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DOCKET NO. 55028

APPLICATION OF DRIFTWOOD	§	PUBLIC UTILITY COMMISSION
WATER CONSERVATION, LLC FOR	§	
AN EXEMPT UTILITY	§	OF TEXAS
REGISTRATION	§	

**COMMISSION STAFF’S RESPONSE TO ORDER NO. 9, SUPPLEMENTAL MOTION
TO ADMIT EVIDENCE, AND REVISED PROPOSED NOTICE OF APPROVAL**

On May 22, 2023, Driftwood Water Conservation, LLC (Driftwood) filed an application for an exempt utility registration in accordance with Texas Water Code § 13.242(c) and 16 Texas Administrative Code (TAC) § 24.229(e). Driftwood filed supplemental information on July 27, 2023, August 24, 2023, September 12, 2023, October 30, 2023, and December 22, 2023.

On February 8, 2024, the administrative law judge (ALJ) filed Order No. 9, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a response to Order No. 8, the motion to dismiss, filed on January 25, 2024, and Driftwood’s filing on January 29, 2024, by February 14, 2024. Therefore, this pleading is timely filed.

**I. STAFF’S RESPONSE TO DRIFTWOOD’S JANAURY 29, 2024 FILING AND
ORDER NO. 9**

It was previously stated by Driftwood that there were eight customer connections. Staff can represent to the ALJ that in discussions between Staff and Driftwood, that it was discovered that while there were no active customer connections, Driftwood is informally aware of and anticipating eight customer connection requests within the first year after receiving an exempt utility registration. For the sake of clarity, Driftwood does not provide any water service in any capacity at this time and has stated it will not provide service until after this registration is fully approved by the Commission. Driftwood is not presently anticipating any further connections in the foreseeable future but does not anticipate having more than 14 connections overall when and if more customer connection requests are made. As noted in the attached memorandum from Jaspinder Singh, Engineering Specialist of the Infrastructure Division, Staff has confirmed that Driftwood has confirmed that there are zero current water connections with a potential of up to 14

customer connections once the area is developed. Therefore, Staff recommends that be registered with the Commission as an exempt utility and that the ALJ's motion to dismiss be withdrawn.

II. SUPPLEMENTAL MOTION TO ADMIT EVIDENCE

Staff respectfully requests the following supplemental evidence be admitted into the record:

- A. Driftwood's supplemental filing, filed on January 29, 2024 (Interchange Item No. 23); and
- B. This pleading and attached memorandum from Mr. Singh, filed on February 12, 2024 (anticipated Interchange Item No. 25).

III. REVISED PROPOSED NOTICE OF APPROVAL

For the purpose of convenience, Staff has revised the proposed notice of approval from what was submitted on January 24, 2024, and has attached the revised notice hereto as Exhibit A. Staff is authorized to represent that it has communicated with Driftwood, who is in support of the revisions.

IV. CONCLUSION

The Parties respectfully request that the motion to dismiss be withdrawn by the ALJ, that the above referenced items be admitted into evidence, and the revised proposed notice of approval be adopted.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
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/s/ Kevin Pierce
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DOCKET NO. 55028

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 12, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kevin Pierce

Kevin Pierce

Attachment A

Revised Proposed Order

DOCKET NO. 55028

APPLICATION OF DRIFTWOOD	§	PUBLIC UTILITY COMMISSION
WATER CONSERVATION, LLC FOR	§	
AN EXEMPT UTILITY	§	OF TEXAS
REGISTRATION	§	

PROPOSED NOTICE OF APPROVAL

This Order addresses the application of Driftwood Water Conservation, LLC (Driftwood) for exempt utility regulation. Commission Staff recommended approval of the application.

The administrative law judge (ALJ) adopts the following findings of fact and conclusions of law.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicants

1. Driftwood is a limited liability company formed in the State of Texas under Texas Secretary of State No. 0804754749.
2. Driftwood does not currently provide service to any customers.

Application

3. On May 22, 2023, Driftwood filed an exempt utility information form seeking exempt utility registration.
4. On July 27, 2023 and August 24, 2023, Driftwood filed supplemental information to the application.
5. On September 5, 2023, Commission Staff recommended the application as supplemented be found administratively complete.
6. In Order No. 4, filed on September 6, 2023, the Administrative Law Judge (ALJ) found the application administratively complete.

Notice

7. On September 12, 2023, Driftwood filed an affidavit attesting to notice being published.
8. On October 30, 2023, Driftwood clarified that there were no affected customers to which notice needed to be provided.
9. In Order No. 6, filed on November 27, 2023, the ALJ found notice sufficient.

Evidentiary Record

10. On January 24, 2024, Commission Staff filed a motion to admit evidence on behalf of the parties.
11. In Order No. 7 filed on January 25, 2024, the ALJ admitted the following evidence into the record of this proceeding:
 1. **Driftwood's Application for Exempt Utility Registration, filed on May 22, 2023 (Interchange Item No. 1);**
 2. **Driftwood's Response to Order No. 2, filed on July 27, 2023 (Interchange Item No. 5);**
 3. **Driftwood's Application resubmission, filed on August 24, 2023 (Interchange Item No. 80;**
 4. **Staff's Recommendation on Administrative Completeness, filed on September 5, 2023 (Interchange Item No. 9);**
 5. **Driftwood's supplemental filing, filed on September 12, 2023 (Interchange Item No. 11);**
 6. **Driftwood's supplemental filing, filed on October 30, 2023 (Interchange Item No. 14);**
 7. **Staff's Recommendation on Sufficiency of Notice, filed on November 21, 2023 (Interchange Item No. 15);**
 8. **Driftwood's Updated Tariff, filed on December 22, 2023 (Interchange Item No. 17);**
 9. **Driftwood's Consent Form, filed on December 22, 2023 (Interchange Item No. 18); and**
 10. **Staff's Final Recommendation, filed on January 10, 2023 (Interchange Item No. 19).**
12. On February 12, 2024, Commission Staff filed a supplemental motion to admit evidence on behalf of the parties.
13. In Order No. __ filed on February ____, 2024, the ALJ admitted the following evidence into the record of this proceeding:

11. Driftwood’s supplemental filing, filed on January 29, 2024 (Interchange Item No. 23); and

12. Staff’s Response to Order No. 9, filed on February 12, 2024 (Interchange Item No. 25).

Effect on Customers

14. There are no affected customers.

Certificated Not Required

15. The water utility at issue in this proceeding has less than 15 potential service connections.

16. The water utility at issue in this proceeding is not owned by or affiliated with a retail public water utility or any other provider of potable water service.

17. The service area of the water utility at issue in this proceeding is not within the certificated area of another retail public water utility.

18. The service area of the water utility at issue in this proceeding is not within the corporate boundaries of a district or municipality.

Tariffs and Maps

19. On January 10, 2024, Commission Staff filed a proposed tariff and map attached to its final recommendation.

20. On December 22, 2023, Driftwood filed a consent form concurring with the tariff and maps as prepared by Commission Staff.

Informal Disposition

21. At least 15 days have passed since the completion of notice provided in this proceeding.

22. Commission Staff and Driftwood are the only parties to this proceeding.

23. No protests or motions to intervene were filed.

24. No party requested a hearing and no hearing is necessary.

25. Commission Staff recommended approval of the application.

26. This 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 the Petition under TWC §§ 13.041, 13.250, 13.242(c), and 16 TAC § 24.229(e).
2. Driftwood is an exempt utility under 16 TAC § 24.299(e).
3. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act, the TWC, and Commission Rules.
4. Driftwood is not required to obtain a certificate of convenience and necessity to provide water service under TWC § 13.242(c) and 16 TAC § 24.229(e).
5. Driftwood's application was processed in accordance with the requirements of TWC § 13.242(c) and 16 TAC § 24.229(e).
6. The requirements for informal disposition under 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 approves the application, to the extent provided in this Notice of approval.
2. The Commission issues exempt utility registration number N0084 to Driftwood for water service in Hays County as shown on the map attached to this Notice of Approval.
3. The tariff submitted by Commission Staff on January 10, 2024 is approved.
4. Driftwood must comply with the service rule requirements in the Commissions Exempt Utility Tariff Form.
5. Driftwood must provide a copy of the exempt utility tariff for exempt utility registration number N0084 to each future customer at the time service is requested and upon request to each current customer.
6. Driftwood must maintain a current copy of the exempt utility tariff approved in this Notice at its business location.
7. Driftwood may not change the rates charged under exempt utility registration number N0084 unless the procedures outlined in 16 TAC § 24.22(e)(7)(B) are followed.
8. Driftwood must not cease operations under exempt utility registration number N0084 unless it obtains written authorization from the Commission.

9. Within 10 days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the approved exempt utility water tariff to Central Records to be marked *Approved* and filed in the Commission's tariff books.
10. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas, the _____ day of _____, 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE

Attachment B
Memorandum from Jaspinder Singh

Public Utility Commission of Texas

Memorandum

TO: Kevin Pierce, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: February 5, 2024

RE: Docket No. 55028 – *Application of Driftwood Water Conservation, LLC for an Exempt Utility Registration*

On May 22, 2023, Driftwood Water Conservation, LLC (Driftwood Water), filed an application for registration of an exempt utility under 16 Texas Administrative Code (TAC) § 24.229(e). It was previously stated there were 8 customer connections. There are actually zero customer connections in the requested area and with a potential to have up to 14 customer connections once the area is developed.

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

- The requested area includes zero customer connections and approximately 21 acres that is proposed to obtain a new water exempt utility registration number (N0084).
- The application proposes the addition of approximately 21 acres to obtain a new water exempt utility registration No. (N0084).
- The application does not indicate that the total acreage being requested, however, the mapping review determined the requested area is approximately 21 acres.

Under 16 TAC § 24.229(e), a utility is exempt from the requirement to possess a certificate of convenience and necessity (CCN) in order to provide retail water service if it has less than 15 potential service connections. Based on the information provided, it appears Driftwood Water has less than 15 potential retail water service connections. Driftwood Water asserts that currently there are zero water connections with a potential to have up to 14 customer connections once the area is developed. The requested area includes approximately 21 acres of uncertificated area.

Driftwood Water meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Therefore, I recommend Driftwood Water

be registered with the Commission as an exempt utility and assigned exempt registration No. N0084, and that Driftwood Water be provided a copy of the attached final map and exempt utility tariff.

The applicant consented to the attached map and tariff on December 22, 2023.

Further, as a retail public utility, Driftwood Water is required to collect and remit the Regulatory Assessment Fee (RAF) to the Commission annually. For investor-owned utilities, this fee is 1% of the amount the utility will receive for providing water utility service.