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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 RECOMMENDATION SUPPLEMENTAL
INFORMATION AND MOTION TO ADMIT 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.

On October 20, 2023, the administrative law judge filed Order No. 26, instructing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the supplemental information provided by Big Easy and to move to admit its recommendation by November 7, 2023. Therefore, this pleading is timely filed.

II. STAFF'S RECOMMENDATION ON SUPPLEMENT INFORMATION

Staff has reviewed the application and, as detailed in the attached memoranda from Jolie Mathis of the Infrastructure Division and from Fred Bednarski from the Rate Regulation Division, recommends that Big Easy has provided sufficient information to meet the requirements of 16 Texas Administrative Code (TAC) § 24.11(e)(5) and has sufficiently amended its application to reduce the acreage of the requested CCN to only include areas in which Big Easy will provide retail water service.

Specifically, Staff recommends that Big Easy has provided sufficient firm capital commitment to meet the requirements of 16 TAC § 24.11(e)(5)(B). Big Easy clarified that it has paid for and installed the water plant and distribution system for phase 1, which accounts for the \$1,547,199.¹ However, Big Easy has not completed the buildout of its new water system, which will be completed in phases 2 and 3 and is estimated to cost approximately \$856,350.² Nevertheless, as explained in Mr. Bednarski's memorandum, Big Easy provided an updated firm

¹ Response to ALJ's Order No. 19 and Motion to Admit Evidence at 5–16 (Jul. 17, 2023).

² *Id.* at 15–17 and Response to second RFI at 19 (Oct. 19, 2023).

capital commitment to pay for the remaining cost and accordingly meets the requirements of 16 TAC § 24.11(e)(5)(B).

As Ms. Mathis states in her attached memo, Staff also recommends that Big Easy provided a sufficient capital improvement plan that includes a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed CCN area with a map showing where facilities will be located to provide service. Ms. Mathis also states that Big Easy sufficiently amended its CCN application to only include areas in which Big Easy will provide retail water service.

Finally, Staff notes that both Ms. Mathis's and Mr. Bednarski's recommendations supplement their December 1, 2022 recommendations³ and maintain that Big Easy's application for a water CCN should be approved. Additionally, as Ms. Mathis notes in her memorandum, in order to true-up the proposed tap fees and rates, Staff also recommends that Big Easy be required to 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. MOTION TO ADMIT RECOMMENDATION

Staff hereby requests that this recommendation be admitted into the record.

IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that Big Easy has provided sufficient information to comply with the requirements under 16 TAC § 24.11(e)(5), including a firm capital commitment to pay for the remaining required capital improvement costs and a complete capital improvement plan keyed to a map showing where facilities will be located to provide service. Staff also respectfully recommends that Big Easy has appropriately amended its CCN application to only include areas in which Big Easy will provide retail water service. Accordingly, Staff recommends that Big Easy has sufficiently addressed the Commissioners' concerns in the Order Remanding Proceeding to Docket Management⁴ and Order No. 19 and recommends that Big Easy's CCN application be approved. However, in order to true-up the

³ Commission Staff's Supplemental Final Recommendation (Dec. 1, 2022) (erroneously labelled as a supplemental final recommendation).

⁴ Order Remanding Proceeding to Docket Management (Jun. 15, 2023).

proposed tap fees and rates, Staff also recommends that Big Easy be required to file a rate application with the Commission within 18 months from the date service begins pursuant to 16 TAC § 24.25(b)(1)(C). Finally, Staff respectfully requests that this recommendation be admitted into the record of this proceeding.

Dated: November 10, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

/s/ Ian Groetsch
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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 10, 2023, in accordance with the Second 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: November 10, 2023

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 revised maps submitted with Item 64 on July 26, 2023, the revised digital mapping data submitted with Item 68 on August 23, 2023, and the revised digital mapping data submitted with Item 72 on September 21, 2023, are sufficient. The requested area was reduced from 1,039 acres to 304 acres. Big Easy sufficiently amended its CCN application to only include areas in which Big Easy will provide retail water service.

- The requested area includes 0 customer connections and approximately 304 acres, comprised of uncertificated area to amend (add) to Big Easy Agua LLC and the issuance of water CCN number.
- The application proposes the addition of approximately 304 acres and the issuance of water CCN number to Big Easy Agua LLC

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and that there is one landowner in the requested area. A map indicating the location of each landowner was also provided.

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. Big Easy Ranch Development LLC is developing a 120-lot subdivision as part of the overall Big Easy Ranch Development. These homes will require retail water service that Big Easy Agua LLC will provide. To date, four homes are under construction, with several more in the review process.

The Texas Commission on Environmental Quality (TCEQ) 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. A copy of the TCEQ approval letter for the water system and distribution system was filed November 9, 2022.

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)).

There are no neighboring utilities. The TCEQ 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. *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)).*

Big Easy is building a new water treatment plant to provide service to the requested area. Big Easy provided a budget, a map, and an estimated timeline for construction. Construction of the water plant began in October 2022. Estimated costs to build a new water system and extend the water system for all phases of buildout are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

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.

I recommend that Big Easy has provided all the required documentation to fulfill 16 TAC § 24.25(b)(1)(B). In order to true-up the proposed tap fees and rates, I recommend that Big Easy be required to 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).

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

Public Utility Commission of Texas

Memorandum

TO: Ian Grotesch, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: November 10, 2023

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.

On June 21, 2023, the administrative law judge issued Order No. 19 requiring commission staff to file a recommendation regarding Big Easy's firm capital improvement plan and firm capital commitment of \$1,547,199 for installing a water system cost in the entire requested service area.

Based on my review of Jolie Mathis's memorandum and the supplemental filings, the remaining capital improvements required to provide continuous and adequate water service to the entire requested area exceed \$100,000. I determined that Big Easy paid \$1,721,539.19 to install the water plant and distribution system for phase 1,¹ which exceeds the estimated cost of \$1,547,199 as shown in confidential attachment FB-1.1. The remaining required capital improvements are distribution system costs for phase II and III that total to \$856,350.² Big Easy provided an updated firm capital commitment to pay for the entire remaining capital improvement cost as shown in confidential attachment FB-1-1.³ Therefore, I recommend a finding that Big Easy provided an updated firm capital commitment that meets the requirements specified in 16 TAC

¹ Response to ALJ's Order No. 19 and Motion to Admit Evidence at 5–16 (Jul. 17, 2023).

² *Id.* at 15–17 and Response to second RFI at 19 (Oct. 19, 2023).

³ Financial information and financial guarantee affidavit at 22–25 (Mar. 11, 2022), Financial information requested by Fred Bednarski at 26 (Nov. 4, 2022), and Additional response to RFI 2 at 6 & 7 (Nov. 1, 2023).

§ 24.11(e)(5)(B).

Finally, I recommend a finding that Big Easy still demonstrates the financial and managerial capability needed to provide adequate service to the area subject to this application based on my memorandum dated provided on December 1, 2022.⁴

⁴ Commission Staff's Supplemental Final Recommendation at 7–8 (Dec. 1, 2022).