



Filing Receipt

Filing Date - 2023-10-06 12:26:12 PM

Control Number - 54171

Item Number - 76

DOCKET NO. 54171

APPLICATION OF TEXAS WATER UTILITIES, LP AND CS WATER CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BOSQUE COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
--	--	--

**ORDER NO. 19
REQUIRING BRIEFING**

This Order requires briefing on issues related to Commission Staff’s January 31 and July 18, 2023 recommendations on application materials and Texas Water Utilities, LP’s June 21, 2023 arguments regarding the applicability of 16 Texas Administrative Code (TAC) § 24.11(e)(5). As detailed below, Commission Staff and Texas Water have provided conflicting statements regarding the applicability of 16 TAC § 24.11(e)(5).

In Fred Bednarski III’s January 31, 2023 memorandum attached to Commission Staff’s recommendation on approval of the sale and on the certificate of convenience and necessity (CCN) amendment of the same date, Mr. Bednarski states that, under 16 TAC § 24.11(e)(5)(A), an applicant proposing service to a new CCN area must provide documentation demonstrating adequate funding for the purchase of the existing system and any improvements necessary to provide continuous and adequate service. Mr. Bednarski asserts that Texas Water satisfied the requirements of 16 TAC § 24.11(e)(5)(A) because Texas Water filed documentation demonstrating adequate sources of funding for the purchase price and planned system improvements for the water system being transferred.

This recommendation appears to state that 16 TAC § 24.11(e)(5) applies to this proceeding and that Texas Water met all requirements of 16 TAC § 24.11(e)(5). Additionally, Commission Staff appears to take the position that Texas Water’s application is for a new CCN area even though the requested area is currently certificated.

In Mr. Bednarski’s July 18, 2023 memorandum attached to Commission Staff’s response to Order No. 15 of the same date, Mr. Bednarski states that no repairs, improvements, or capital expenditures are required to provide continuous and adequate service, and therefore, no loan documentation is required under 16 TAC § 24.11(e)(5)(A).

Commission Staff appears to recommend that 16 TAC § 24.11(e)(5) does not apply to this proceeding because no repairs, improvements, or capital expenditures are required to provide continuous and adequate service. However, in attachment 8 to the September 30, 2022 application, Texas Water identified estimated capital expenditures of over \$100,000. Texas Water argues that these are discretionary improvements based on preliminary estimates and are not “capital improvements” as that phrase is used in 16 TAC § 24.11(e)(5) and therefore, 16 TAC § 24.11(e)(5) does not apply.

Texas Water also argues that 16 TAC § 24.11(e)(5) does not apply to this proceeding because 16 TAC § 24.11(b) specifies that the rule only applies to retail public utility owners or operators required to provide financial assurance under 16 TAC chapter 24, which the Commission has not required of Texas Water.

Finally, Texas Water argues that 16 TAC § 24.11(e)(5) does not apply to this proceeding because Texas Water is not applying for a “substantial addition” to its CCN area, given the size of the requested area and number of customers compared to the size of the company’s overall CCN area and number of customers. This application is to add 726 acres and 178 customers to Texas Water’s service area held under CCN number 12983 which covers over 80,000 acres and 33,537 customers.

The ALJ requires briefing on the following questions:

1. Does 16 TAC § 24.11 apply to Texas Water if Texas Water is not required to provide financial assurance under 16 TAC § 24.11(b)?
2. What constitutes a “new CCN area” under 16 TAC § 24.11(e)(5)? For example,
 - a. Is a “new CCN area” only an area that has not been previously certificated to any CCN holder?
 - b. Is a “new CCN area” an area that is currently certificated to a CCN holder but is being transferred to another CCN holder such that the area is new to the transferee?
3. What constitutes a “substantial addition” to a CCN area as contemplated by 16 TAC § 24.11(e)(5)? For example,

- a. Is a “substantial addition” any amount above a specific acreage or number of customers? If so, what are the threshold acreages or customer numbers?
 - b. Is substantialness determined by comparing the size of the addition (in terms of acreage or customers) to the acquiring CCN holder’s existing service area or number of customers? If so, what is the threshold ratio?
4. What constitute “capital improvements” under 16 TAC § 24.11(e)(5)? For example,
- a. Are repairs or replacements of existing equipment necessary to bring the system into compliance with federal and state regulations, including to address violations cited by the Texas Commission on Environmental Quality, “capital improvements?”
 - b. Are “capital improvements” repairs necessary for the system to provide continuous and adequate service?
 - c. Are “capital improvements” any anticipated repairs or improvements to the system?
 - d. Does the term “capital improvements” apply solely to the installation of new systems?
5. Does the phrase “capital improvements in excess of \$100,000” only modify “substantial addition to its current CCN area” or does it also modify “a new CCN area?”
6. Do the phrases “substantial addition” and “capital improvement in excess of \$100,000” impose separate requirements or are they interrelated? For example, is an addition only substantial if it requires capital improvements in excess of \$100,000? Or can an addition be substantial while not requiring capital improvements in excess of \$100,000, or vice versa?

On or before October 27, 2023, the parties must file briefs addressing the questions presented in this Order.

Signed at Austin, Texas the 6th day of October 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink that reads "Katie Moore Marx". The signature is written in a cursive style with a large initial 'K'.

KATIE MOORE MARX
ADMINISTRATIVE LAW JUDGE