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DOCKET NO. 54583

APPLICATION OF CITY OF	§	PUBLIC UTILITY COMMISSION
PFLUGERVILLE TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY AND TO	§	
DECERTIFY KELLY LANE UTILITY'S	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN TRAVIS AND	§	
WILLIAMSON COUNTIES	§	

COMMISSION STAFF'S FINAL RECOMMENDATION AND REQUEST FOR GOOD CAUSE EXCEPTION

On January 19, 2023, the City of Pflugerville (Pflugerville) filed an application to amend its certificate of convenience and necessity (CCN) number 20678 and to decertify Kelly Lane Utility's CCN number 20720 in Travis and Williamson Counties.

On September 20, 2023, the administrative law judge filed Order No. 8, directing the Staff (Staff) of the Public Utility Commission of Texas to file a final recommendation on the application, if no hearing is requested, by November 15, 2023. Therefore, this pleading is timely filed.

I. FINAL RECOMMENDATION

Staff has reviewed the application and supplemental information and, as detailed in the attached memoranda from Jaspinder Singh of the Infrastructure Division and Fred Bednarski III of the Rate Regulation Division, recommends approval of the application. Staff's review indicates that Pflugerville 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's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

II. REQUEST FOR GOOD CAUSE EXCEPTION

Order No. 8 listed a deadline of November 6, 2023 for Pflugerville and Kelly Lane Utility to file signed consent forms with the Commission. Pflugerville filed its signed consent form on October 24, 2023, however, Kelly Lane Utility is no longer an entity and therefore, is unable to file a signed consent form. Accordingly, Staff requests a good cause exception to the requirement that Kelly Lane Utility file a signed consent form with the Commission.

III. CONCLUSION

For the reasons detailed above, Staff respectfully requests that Pflugerville's application be approved and that a good cause exception to the requirement that Kelly Lane Utility file a signed consent form with the Commission be granted.

Dated: November 15, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/ Kelsey Daugherty
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DOCKET NO. 54583

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 15, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kelsey Daugherty
Kelsey Daugherty

Public Utility Commission of Texas

Memorandum

TO: Kelsey Daugherty, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: November 15, 2023

RE: Docket No. 54583 – *Application of City of Pflugerville to Amend Its Certificate of Convenience and Necessity and to Decertify Kelly Lane Utility's Certificate of Convenience and Necessity in Travis and Williamson Counties*

1. Application

On January 19, 2023, the City of Pflugerville (Pflugerville) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20678 in Travis and Williamson counties, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237 and to decertify a portion of Kelly Lane Utility Company, Inc.'s (Kelly Lane) CCN No. 20720 under TWC § 13.254(a) and TAC § 24.245(d)(1)(A).

Pflugerville is requesting the decertification of Kelly Lane's CCN as Kelly Lane Utility Company, Inc. no longer exists and no longer provides service inside the area being requested for decertification. Pflugerville and Kelly Lane submitted an STM application in 2005 where the portion of Kelly Lane inside Travis County successfully transferred to Pflugerville, however the portion being requested for decertification in this docket was not transferred. Pflugerville provides service to an apartment complex inside the requested area. Additionally, there is a portion of the requested area being requested for decertification that is inside the city limits of the City of Hutto and where customers receive service from the City of Hutto. The decertification will not affect these customers as they do not receive service from Kelly Lane or Pflugerville.

Based on the mapping review by Hank Journeay, Infrastructure Division:

- The requested area includes one customer connection and approximately 116 acres, comprised of:
24 acres of decertified area from Kelly Lane (CCN No. 20720); and
92 acres of decertified area from Kelly Lane (CCN No. 20720) to amend (add) to Pflugerville (CCN No. 20678).

- The application proposes the subtraction of approximately 116 acres from CCN No. 20720 and the addition of approximately 92 acres to CCN No. 20678.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judges, groundwater conservation districts, and that there are 96 landowners in the requested area. A map indicating the location of each landowner was also provided.

The deadline to intervene was September 25, 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)).*

Customers in the requested area currently receive service from Pflugerville's Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant (WWTP) registered as City of Pflugerville, Wastewater Discharge Permit No. WQ0011845002. Pflugerville does not have any violations listed in the TCEQ database.

No additional construction is necessary for Pflugerville to serve the requested area. The Commission's complaint records, which go back five years, show no complaints against Pflugerville.

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 existing customers and potential new customers in the requested area.

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)).*

Pflugerville 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)).*

TCEQ rule, 30 TAC § 30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Pflugerville will have qualified TCEQ licensed operators licensed in wastewater treatment to run the systems.

Pflugerville will have licensed operators to run the system operations. Twenty-three operators with Class A, Class B, and Class C licenses are responsible operators for the system.

Pflugerville has a TCEQ approved public water system(s) WWTP registered as City of Pflugerville, Wastewater Discharge Permit No. WQ0011845002. Pflugerville does not have any violations listed in the TCEQ database. No additional construction is necessary for Pflugerville to serve the requested area. The Commission's complaint records, which go back five years, show no complaints against Pflugerville.

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)).*

Pflugerville currently provides sewer service to an apartment complex. 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)).*

Pflugerville is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity. 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)).*

There are no improvements necessary to provide continuous and adequate service to the requested area, therefore, a capital improvement plan is not necessary.

- 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 memorandum.

- 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 memorandum.

- 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 not be affected, as no additional construction is needed 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)).*

Pflugerville will continue to provide sewer service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

4. Recommendation

Based on the mapping review by Hank Journeay, Infrastructure Division, and my technical and managerial review, I recommend that Pflugerville meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, and is capable of providing continuous and adequate service. I further recommend that approving this application to amend its sewer CCN No. 20678 is necessary for the service, accommodation, convenience and safety of the public.

Pflugerville consented to the attached map and certificate on October 24, 2023.

Kelly Lane no longer exists as a utility. Staff requests a good cause exception to the consent form requirement for Kelly Lane.

Public Utility Commission of Texas

Memorandum

TO: Kelsey Daugherty, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: November 15, 2023

RE: Docket No. 54583 *Application of City of Pflugerville to Amend its Certificate of Convenience and Necessity and to Decertify Kelly Lane Utility's Certificate of Convenience of Necessity in Travis and Williamson Counties*

On January 19, 2023, the City of Pflugerville (Pflugerville) filed an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20678 and to decertify Kelly Lane Utility's CCN number 20720, in Travis and Williamson counties 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. Pflugerville 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

My analysis is based on Pflugerville's financial statements ending September 30, 2021. These financial statements contain an unqualified auditor's opinion stating that the financial statements present fairly, in all material respects, the financial position of Pflugerville as of September 30, 2021.¹

¹ City of Pflugerville's Response to Commission Staff's First Request for Information Question Nos. Staff 1-1 through Staff 1-2 at 22 and 23 (Apr. 5, 2023).

Based upon my review of Pflugerville's financial statements, I calculate the debt service coverage ratio equal to 1.37. The debt service coverage ratio is based on \$39,227,177² of net income before depreciation expense divided by long-term debt payments of \$28,579,722.³ Because the ratio is greater than 1.25, I recommend a finding that Pflugerville meets the leverage test as specified in 16 TAC § 24.11(e)(2)(B).

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; or, an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Pflugerville's budget projects no operating, maintenance, or cash shortages to cover.⁴ Additionally, Pflugerville's financial statements include \$39,227,177 in net income before depreciation expense and \$62,803,013 in cash and investments.⁵ Therefore, I recommend a finding that Pflugerville meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Capital improvements are not required to provide continuous and adequate sewer service to the requested area per the recommendation provided by Jaspinder Singh, Engineering Specialist. Therefore, I recommend a finding that Pflugerville is not required to provide loan approval documents, or a firm capital commitment as specified in 16 TAC § 24.11(e)(5)(B).

Recommendation

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

Consequently, I recommend a finding that Pflugerville demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this

² *Id.* at 38 and 62.

³ *Id.* at 63, 68, 69, 77, and 78.

⁴ City of Pflugerville's Application to Amend Sewer Certificate of Convenience and Necessity (CCN) No. 20678 and to Cancel Kelly Lane Utility Company's CCN No. 20720 at 309 (Jan. 19, 2023).

⁵ City of Pflugerville's Response to Commission Staff's First Request for Information Question Nos. Staff 1-1 through Staff 1-2 at 35, 38, and 62 (Apr. 5, 2023).

application. My conclusions are based on information provided by Pflugerville before the date of this memorandum and may not reflect any changes in Pflugerville's status after this review.



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Pflugerville

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Pflugerville is entitled to this



Certificate of Convenience and Necessity No. 20678

to provide continuous and adequate sewer utility service to that service area or those service areas in Travis and Williamson counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 54583 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Pflugerville to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

PUCT Docket No. 54583
City of Pflugerville
Portion of Sewer CCN No. 20678
Amend CCN No. 20678 and Decertify all of Kelly Lane Utility Company, Inc., CCN No. 20720
in Travis and Williamson Counties



Sewer CCN

-  20678 - City of Pflugerville
-  20122 - City of Hutto

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