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PUC 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	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

MOTION TO RECONSIDER MARK AND STACEY MARTIN'S UNTIMELY MOTION TO INTERVENE

The City of Splendora ("***Splendora***") files this Motion to Reconsider ("***Motion***") Mark and Stacey Martin's (collectively, "***Martin***") Untimely Motion to Intervene in accordance with the Administrative Law Judge's ("***ALJ***") Order No. 6 in this matter. The ALJ should grant this Motion and deny Martin's request to intervene in this matter because Martin has failed to meet or even address the Public Utility Commission's ("***Commission***") requisite criteria for untimely intervention under P.U.C. PROC. R. 22.104(d)(1)-(5). In support hereof, WTCPUA would show the following:

I. BACKGROUND

Splendora filed its Application to Amend Water Certificate of Convenience and Necessity ("***CCN***") No. 11727 ("***Application***") with the Texas Commission on Environmental Quality (the "***TCEQ***") on April 1, 2013. The Application was found administratively complete on June 28, 2013. On August 6, 2013, and September 13, 2013, Splendora provided mailed notice to landowners and neighboring utilities as required by TCEQ regulations. On October 4, 2013, the City of Patton Village ("***Patton Village***") requested a contested case hearing within the applicable period for requesting a public hearing. On April 29, 2014, the TCEQ referred this matter to the State Office of Administrative Hearings ("***SOAH***").

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No action was taken on the Application before jurisdiction on water and sewer CCN matters were transferred by an act of legislation from the TCEQ to the Commission. The Commission again referred this matter to SOAH on September 26, 2014. On October 6, 2014, over a year after Splendora provided notice of its Application, Martin filed a letter with the Commission and SOAH, through their attorney of record, requesting that their property be excluded from the proposed CCN expansion area based on the fact that their property is in excess of 25 acres. To date, the Commission has not granted Martin's untimely request for exclusion. In the alternative, Martin requested a contested case hearing regarding the Application. Martin's late, untimely request for a contested case hearing does not cite to any law or regulation in support of such request.

A Prehearing Conference was held at SOAH on November 18, 2014, and counsel for Splendora, Patton Village and Martin attended. At that Prehearing Conference, counsel for Martin requested that Martin be admitted as a party to this proceeding. Splendora objected to such request because Martin did not timely request a contested case hearing. The Administrative Law Judge ("*ALJ*") declined to rule at the time and stated that she would hear arguments and rule on this request and objection at a later date. After two abatements, the ALJ issued Order No. 5, which set a Prehearing Conference for March 10, 2015, and granted Martin's Motion to Intervene. At the March 10, 2015 Prehearing Conference, Splendora requested that the ALJ reconsider admitting Martin as a party to this matter and grant Splendora the opportunity to provide a brief to provide the legal basis for denying Martin's Untimely Motion to Intervene. Under ALJ's Order No. 6, Splendora must file its Motion to Reconsider by March 20, 2015. Thus, this Motion is timely filed.

II. APPLICABLE LAW

Unlike the TCEQ, the Commission has adopted specific rules regarding a motion to intervene, and such rules are applicable to the Application. First, P.U.C. PROC. R. 22.104(a) provides that a motion to intervene, "shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, rule or order of the presiding officer." The rules relevant to CCN applications give landowners 30 days to request a hearing on the application or, if the landowner's property includes 25 acres or more, to elect to exclude their property from the CCN area.[1] In other words, to ***timely*** file a motion to intervene, Martin (or the previous landowner) was required to file such a motion by no later than September 20, 2013.

Second, Commission Rule P.U.C. PROC. R. § 22.104(d)(1) governs an untimely motion to intervene. Specifically, this rule allows a presiding officer to grant a late motion to intervene, but in doing so, the presiding officer must consider the following:

(A) any objections that are filed;
(B) whether the movant had good cause for failing to file the motion within the time prescribed;
(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
(D) whether any disruption of the proceeding might result from permitting late intervention; and
(E) whether the public interest is likely to be served by allowing the intervention.[2]

Further, in the event that the presiding officer determines that an untimely movant has met the criteria in P.U.C. PROC. R. § 22.104(d)(1), the officer "may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties."[3]

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[1] See Texas Water Code ("***TWC***") § 13.246(h), P.U.C. SUBST. R. § 24.102(h) (under TCEQ Rules, 30 TAC § 24.102(h), and P.U.C. SUBST. R. § 24.107(b) (under TCEQ rules, 30 TAC § 291.107(b)).

[2] P.U.C. PROC. R. § 22.104(d)(1)(2015).

[3] P.U.C. PROC. R. § 22.104(d)(2)(2015).

III. ARGUMENT

Martin's Untimely Motion to Intervene in this matter should be denied because Martin has failed to meet or address the criteria outlined in P.U.C. PROC. R. 22.104(d)(1), the Commission's regulation regarding an untimely motion to intervene, and that in light of such criteria, Martin should not be entitled to intervene in this matter.

(A) An Objection Has Been Filed.

Splendora objected to Martin's Motion to Intervene at the November 18, 2014, Prehearing Conference. Such objection was renewed at the March 10, 2015 Prehearing Conference, and Splendora again asserts its objection in this Motion for Reconsideration.

(B) Martin Does Not Have Good Cause for Failing to File Motion within Prescribed Time

Purchasing land after the regulatory deadline to request a contested case hearing does not constitute good cause for failing to file a motion to intervene in a timely manner. Martin indicates in the October 6, 2014 letter that Martin owns an approximately 91 acre tract of land. Additionally, Martin admits in this letter that the prior property owners did not exercise their right to opt-out of the CCN expansion in 2013. In other words, the prior landowners missed their opportunity to exercise their rights in a timely manner, despite the opportunity to do so.

Before purchasing this land, if the water service provider to the 91 acre tract was important to Martin, then Martin should have conducted due diligence to determine if the land was subject to a pending water CCN application. Such information is available at the TCEQ/Commission and is public information. In other words, if Martin had known that the land was the subject to a pending water CCN application, and it did not want service from Splendora, then Martin did not have to purchase the land. Such failure does not constitute good cause to intervene in this contested case hearing process.

(C) Splendora Would Be Prejudiced If Martin's Untimely Motion to Intervene Is Granted

Splendora would be prejudiced by Martin receiving party status in this proceeding. Splendora and Patton Village have and are working towards a settlement in this matter. Without Martin, if Splendora and Patton Village do, in fact, reach a settlement, then this proceeding would end. However, if Martin's Untimely Motion to Intervene is granted, then Martin would still be a party to this matter and the contested case hearing would continue, causing Splendora to incur additional costs and delays in securing its requested water CCN amendment. In fact, Martin's participation could impede settlement discussions with Patton Village.

Additionally, Patton Village, as a neighboring city, will likely have different issues with the Application than Martin, a landowner and potential customer. Thus, Splendora would be forced to expand the scope of its discovery and prefiled testimony, as well as receiving additional discovery requests from two entities, instead of one.

(D) This Proceeding Would Be Disrupted by Martin's Late Intervention

Granting Martin's Untimely Motion to Intervene would disrupt this proceeding. As discussed in subsection III.(C), above, Martin's participation in this matter would impede Splendora's ability to reach a settlement with Patton Village, and could unnecessarily extend this proceeding for a year, if this hearing is fully litigated and presented to the Commission for final approval.

(E) The Public Interest Is Not Likely Served by Granting Martin's Untimely Motion to Intervene

Granting Martin's Untimely Motion to Intervene would not serve the public interest because it contradicts the substantive laws and rules for processing CCN applications. TWC § 13.246(h), the statute that allows large landowners to opt out of a CCN area within 30 days of receipt of notice, does not address subsequent purchasers of property who purchase the property

before a CCN application is granted. Further, there are no other laws in TWC, Chapter 13, or in Chapter 24 of the Commission's rules that entitle subsequent purchasers of property to have an unlimited amount of time to file a protest to a CCN application. Splendora believes that there is a good reason that such exceptions do not exist. Namely, it would be inequitable to CCN applicants as a class, to the Commission, and to SOAH to have to address every subsequent purchaser of property who did not have an opportunity to request exclusion from the proposed CCN area or to protest the application. Otherwise, any subsequent landowner of 25 acres or more could intervene in a contested case hearing on a CCN at any point in the process; and then any CCN application could be unnecessarily and indefinitely delayed, thereby causing excessive, unnecessary costs to the parties, Commission and SOAH. Ultimately, Martin is seeking to penalize Splendora for Martin's failure to research the water service provider entitlements regarding the 91 acre tract of land, and the applicable statutes or regulations do not afford subsequent landowners such opportunity.

IV. CONCLUSION AND PRAYER

For the reasons stated above, Splendora respectfully requests that the ALJ reconsider Martin's untimely Motion to Intervene and deny Martin party status in this proceeding. In the alternative, if the ALJ believes that Martin's untimely request should be granted, then Splendora requests that the ALJ limit Martin's participation so that (1) Martin is not able to propound any discovery requests on Splendora; and (2) Martin may only be a party to this proceeding so long as Patton Village remains a party to the proceeding. Splendora further requests all other relief to which it is entitled.

Respectfully submitted,

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ATTORNEYS FOR CITY OF SPLENDORA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 20th day of March, 2015 to the parties of record, in accordance with P.U.C. Procedural Rule 22.74.

David J. Klein