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OPEN MEETING COVER SHEET

MEETING DATE: October 17, 2014

DATE DELIVERED: October 10, 2014

AGENDA ITEM NO.: 30

CAPTION: Docket No. 42852; SOAH Docket No. 473-15-0422 -
Application from the City of Splendora to
Amend CCN No. 11727 in Montgomery and
Liberty Counties

ACTION REQUESTED: Discussion and possible action with respect
to Draft Preliminary Order

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Public Utility Commission of Texas

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TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy D. Marty

All Parties of Record

FROM: Davida Dwyer, Commission Advising *DD*

RE: October 17, 2014, Open Meeting Agenda Item No. 30
Draft Preliminary Order, P.U.C. Docket No. 42852; SOAH Docket No. 473-15-0422 - *Application from the City of Splendora to Amend CCN No. 11727 in Montgomery and Liberty Counties*

DATE: October 10, 2014

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the October 17, 2014 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the October 17, 2014 open meeting.

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**SOAH DOCKET NO. 473-15-0422
PUC DOCKET NO. 42852**

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| APPLICATION FROM THE CITY OF SPLENDORA TO AMEND CCN NO. 11727 IN MONTGOMERY AND LIBERTY COUNTIES | § § § § | PUBLIC UTILITY COMMISSION OF TEXAS |
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DRAFT PRELIMINARY ORDER

On June 28, 2013, the Texas Commission on Environmental Quality (TCEQ) accepted for filing an application by the city of Splendora to amend certificate of convenience and necessity number 11727 to provide water utility service in Montgomery and Liberty counties. The city of Splendora is seeking to add to its certificated service area approximately 12,600 acres which includes approximately 1000 customers.¹

Effective September 1, 2014, jurisdiction over water and sewer CCNs was transferred to this Commission and this pending case was transferred from the TCEQ to the Commission.²

On September 26, 2014, the Commission issued an Order referring this proceeding to the State Office of Administrative Hearings (SOAH) and requiring Splendora, and allowing Commission Staff and any other interest party, to file a list of issues to be addressed in the docket by October 6, 2014. Lists of issues were filed by Commission Staff and intervenor, the city of Patton Village.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the SOAH.³ After reviewing the pleadings

¹ The city of Splendora's application at 18 (Apr. 1, 2013).

² Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §2.96, 2013 Tex. Gen. Laws 725, 730; Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §96, 2013 Tex. Gen. Laws 772.

submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has the city of Splendora given notice consistent with Texas Water Code Ann. (TWC) § 13.246 and P.U.C. SUBST. R. 24.106, 16 Tex. Admin Code § 24.106?
2. What modifications, if any, must be made to Splendora's proposed service area to reflect land removed from the proposed service area because of a qualified landowner's election to exclude some or all of the landowner's property, pursuant to TWC § 13.246(h) and P.U.C. SUBST. R. 24.102(h), 16 Tex. Admin Code § 24.102(h)?
3. Does Splendora possess the financial, managerial, and technical capability to provide continuous and adequate service? TWC § 13.241(a) and P.U.C. SUBST. R. 24.102(a), 16 Tex. Admin Code § 24.102(a)
4. Does Splendora possess a Texas Commission on Environmental Quality-approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341 and TCEQ rules? P.U.C. SUBST. R. 24.102(a)(1), 16 Tex. Admin Code § 24.102(a)(1)
5. Does Splendora have access to an adequate supply of water? P.U.C. SUBST. R. 24.102(a)(1), 16 Tex. Admin Code § 24.102(a)(1)
6. Would the proposed service area require construction of a physically separate water system? If so, has Splendora proven that regionalization or consolidation with another retail public utility is not economically feasible? TWC § 13.241(d) and P.U.C. SUBST. R. 24.102(b), 16 Tex. Admin Code § 24.102(b)
7. Is the requested certificate amendment necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and P.U.C. SUBST. R. 24.102(c), 16 Tex. Admin Code § 24.102(c)
8. Does the balance of factors under TWC § 13.246(c) and P.U.C. SUBST. R. 24.102(d), 16 Tex. Admin Code § 24.102(d) weigh in favor of granting the requested certificate amendment? In answering this issue, please address the following sub-issues:

³ Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

- a. Is the proposed service area currently receiving adequate service? TWC § 13.246(c)(1) and P.U.C. SUBST. R. 24.102(d)(1), 16 Tex. Admin Code § 24.102(d)(1)
- b. Does the proposed service area need additional service? TWC § 13.246(c)(2) and P.U.C. SUBST. R. 24.102(d)(2), 16 Tex. Admin Code § 24.102(d)(2).
 - i. Have any landowners, prospective landowners, tenants, or residents requested service?
 - ii. Are there economic needs for additional service?
 - iii. Are there environmental needs for additional service?
 - iv. Are there written applications or requests for service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
- c. What is the effect, under TWC § 13.246(c)(3) and P.U.C. SUBST. R. 24.102(d)(3), 16 Tex. Admin Code § 24.102(d)(3) of granting the requested certificate amendment on
 - i. Splendora,
 - ii. landowners in the proposed service area, and
 - iii. any retail public utility of the same kind as Splendora that is already serving the area proximate to the proposed service area?
- d. Does Splendora have the ability to provide adequate service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the proposed service area? P.U.C. SUBST. R. 24.102(d)(4), 16 Tex. Admin Code § 24.102(d)(4)
- e. What is the feasibility of obtaining service from an adjacent retail public utility? TWC § 13.246(c)(5) and P.U.C. SUBST. R. 24.102(d)(5), 16 Tex. Admin Code § 24.102(d)(5)
- f. Is Splendora financially able to pay for the facilities necessary to provide continuous and adequate service? TWC § 13.246(c)(6) and P.U.C. SUBST. R. 24.102(d)(6), 16 Tex. Admin Code § 24.102(d)(6)

- g. Is Splendora financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and P.U.C. SUBST. R. 24.102(d)(6), 16 Tex. Admin Code § 24.102(d)(6)
 - h. How would environmental integrity be affected, if at all, by granting the requested certificate amendment? TWC § 13.246(c)(7) and P.U.C. SUBST. R. 24.102(d)(7), 16 Tex. Admin Code § 24.102(d)(7)
 - i. Is it probable that service would be improved or costs to consumers in that service area would be lowered by granting the requested certificate amendment? TWC § 13.246(c)(8) and P.U.C. SUBST. R. 24.102(d)(8), 16 Tex. Admin Code § 24.102(d)(8)
 - j. How would the land in the proposed service area be affected, if at all, by granting the requested certificate amendment? TWC § 13.246(c)(9) and P.U.C. SUBST. R. 24.102(d)(9), 16 Tex. Admin Code § 24.102(d)(9)
9. Should the Commission require Splendora, pursuant to TWC § 13.246(d) and P.U.C. SUBST. R. 24.102(e), 16 Tex. Admin Code § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided?
10. If applicable, what were Splendora's efforts to
- a. extend service to any economically distressed area, within the meaning of TWC § 15.001, located within Splendora's certificated service area(s); and
 - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e)

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon

his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of October, 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER