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DOCKET NO. 53336

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APPLICATION OF BIG EASY AGUA  
LLC FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
COLORADO COUNTY

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PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

### ORDER REMANDING PROCEEDING TO DOCKET MANAGEMENT

This Order addresses the application of Big Easy Agua LLC to obtain a water certificate of convenience and necessity (CCN) in Colorado County. The administrative law judge (ALJ) filed a revised proposed order on May 24, 2023 approving the application, which the Commission considered at its June 15, 2023 open meeting. For the reasons provided below, the Commission declines to approve the proposed order and remands this proceeding to Docket Management to allow Big Easy Agua to file sufficient financial assurances, a capital improvements plan, and reduce the acreage of the requested CCN.

Commission rules require owners and operators of retail public utilities to demonstrate they have the financial resources to operate and manage a retail public utility and to provide continuous and adequate service.<sup>1</sup> Generally, an owner or operator may demonstrate financial assurance by satisfying financial tests or providing an irrevocable stand-by letter of credit.<sup>2</sup> However, the owner or operator of a retail public utility that requests to serve a new CCN area must provide additional financial assurance.<sup>3</sup> The additional financial assurance must be in the form of loan approval documents or firm capital commitments affirming that all funds are available to install the CCN applicant's proposed water utility system for the requested service area.<sup>4</sup>

Big Easy Agua has provided firm capital commitments in the amount of \$1,547,199 for construction of an unknown portion of the water system for its new CCN. These loan approval documents or firm capital commitments must affirm that all funds needed to install the CCN

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<sup>1</sup> 16 Tex. Admin. Code §§ 24.11(b), .227(f) (TAC).

<sup>2</sup> *Id.* § 24.11(c)–(e).

<sup>3</sup> *Id.* § 24.11(e)(5).

<sup>4</sup> *Id.* § 24.11(e)(5)(B)(ii).

applicant's proposed water system for the entire requested service area are available to Big Easy Agua.<sup>5</sup> Big Easy Agua has not specified whether the current firm capital commitment of \$1,547,199 will cover the cost of *all* of the water system to be installed in the *entire* requested service area. If not, the Commission has found that financial commitment letters similar to the November 10, 2022 letter executed by Mr. Billy Brown do not satisfy the firm capital commitment requirement.<sup>6</sup>

Additionally, Big Easy Agua must file a capital improvements plan. The Texas Water Code states all CCN applications must include a capital improvements plan.<sup>7</sup> Big Easy Agua filed a pro forma budget with its application, but a pro forma budget is not a capital improvements plan under the Water Code and Commission rules. A capital improvements plan includes a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed CCN area and must be keyed to a map showing where facilities will be located to provide service.<sup>8</sup>

A CCN is required for areas where a utility will provide *retail water or sewer utility service* directly or indirectly to the public.<sup>9</sup> *Retail water or sewer utility service* means potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.<sup>10</sup> Big Easy Agua has requested 1039 acres be included in its new CCN, but will only provide retail water service on approximately 300 acres of the requested CCN area. Big Easy Agua should amend its CCN application to only include areas in which the Big Easy Agua will provide retail water service.

For these reasons, the Commission remands this proceeding to Docket Management for further processing consistent with this Order. On remand, Big Easy Agua must file and seek admission of loan approval documents or firm capital commitments, a capital improvements plan, and an amended application reducing the acreage of the requested CCN. These filings and a

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<sup>5</sup> See *id.* § 24.11(a), (e)(5)(B)(ii).

<sup>6</sup> *Application of Liberty County Utilities, LLC for Water and Sewer Certificate of Convenience and Necessity in Liberty County*, Order Remanding Proceeding to Docket Management (Oct. 20, 2022).

<sup>7</sup> Tex. Water Code § 13.244(d)(3) (TWC).

<sup>8</sup> TWC § 13.244(d)(3); 16 TAC § 24.233(a)(6).

<sup>9</sup> See TWC § 13.242(a).

<sup>10</sup> TWC § 13.002(20).

motion to admit them into evidence must be submitted by Friday, June 30, 2023. After admitting the parties' filings into the evidentiary record, the ALJ will prepare a revised proposed order for the Commission's consideration.

Signed at Austin, Texas the 15<sup>th</sup> day of June 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

  
KATHLEEN JACKSON, INTERIM CHAIR

  
WILL MCADAMS, COMMISSIONER

 Lori Cobos  
LORI COBOS, COMMISSIONER

  
JIMMY GLOTFELTY, COMMISSIONER

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