



Filing Receipt

Filing Date - 2024-04-11 04:37:39 PM

Control Number - 55154

Item Number - 31

DOCKET NO. 55154

APPLICATION OF CITY OF PHARR	§	PUBLIC UTILITY COMMISSION
TO AMEND ITS CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
HILDALGO COUNTY	§	

COMMISSION STAFF'S FINAL RECOMMENDATION

On June 16, 2023, the City of Pharr (Pharr) filed an application to amend its Certificate of Convenience and Necessity (CCN) No. 20643 in Hidalgo County under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237. Pharr filed supplemental information on September 6 and 21, 2023, December 18 and 21, 2023, February 9, 2024, and March 20, 2024.

On March 14, 2024, the administrative law judge (ALJ) filed Order No. 10, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on the CCN amendment by April 11, 2024. Therefore, this pleading is timely filed.

I. FINAL RECOMMENDATION

Staff has reviewed Pharr's application and supplemental information and, as supported by the attached memoranda of Jolie Mathis, Infrastructure Division, and Fred Bednarski III, Rate Regulation Division, recommends that the application be approved. Staff's review indicates that Pharr meets the applicable technical, managerial, and financial requirements necessary to provide continuous and adequate service under the TWC and the TAC. Additionally, Staff's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

II. CONCLUSION

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

Dated: April 11, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

Andy Aus
Managing Attorney

/s/ Dylan King
Dylan King
State Bar No. 24131431
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7299
(512) 936-7268 (facsimile)
Dylan.King@puc.texas.gov

DOCKET NO. 55154

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 11, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Dylan King
Dylan King

Public Utility Commission of Texas

Memorandum

TO: Dylan King, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: April 11, 2024

RE: Docket No. 55154 – *Application of City of Pharr to Amend Its Certificate of Convenience and Necessity in Hidalgo County*

1. Application

On June 16, 2023, City of Pharr (Pharr) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20643 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 revised maps and digital mapping data for the requested area submitted with Item 7 on September 7, 2023 and digital mapping data submitted for the current corporate boundaries of Edinburg and San Juan with Item 8 on September 21, 2023, were sufficient.

- The requested area north includes 1,006 customer connections and approximately 510 acres of uncertificated area.
- The requested area south includes 0 customer connections and approximately 168.9 acres of uncertificated area.
- **The total requested area includes 1,006 customer connections and approximately 678.9 acres of uncertificated area.**
- The application proposes the addition of approximately 678.9 acres to CCN No. 20643.

2. Notice

Affidavits were provided affirming that notices were submitted to current customers, neighboring utilities, and affected parties, and that there are 5 landowners in the requested area. A map indicating the location of each landowner was also provided.

The deadline to intervene was January 22, 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)).*

Customers in the requested area to the north currently receive service from Pharr's Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant(s) (WWTP) registered as City of Pharr WWTP, Wastewater Discharge Permit No. WQ-0010596001. Pharr has violations listed in the TCEQ database.

Construction of facilities is necessary for Pharr to serve the requested area to the south and portions of the requested area to the north. The Commission's complaint records, which go back 5 years, show 6 complaints against Pharr. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

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 1006 existing customers and potential new customers in the requested areas.

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)).*

Pharr will be the certificated entity for the requested areas and will be required to provide continuous and adequate service to the requested areas.

The landowners in the areas 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 areas. All retail public utilities in the proximate areas 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. Pharr will have qualified TCEQ licensed operators licensed in wastewater treatment to run the system.

Pharr will have licensed operators to run the system operations. Class A, B, C, or D operators will be the responsible operators for the system.

Pharr has a TCEQ approved WWTP registered as registered as City of Pharr WWTP, Wastewater Discharge Permit No. WQ-0010596001. Pharr has violations listed in the TCEQ database. Construction of facilities is necessary for Pharr to serve the requested area. The Commission's complaint records, which go back 5 years, show 6 complaints against Pharr. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

- 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)).***

The City has an existing wastewater treatment facility that is permitted to treat and dispose of 8 million gallon per day of treated wastewater, the City does not need to amend this permit or to obtain an additional permit to serve the requested areas. 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)).***

Pharr is currently serving customers in the requested area to the north, has facilities in the requested areas 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)).***

Pharr is currently serving customers in the requested area to the north, has facilities in the requested areas to serve any future customers, and has excess capacity. As Pharr has constructed all facilities required to provide service to the areas a capital improvement plan, budget, and estimated timeline for construction of wastewater treatment facilities is not necessary. Any collection lines installed to transport sewage to the wastewater treatment facilities will be financed by individual developers in the areas not currently receiving service. Additionally, much of the requested area is within the city limits as such Pharr would need to provide consent for any other utility to provide service inside the requested area. If they secure the requested CCN area other utilities will be immediately aware that they may not serve inside the requested area preventing any possible cease and desist filings from Pharr.

- 3.8. ***Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(e)(6); 16 TAC §§ 24.227(a) a€(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)).*

Pharr will continue to provide sewer service to the existing customers in the area and provide service to any new customers in the requested areas. 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 Pharr 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. 20643 is necessary for the service, accommodation, convenience and safety of the public.

Pharr consented to the attached maps and certificates on March 11, 2024.

Public Utility Commission of Texas

Memorandum

TO: Dylan King, Attorney
Legal Division

FROM: Fred Bednarski, Financial Analyst
Rate Regulation Division

DATE: April 11, 2024

RE: Docket No. 55154 *Application of City of Pharr to Amend its Sewer Certificate of Convenience and Necessity in Hidalgo County*

On June 16, 2023, the City of Pharr (Pharr) filed an application to amend its sewer Certificate of Convenience and Necessity 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. Pharr 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 Pharr's financial statements ending September 30, 2021. These financial statements contain an unqualified auditor's opinion from Oscar R. Gonzalez CPA & Associates PLLC stating that the financial statements present fairly, in all material respects, the financial position of Pharr as of September 30, 2021,¹ as required by 16 TAC § 24.11(e)(4)(B)(i).

Based upon my review of Pharr's financial statements, I calculate the debt-to-equity ratio to be 0.78. The debt-to-equity ratio is based on long-term debt of \$212,307,558 divided by

¹ Application of City of Pharr, interchange item no. 1, at 181 & 182 (Jun. 16, 2023).

equity of \$272,058,494.² Because the ratio is less than one, I recommend a finding that Pharr 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).

Pharr's financial statements include net income of \$23,416,900³ and a \$48,382,603⁴ cash and cash equivalents balance that indicates Pharr will have sufficient cash to cover projected shortages. Therefore, I recommend a finding that Pharr meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Per Jolie Mathis, Engineering Specialist, memorandum, Pharr has extended its' wastewater system in the requested area to provide sewer service. Future improvements will be paid for by the requestor pursuant to Pharr's ordinances 118.48(a)(1) and (c) which require new developments and subdivisions to extend and install the new sewer facilities needed to serve new developments or request for service.⁵ Therefore, I recommend a finding that Pharr provided a firm capital commitment and demonstrated compliance with 16 TAC § 24.11(e)(5)(B) and that, if necessary, a good cause exception should be granted for 16 TAC § 24.11(e)(5)(B).

Recommendation

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

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

² *Id.* at 194

³ *Id.* at 195.

⁴ *Id.* at 194.

⁵ City's response to staff's first RFI, interchange item no. 23, at 2 thru 36 (Feb. 9, 2024).