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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	§	
COMPANY, INC.'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
TRAVIS AND WILLIAMSON	§	
COUNTIES	§	

NOTICE OF APPROVAL

This Notice of Approval addresses the application of the City of Pflugerville to amend its certificate of convenience and necessity (CCN) number 20678 and to decertify all remaining certificated service area and revoke Kelly Lane Utility Company, Inc.'s CCN number 20720 in Travis and Williamson counties. The Commission amends Pflugerville's CCN number 20678 to add 92 acres and one customer transferred from Kelly Lane's CCN number 20720 to the extent provided in this Notice of Approval.

In 2002, Pflugerville and Kelly Lane entered into an agreement to transfer all of Kelly Lane's facilities and certificated service area held under its CCN number 20720 to Pflugerville. In 2005, Pflugerville and Kelly Lane filed a sale, transfer, or merger application with the TCEQ to transfer Kelly Lane's facilities and certificated service area to Pflugerville. However, unbeknownst to the parties, only Kelly Lane's service area within Travis County was transferred, leaving Kelly Lane's service area within Williamson County held by Kelly Lane under CCN number 20720. Pflugerville has been providing sewer service to the service area in both Travis and Williamson County. After the 2005 sale, transfer, or merger proceeding, Kelly Lane ceased operations. As a result, CCN number 20720 is held by a non-existent corporation.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Pflugerville is a home rule municipality.

2. Pflugerville holds CCN number 20678 that obligates it to provide retail sewer service in its certificated service area in Travis and Williamson counties.
3. Pflugerville owns and operates a wastewater treatment plant registered with the Texas Commission on Environmental Quality (TCEQ) under identification number WQ0011845002.
4. Kelly Lane was a Texas corporation registered with the Texas secretary of state under filing number 101015600. Kelly Lane forfeited its corporate existence in 2005.
5. Kelly Lane holds CCN number 20720 that obligates it to provide retail sewer service in its certificated service area in Williamson County.

Application

6. On January 19, 2023, Pflugerville filed the application at issue in this proceeding.
7. Pflugerville supplemented its application on February 21, 2023.
8. In the application, as supplemented, Pflugerville seeks approval of the following:
 - a. subtract a total of 116 acres from Kelly Lane's CCN number 20720,
 - b. decertify all remaining certificated service area and revoke Kelly Lane's CCN number 20720, and
 - c. add 92 acres and one customer connection to Pflugerville's CCN number 20678.
9. The requested area includes one customer connection and is located approximately 2.9 miles southwest of downtown Hutto, Texas, and is generally bounded on the north by Kaatz Lane, on the east by the intersection of Greenridge Drive and County Road 138 (Gattis School Road), on the south by Leger Street, and on the west by State Highway 130.
10. In Order No. 3 filed on March 24, 2023, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

11. On May 1, 2023, Pflugerville filed the affidavit of Brandon Pritchett, director of public utilities of Pflugerville, attesting that direct mailed notice, along with maps, was sent to current customers, landowners, neighboring utilities, and affected parties on April 10 or 11, 2023.

12. On May 1, 2023, Pflugerville filed a publisher's affidavit attesting to the publication of notice in the *Austin American Statesman*, a newspaper of general circulation in Travis and Williamson counties, on April 12 and 19, 2023.
13. On June 5, 2023, Pflugerville filed the affidavit of Mr. Pritchett, attesting that notice was provided to additional landowners on June 1, 2023.
14. On June 23, 2023, Pflugerville supplemented the June 5, 2023 affidavit, with a copy of the Travis and Williamson counties central appraisal district maps overlaid on the requested area with the list of landowners and a list of landowners with addresses and acreage.
15. On August 29, 2023, Pflugerville filed the affidavit of Mr. Pritchett, attesting that notice was provided to 118 additional landowners on August 25, 2023.
16. On September 14, 2023, Pflugerville filed the supplemental affidavit of Mr. Pritchett, confirming that notice was provided to two specific landowners on April 10, 2023 and August 25, 2023.
17. In Order No. 8, filed on September 20, 2023, the ALJ found the notice, as supplemented, sufficient.

Evidentiary Record

18. In Order No. 12 filed on February 21, 2024, the ALJ admitted the following evidence into the record of this proceeding:
 - a. Pflugerville's application and all attachments filed on January 19, 2023;
 - b. Pflugerville's supplemental mapping filed on February 21, 2023;
 - c. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on March 23, 2023;
 - d. Pflugerville's response to Commission Staff's first request for information filed on April 5, 2023;
 - e. Pflugerville's proof of notice filed on May 1, 2023;
 - f. Pflugerville's notice maps filed on May 1, 2023.
 - g. Pflugerville's landowner notice affidavit filed on June 5, 2023.

- h. Pflugerville's supplemental map, including landowner details from appraisal district records, filed on June 23, 2023;
- i. Pflugerville's supplemental response to Order No. 4 filed on August 29, 2023;
- j. Pflugerville's supplemental notice affidavit filed on September 14, 2023;
- k. Commission Staff's recommendation on notice and supplemental notice and proposed procedural schedule filed on September 19, 2023;
- l. Pflugerville's consent form filed on October 24, 2023;
- m. Commission Staff's final recommendation and request for good cause exception and all attachments filed on November 15, 2023; and
- n. The final proposed map and certificate, attached to the joint motion to admit evidence and proposed notice of approval, filed on November 29, 2023; and
- o. Commission Staff's clarification filed on January 12, 2024.

Adequacy of Existing Service

- 19. Pflugerville currently provides retail sewer service to customers in the requested area through its TCEQ-approved wastewater treatment plant, identification number WQ0011845002.
- 20. Pflugerville does not have any outstanding violations listed in the TCEQ database.
- 21. The Commission's complaint records, which go back five years, show no complaints against Pflugerville.

Need for Additional Service

- 22. There is a need for service as there is an existing customer and potential new customers in the requested area.

Effect of Granting the Amendment

- 23. Pflugerville will be the certificated sewer entity for the requested area and will be required to provide continuous and adequate service to the requested area.
- 24. Landowners in the area will have a sewer provider available when they need to request sewer service.

25. There will be no effect on any retail public utility servicing the proximate area.
26. All retail public utilities in the proximate area were provided notice of the CCN amendment and none filed a protest or motion to intervene.

Ability to Serve: Managerial and Technical

27. Pflugerville currently provides retail sewer service to customers in the requested area through its wastewater treatment plant, identification number WQ0011845002.
28. Pflugerville employs 23 TCEQ-licensed operators who are licensed in wastewater treatment to run the system.
29. Pflugerville has demonstrated the technical and managerial capability to provide adequate and continuous service to the requested area.

Feasibility of Obtaining Service from Adjacent Utilities

30. Pflugerville is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity to provide service to future customers.
31. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization and Consolidation

32. Pflugerville currently provides sewer service to a customer in the requested area; therefore, consideration of regionalization or consolidation with another retail public utility is not feasible.

Ability to Serve: Financial Ability and Stability

33. Pflugerville has a debt service coverage ratio greater than 1.25, satisfying the leverage test.
34. Pflugerville demonstrated it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after approval of the CCN amendment, satisfying the operations test.
35. Capital improvements are not required to provide continuous and adequate sewer service to the requested area.
36. Pflugerville has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

37. There is no need to require Pflugerville to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Environmental Integrity and Effect on the Land

38. The environmental integrity of the land will not be affected, as no additional construction is needed to provide service to the requested area.

Improvement in Service or Lowering Cost to Consumers

39. Sewer service to the requested area will improve because Pflugerville will be obligated to serve existing and future customers in the requested area.
40. There will be no change in the quality or cost of service to customers.

Decertification

41. Kelly Lane is not providing service in its remaining certificated service areas in Williamson County.
42. Kelly Lane no longer exists as a legal entity.
43. Kelly Lane's sewer facilities have been decommissioned.
44. On November 12, 2002, Kelly Lane and Pflugerville executed an agreement under which Pflugerville was to acquire all of Kelly Lanes facilities and certificated service area and Pflugerville was to serve all existing and future customers in the service area.

Map and Certificate

45. On October 23, 2023, Commission Staff emailed the final proposed map and certificate to Pflugerville.
46. On October 24, 2023, Pflugerville filed its consent to the proposed final map and certificate.
47. In Order No. 9 filed on November 21, 2023, the ALJ granted, for good cause, an exception to the requirement that Kelly Lane file a signed consent form because Kelly Lane no longer exists as a legal entity.
48. On November 29, 2023, the parties filed the proposed final map and certificate as attachments to the joint motion to admit evidence and proposed notice of approval.

Informal Disposition

49. More than 15 days have passed since the completion of notice provided in this docket.
50. No person filed a protest or motion to intervene.
51. Pflugerville and Commission Staff are the only parties to this proceeding.
52. No party requested a hearing and no hearing is needed.
53. Commission Staff recommended approval of the application.
54. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this application under Texas Water Code (TWC) §§ 13.241, 13.242, 13.244, 13.246, and 13.254.
2. Pflugerville is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Pflugerville's application meets the requirements of TWC §§ 13.244 and 13.254 and 16 TAC §§ 24.227, 24.233, and 24.245.
4. Pflugerville provided notice of the application that complies with TWC § 13.246 and 16 TAC §§ 24.235 and 24.245.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(c) and 13.246(c) and 16 TAC § 24.227(a) and (e), Pflugerville demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area, as required by TWC § 13.241 and 16 TAC § 24.227.
7. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate sewer system is not required.

¹ Tex. Gov't Code §§ 2001.001-.903.

8. It is not necessary for Pflugerville to provide a bond or other financial assurance under TWC § 13.246(d) and 16 TAC § 24.227(f).
9. Pflugerville has demonstrated that the amendment of CCN number 20678 is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
10. Under TWC § 13.257(r) and (s), Pflugerville must record certified copies of the approved map and certificate, along with a boundary description of the service area, in the real property records of Travis and Williamson counties within 31 days of this Notice of Approval and must submit evidence of the recordings to the Commission.
11. Under TWC § 13.245(a) and 16 TAC §24.245(d)(1)(C), Kelly Lane consented in writing to another retail public utility providing service in its certificated service area when it entered the November 12, 2002 agreement with Pflugerville.
12. Under TWC § 13.254(a)(1)) and 16 TAC §24.245(d)(1)(A), Kelly Lane is no longer providing, is incapable of providing, and has not been providing continuous and adequate service in its certificated service area as Kelly Lane forfeited its existence in 2005.
13. After considering the factors in TWC § 13.245(a), Kelly Lane's CCN number 20720 should be decertified and revoked.
14. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission amends Pflugerville's CCN number 20678 to add the requested area as described in this Notice of Approval and shown on the attached map to this Notice of Approval.
2. The Commission decertifies and revokes Kelly Lane's sewer CCN number 20720 as described in this Notice of Approval and shown on the attached map.
3. The Commission approves the map attached to this Notice of Approval.

4. The Commission issues the certificate attached to this Notice of Approval.
5. Pflugerville must provide sewer service to every customer and applicant for service within the approved area under CCN number 20678 who requests sewer service and meets the terms of Pflugerville's sewer service policies, and such service must be continuous and adequate.
6. Pflugerville must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Williamson County affected by this application and must file in this docket proof of the recordings no later than 45 days after the date of this Notice of Approval.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 25th day of March 2023.

PUBLIC UTILITY COMMISSION OF TEXAS





KATIE MOORE MARX
ADMINISTRATIVE LAW JUDGE

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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Feet





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.