



## **Filing Receipt**

**Filing Date - 2023-05-31 11:59:24 AM**

**Control Number - 54271**

**Item Number - 20**

**DOCKET NO. 54271**

**APPLICATION OF KICKAPOO § PUBLIC UTILITY COMMISSION**  
**UTILITY LLC FOR A CERTIFICATE §**  
**OF CONVENIENCE AND NECESSITY § OF TEXAS**  
**IN WALLER COUNTY §**

**COMMISSION STAFF'S FINAL RECOMMENDATION**

**I. INTRODUCTION**

On October 27, 2022, Kickapoo Utility LLC (Kickapoo) filed an application to obtain a sewer certificate of convenience and necessity (CCN) in Waller County, Texas under Texas Water Code (TWC) §§ 13.241 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

On April 4, 2023, the administrative law judge (ALJ) filed Order No. 4, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a request for a hearing or final recommendation by May 31, 2023. Therefore, this pleading is timely filed.

**II. FINAL RECOMMENDATION**

Staff has reviewed the application and as detailed in the attached memoranda of James Harville of the Commission's Infrastructure Division and Fred Bednarski of the Commission's Rate Regulation Division, recommend that it be approved. Staff's review indicates that Kickapoo meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code and therefore, is capable of providing continuous and adequate service. Additionally, Staff recommends that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

In addition, in order to true-up the proposed tap fees and rates, Staff recommends that Kickapoo 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) and TWC § 13.1872(c)(2).

On or before June 14, 2023, the parties will file agreed proposed findings of fact and conclusions of law.

### III. CONCLUSION

For the reasons discussed above, Staff respectfully recommends approval of the application.

Dated: May 31, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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*/s/ Arnett D. Caviel*  
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**DOCKET NO. 54271**

### **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 May 31, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

*/s/ Arnett D. Caviel*  
Arnett D. Caviel

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Arnett Caviel, Attorney  
Legal Division

**FROM:** James Harville, Infrastructure Analyst  
Infrastructure Division

**DATE:** May 31, 2023

**RE:** Docket No. 54271 – *Application of Kickapoo Utility LLC for a Certificate of Convenience and Necessity in Waller County*

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### **1. Application**

On October 27, 2022, Kickapoo Utility LLC (Kickapoo Utility) filed with the Public Utility Commission of Texas (Commission) an application to obtain a sewer certificate of convenience and necessity (CCN) in Waller 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 requested area includes 0 customer connections and approximately 38 acres, comprised of uncertificated area.
- The application proposes the addition of approximately 38 acres and the issuance of a sewer CCN number to Kickapoo Utility.
- The application indicates that the total acreage being requested is approximately 31 acres, however, the mapping review determined the requested area is approximately 38 acres.

### **2. Notice**

The deadline to intervene was April 13, 2023; 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 the owner of the property and Kickapoo Utility share common ownership of the requested area and the property is being developed into a 160 home community for future residents. Water utility service will be provided to the requested area by G & W Water Supply Corporation and sewer utility service will be provided by Kickapoo Utility.

**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)).***

Kickapoo Utility 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 sewer provider available when they need to request sewer 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)).***

Kickapoo Utility has a Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant (WWTP) registered as Welcome Home Communities Hockley WWTP, Wastewater Discharge Permit No. WQ0016113001. Kickapoo Utility does not have any violations listed in the TCEQ database. Additional construction is necessary for Kickapoo Utility to serve the requested area. There are no complaints against Kickapoo Utility as they are a new utility provider.

**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 sewer utility providers in the requested area. TCEQ has approved a wastewater discharge permit for the requested area to serve future customers and Kickapoo Utility will have sufficient capacity to serve the requested 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 sewer providers in the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**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)).***

Kickapoo Utility is building a new sewer treatment plant to provide service to the requested area. Construction is set to begin upon approval of the TPDES permit. The permit was issued on April 4, 2023 with an estimated completion date by the end of June 2023. Estimated costs to build a new sewer system 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 sewer service.

In order to true-up the fees and rates, I recommend that Kickapoo Utility file a rate application with actual financial information with the Commission within 18 months from the date service begins as required under 16 TAC § 24.25(b)(1)(C) and TWC § 13.1872(c)(2).

**4. Recommendation**

Based on the mapping review by Dave Babicki, Infrastructure Division, and my technical and managerial review, I recommend that Kickapoo Utility 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 sewer CCN No. 21139 is necessary for the service, accommodation, convenience and safety of the public.

Kickapoo Utility consented to the attached map, tariff, and certificate on May 4, 2023.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Arnett Caviel  
Legal Division

**FROM:** Fred Bednarski III  
Rate Regulation Division

**DATE:** May 31, 2023

**RE:** Docket No. 54271 *Application of Kickapoo Utility LLC for a Certificate of Convenience and Necessity in Waller County*

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On October 27, 2022, Kickapoo Utility, LLC (Kickapoo) filed an application to obtain a sewer Certificate of Convenience and Necessity (CCN) in Waller County under Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Kickapoo must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

### ***Leverage Test***

Kickapoo filed affidavits stating Kickapoo's affiliates-owners<sup>1</sup>, are capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.<sup>2</sup>

My analysis is based on the affiliates' financial statements ending November 30, 2022. Based upon my review of the financial statements, I calculate the debt-to-equity ratio to be 0.06 as provide in confidential attachment FB-1. Because the ratio is less than one, I recommend a finding that thru its affiliates Kickapoo meets the leverage test specified in 16 TAC § 24.11(e)(2)(E).

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<sup>1</sup> Response to order no. 2 at pdf 1 thru 6 (Dec 12, 2022), Application at pdf 41 (Oct. 27, 2022), and Confidential Kickapoo Utility LLC financial package at pdf 5, 6, and 7 (Dec. 9, 2022).

<sup>2</sup> *Id.*



### ***Operations Test***

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

The affidavits provided by Kickapoo demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest.<sup>3</sup> Kickapoo's projections indicate that there are projected shortages to cover however Kickapoo's affiliates have secured a line credit and have sufficient cash reserves to pay for the projected shortages provided in confidential attachment FB-1. Therefore, I recommend a finding that Kickapoo meets the operations test specified in 16 TAC § 24.11(e)(3).

### ***Capital Improvements***

Kickapoo's affiliates secured a loan to purchase and install the capital improvements needed to provide sewer service to the requested area as indicated and referenced in confidential attachment FB-1. Kickapoo has also indicated the distribution system is complete and the wastewater plant construction is substantially complete and will be totally complete by the end of June 2023.<sup>4</sup> Therefore, I recommend a finding that Kickapoo meets the requirements specified in 16 TAC § 24.11(e)(5).

### ***Recommendation***

Because Kickapoo meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Kickapoo demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Kickapoo before the date of this memorandum and may not reflect any changes in Kickapoo's status after this review.

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<sup>3</sup> *Id.*

<sup>4</sup> Motion to admit construction budget and capital improvements plan/construction timeline into the evidentiary record at pdf 4 (May 23, 2023).