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DOCKET NO. 54758

APPLICATION OF T & W WATER	§	PUBLIC UTILITY COMMISSION
SERVICE COMPANY DBA BLUE	§	
TOPAZ UTILITIES TO AMEND ITS	§	OF TEXAS
CERTIFICATES OF CONVENIENCE	§	
AND NECESSITY IN FORT BEND	§	
COUNTY	§	

**COMMISSION STAFF’S FINAL RECOMMENDATION IN RESPONSE TO ORDER
NO. 10**

On March 15, 2023, T & W Water Service Company dba Blue Topaz Utilities (Blue Topaz) filed an application to amend its Certificate of Convenience and Necessity (CCN) in Fort Bend County. Blue Topaz holds water CCN No. 12892 and sewer CCN No. 21127.

On February 13, 2024, the administrative law judge (ALJ) filed Order No. 10, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application by April 3, 2024. Therefore, this pleading is timely filed.

I. STAFF’S FINAL RECOMMENDATION

As detailed in the attached memoranda from Chase Lipscomb, Infrastructure Division, and Fred Bednarski, Rate Regulation Division, Staff has reviewed the supplemented application and recommends approval of the application. Staff’s review indicates that Blue Topaz 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 the approval of the application is necessary for the service, accommodation, convenience, and safety of the public. The parties will file joint proposed findings of fact and conclusions of law by April 24, 2024, in accordance with the procedural schedule established by Order No. 10.

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that the application be approved.

Dated: April 3, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
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/s/ Bradley Reynolds
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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 April 3, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Bradley Reynolds
Bradley Reynolds

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds, Attorney
Legal Division

FROM: Chase Lipscomb, Infrastructure Analyst
Infrastructure Division

DATE: April 3, 2024

RE: Docket No. 54758 – *Application of T & W Water Service Company dba Blue Topaz Utilities to Amend Its Certificates of Convenience and Necessity in Fort Bend County*

1. Application

On March 15, 2023, T&W Water Service Company dba Blue Topaz (Blue Topaz) filed with the Public Utility Commission of Texas (Commission) an application to amend its water Certificate of Convenience and Necessity (CCN) No. 12892 and sewer CCN No. 21127 in Fort Bend 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 Tracy Montes, Infrastructure Division, the maps and digital mapping data submitted with Item 3 on March 15, 2023 are sufficient.

- The requested water and sewer area includes 0 customer connections and approximately 72 acres, comprised of uncertificated area to amend to CCN Nos. 12892 and 21127.
- The application proposes the addition of approximately 72 acres to CCN Nos. 12892 and 21127.

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 (developer requesting service) in the requested area.

The deadline to intervene was June 23, 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 0 customer connections in the requested area. The only landowner in the requested area is the developer.

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 is a developer in the requested area with plans to build a new subdivision. The developer has requested service.

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)).*

Blue Topaz will be the certificated entity for the requested area and will be required to provide continuous and adequate service to the requested area.

The landowner in the area will have a water and sewer provider available when they need to request water and 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 § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Blue Topaz will have qualified TCEQ licensed operators licensed in water treatment to run the system(s).

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. Blue Topaz will have qualified TCEQ licensed operators licensed in wastewater treatment to run the system.

Blue Topaz will have licensed operators to run the system operations. A Class A operator will be the responsible operator for the system.

Blue Topaz has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as:

- Caney Creek Utility, PWS ID No.1700328
- Deer Pines Subdivision, PWS ID No. 1700895
- Deer Run, PWS ID No. 1700700
- Emerald Lakes, PWS ID No. 1700777
- Encino Estates, PWS ID No. 1460187
- Falls of Wildwood, PWS ID No. 1700673
- Gemstone Estates, PWS ID No. 1700608
- Grand Harbor, PWS ID No.1700643
- Harborside, PWS ID No. 1700682
- Hidden Springs Ranch, PWS ID No.1700696
- Hydies Crossing, PWS ID No.1013180
- Millers Crossing, PWS ID No. 1700675
- Oaks of Trinity, PWS ID No. 1450156
- Old Mill Lake, PWS ID No. 1700662
- Rio Vista, PWS ID No. 1700778
- Riverwalk, PWS ID No. 1700604
- Rose Hill Estates Subdivision, PWS ID No.1700911
- Southwind Ridge, PWS ID No. 1700659
- Splendora Woods, PWS ID No. 1460153
- Spring Forest Estates, 1460153
- Spring Oaks, PWS ID No. 1460157
- Sunrise Ranch, PWS ID No. 1700686
- The Ranch, PWS ID No. 1460154
- The Cove at Taylor Landing, PWS ID No. 1230075
- Thousand Oaks, PWS ID No. 1700635

And water discharge permits registered as:

- The Cove at Taylor Landing, WQ-0013565001
- Hunter's Point and Tealwood, WQ-0012023001

Blue Topaz has resolved all violations listed in the TCEQ database. The Commission's complaint records, which go back 5 years, show that Blue Topaz has had 28 complaints filed. All the complaints have been reviewed and closed by the Commission's Consumer Protection Division.

The PWS that will provide service to the requested area is the Venterra Development, PWS ID No. 0790643. The WWTP that will serve the area is the Venterra Fulshear WWTP, Wastewater Permit No. WQ-0015975001. These are new systems and they do not have any violations listed in the TCEQ database.

- 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)).***

Service was requested from neighboring utilities and none of them were able to provide service. TCEQ has approved plans for Blue Topaz 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)).***

Blue Topaz received a request for service for the requested area from the developer. Service was requested from neighboring utilities to which no response was given. Blue Topaz has approved TCEQ plans to build facilities in the requested area to serve future customers and will have sufficient capacity to serve 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)).***

Blue Topaz is building new water and sewer treatment plants to provide service to the requested area. Blue Topaz provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located. Construction began on March 15, 2023. Estimated costs to extend existing water and sewer system is 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 and sewer service.

4. Recommendation

Based on the mapping review by Tracy Montes, Infrastructure Division, and my technical and managerial review, I recommend that Blue Topaz 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 amend its water CCN No. 12892 and sewer CCN No. 21127 is necessary for the service, accommodation, convenience and safety of the public.

Blue Topaz consented to the attached maps, tariffs, and certificates on March 19, 2024.

Public Utility Commission of Texas

Memorandum

TO: Brad Reynolds, Attorney
Legal Division

FROM: Fred Bednarski, Financial Analyst
Rate Regulation Division

DATE: April 3, 2024

RE: Docket No. 54758 *Application of T & W Water Service Company dba Blue Topaz Utilities to Amend its Certificates of Convenience and Necessity in Fort Bend County*

On March 15, 2023, T & W Water Service Company dba Blue Topaz Utilities (Blue Topaz) filed an application amend its water and sewer Certificates of Convenience and Necessity (CCN) Nos. 12892 and 21127, in Fort Bend 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. Blue Topaz 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 upon my review of Blue Topaz's financial statements ending December 31, 2022. Blue Topaz's financial statements demonstrate a debt-to-equity ratio of 0.04 as shown in confidential attachment FB-1. Because the ratio is less than 1.00, I recommend a finding that Blue Topaz meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

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).

Blue Topaz's financial statements and projections to provide water and sewer service to the requested area, provided in confidential attachment FB-1, include operating income and cash flow information that indicate there are not any projected operating shortages to cover. Therefore, I recommend a finding that Blue Topaz meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Capital improvements required to provide continuous and adequate water and sewer service to the requested area exceed \$100,000 per the recommendation provided by Chase Lipscomb, Infrastructure Analyst. Blue Topaz has obtained a developer agreement ¹ indicating the developer will pay for the required system improvements to provide continuous and adequate water and sewer service to the requested area, as provided in confidential attachment FB-1. Therefore, I recommend a finding that Blue Topaz provided a firm capital commitment and meets the requirements specified in 16 TAC § 24.11(e)(5)(B).

Recommendation

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

Consequently, I recommend a finding that Blue Topaz 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 Blue Topaz before the date of this memorandum and may not reflect any changes in Blue Topaz's status after this review.

¹ Confidential Information, interchange item no. 2, at 6 thru 22 (Mar. 15, 2023).