included in its rate study.
56. Big Easy provided an estimated completion date for the water system.
57. Service and billing will commence upon the approval of this application by the Commission.

Map, Certificate, and Tariff

58. On September 19, 2022, Commission Staff emailed the proposed map, certificate, and tariff to Big Easy.
59. On September 19, 2022, Big Easy filed its consent to the proposed map, certificate, and tariff.
60. On December 19, 2022, Commission Staff filed the proposed map, certificate, and tariff.

Informal Disposition

61. More than 15 days have passed since the completion of notice provided in this docket.
62. No person filed a protest or motion to intervene.
63. Big Easy and Commission Staff are the only parties to this proceeding.
64. No party requested a hearing and no hearing is needed.
65. Commission Staff recommended approval of the application.
66. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, and 13.246.
2. Big Easy will be a retail public utility as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Big Easy's application meets the requirements of TWC § 13.244 and 16 TAC §§ 24.25(b)(1) and 24.233.

4. Big Easy provided notice of the application that complies with TWC § 13.246 and 16 TAC § 24.235.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
6. After considering the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC §§ 24.11(e) and 24.227(a) and (e), Big Easy demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested service area as required by TWC § 13.241 and 16 TAC § 24.227.
7. Big Easy demonstrated that regionalization or consolidation with another retail public utility is not economically feasible, as required by TWC § 13.241(d) and 16 TAC § 24.227(b).
8. It is not necessary for Big Easy to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
9. Big Easy demonstrated that issuance of CCN number 13303 is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
10. Under TWC § 13.257(r) and (s), Big Easy must record a certified copy of the approved map and certificate, along with a boundary description of its service area, in the real property records of Colorado County within 31 days of this Order and must submit evidence of the recording to the Commission.
11. Under 16 TAC § 24.25(b)(1)(B)(vi), Big Easy must file notice with the Commission once billing for water service begins.
12. Under 16 TAC § 24.25(b)(1)(C), Big Easy must file a rate application with actual financial information with the Commission within 18 months from the date service begins.
13. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

¹ Tex. Gov't Code Ann. §§ 2001.001–.903.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission issues CCN number 13303, attached to this Order, to Big Easy for the requested area described in this Order and shown on the attached map.
2. The Commission approves the map and tariff attached to this Order.
3. Big Easy must provide service to every customer and applicant for service within the approved area under CCN number 13303 who requests water service and meets the terms of Big Easy's water service policies, and such service must be continuous and adequate.
4. Big Easy must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Colorado County affected by the application and file in this docket proof of the recording no later than 45 days after the date of this Order.
5. Big Easy must comply with 16 TAC § 24.25(b)(1)(B)(vi) and file notice to the Commission once billing for water service begins in Docket No. 54714, *Compliance Filing for Docket No. 53336 (Application of Big Easy Agua LLC for a Certificate of Convenience and Necessity in Colorado County)*.
6. Big Easy must comply with the requirements in 16 TAC § 24.25(b)(1)(C) and file a rate application with the Commission within 18 months from the date water service begins.
7. Within ten days of the date this Order is filed, Commission Staff must provide the Commission with a clean copy of the tariff approved in this Order to be stamped *Approved* and retained by Central Records.
8. 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

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER