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DOCKET NO. 54813

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
DONNA TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN HIDALGO	§	
COUNTY	§	

COMMISSION STAFF'S FINAL RECOMMENDATION

I. INTRODUCTION

On March 31, 2023, the City of Donna (City) filed an application to amend its Certificate of Convenience and Necessity (CCN) in Hidalgo County. City holds water CCN No. 20825. City filed supplemental information on June 7, 2023, July 31, 2023, and October 19, 2023.

On December 1, 2023, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application by February 8, 2024. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

Staff has reviewed City's application and supplemental information and, as supported by the attached memoranda of Chase Lipscomb, Infrastructure Division, and Fred Bednarski III, Rate Regulation Division, recommends that the application be approved. Staff's review indicates that City 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. In accordance with this recommendation, the corresponding map, certificate, and tariff consented to by City are included with this pleading. On or before February 22, 2024, the parties will jointly file proposed findings of fact and conclusions of law.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that City's application be approved.

Dated: February 8, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Kevin Pierce
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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 8, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kevin Pierce
Kevin Pierce

Public Utility Commission of Texas

Memorandum

TO: Kevin Pierce, Attorney
Legal Division

FROM: Chase Lipscomb, Infrastructure Analyst
Infrastructure Division

DATE: February 8, 2024

RE: Docket No. 54813 – *Application of the City of Donna to Amend Its Certificate of Convenience and Necessity in Hidalgo County*

1. Application

On March 31, 2023, the City of Donna (Donna) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20825 in Hidalgo 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 Hank Journeay, Infrastructure Division:

- The requested area includes no customer connections and approximately 81 acres of uncertificated area.
- The application proposes the addition of approximately 81 acres to CCN No. 20825.

It was previously stated that the requested area contained 325 customer connections, however the area does not have any current connections and is currently in development.

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 in the requested area.

The deadline to intervene was January 3, 2024; 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 plot of land is being developed into a subdivision with a total of 325 future customer connections.

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)).*

Donna 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. Donna will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Donna will have licensed operators to run the system operations. Donna will have Class A, Class B, Class C and Class D operators managing the system.

Donna has a Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant (WWTP) discharge permit number WQ-0010504001. Donna did have issues listed on their last comprehensive compliance investigation, however the TCEQ did

not recommend that service was inadequate. No additional construction is necessary for Donna to serve the requested area. Donna has not been under enforcement by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five years for non compliance with rules, orders or state statutes.

- 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 not requested from neighboring utilities. Donna and the developer for the property have entered into a memorandum of understanding (MOU) to serve the planned subdivision. The property is in the ETJ of and has been or is being annexed into Donna's city limits. Donna will be extending facilities from their existing WWTP to 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)).***

Donna is currently serving customers near the requested area, has facilities near requested area to serve any future customers, and has sufficient capacity. Donna and the developer of the property are currently in a MOU and Donna plans on annexing the property into the city limits. 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)).***

Donna is extending an existing sewer treatment plant to provide service to the requested area. Donna provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located. Estimated costs to extend existing sewer system is not expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is not required.

- 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.

4. Recommendation

Based on the mapping review by Hank Journeay, Infrastructure Division, and my technical and managerial review, I recommend that Donna 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 sewer CCN No. 20825 is necessary for the service, accommodation, convenience, and safety of the public.

Donna consented to the attached map and certificate on February 5, 2024.

Public Utility Commission of Texas

Memorandum

TO: Kevin Pierce, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: February 8, 2024

RE: Docket No. 54813 *Application of the City of Donna to Amend its Certificate of Convenience and Necessity in Hidalgo County*

On March 31, 2023, the City of Donna (Donna) filed an application amend its sewer Certificate of Convenience and Necessity (CCN) No. 20825, in Hidalgo 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. Donna 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 Donna's financial statements ending September 30, 2022. These financial statements contain an unqualified auditor's opinion stating that the financial statements present fairly, in all material respects, the financial position of Donna as of September 30, 2022.¹

Based upon my review of Donna's financial statements, I calculate unrestricted cash equals \$11,963,278,² and two years of debt service equals \$10,707,875.³ Because the unrestricted cash

¹ 2022 audited financial statements and adopted 2023 budget to supplement financial information originally submitted, interchange item no. 5, at 8, 9, 10 (Jun. 7, 2023).

² *Id.* at 22.

³ *Id.* at 57, 59, 60, 61, and 62.

balance is greater than the two years of debt service amount, I recommend a finding that Donna meets the leverage test as specified in 16 TAC § 24.11(e)(2)(C).

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).

Donna's budget projects no operating, maintenance, or cash shortages to cover.⁴ Therefore, I recommend a finding that Donna meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Capital improvements are required to provide continuous and adequate sewer service to the requested area. However, the costs of the improvements do not exceed \$100,000 per the recommendation provided by Chase Lipscomb, Engineering Specialist. Because the required improvements are less than \$100,000, I recommend a finding that Donna should be not required to provide loan approval documents, or a firm capital commitment as specified in 16 TAC § 24.11(e)(5)(B).

Recommendation

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

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

⁴ *Id.* at 200 and 201.



Public Utility Commission of Texas

By These Presents Be It Known To All That

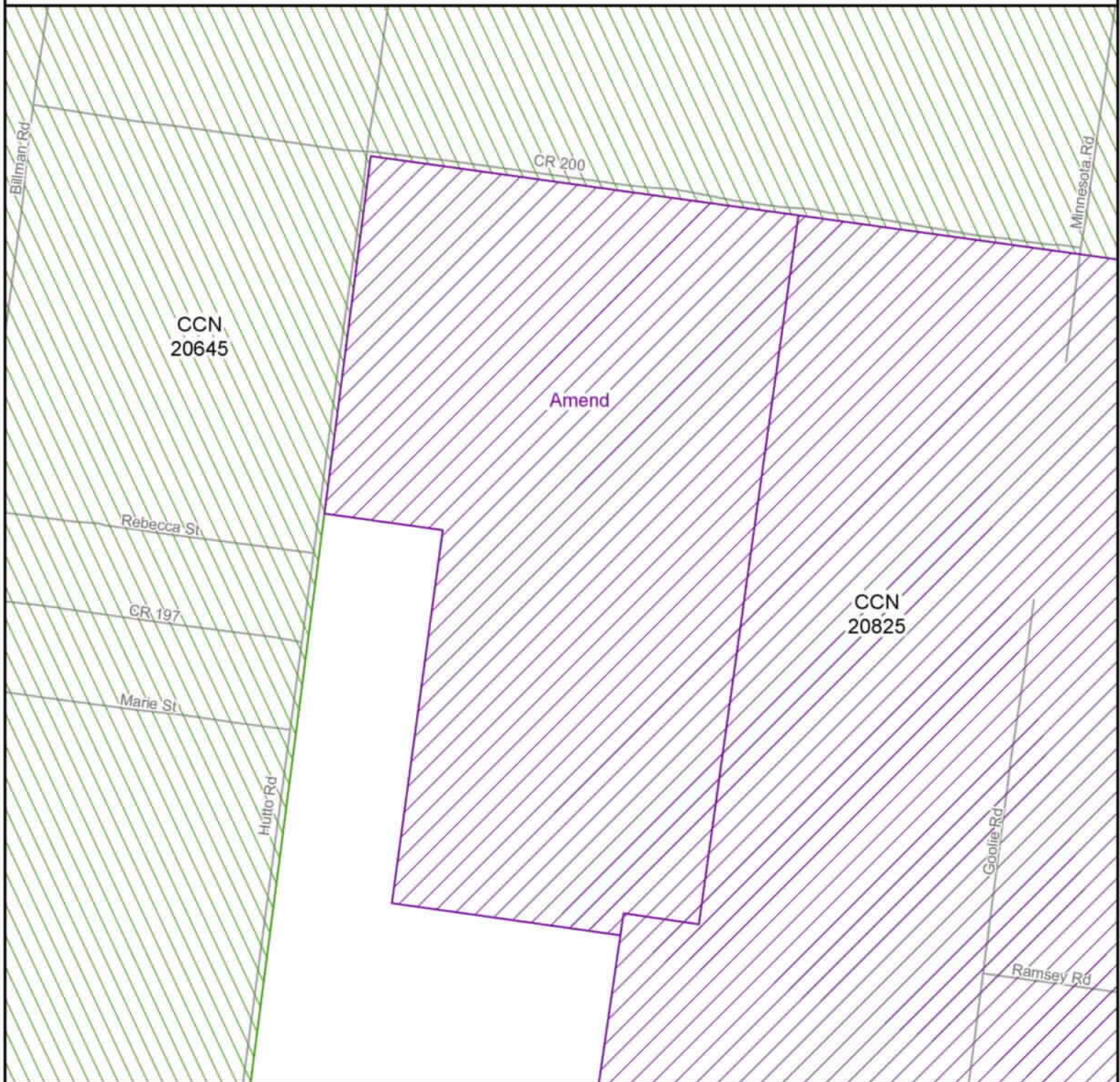
City of Donna

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, the City of Donna is entitled to this



Certificate of Convenience and Necessity No. 20825

to provide continuous and adequate sewer utility service to that service area or those service areas in Hidalgo County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 54813 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 Donna 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. 54813
City of Donna
Portion of Sewer CCN No. 20825
Amend CCN No. 20825 in Hidalgo County



Sewer CCN

-  20825 - City of Donna
-  20645 - North Alamo WSC

0 250 500
Feet

