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PUBLIC UTILITY COMMISSION  
FILING CLERK

APPLICATION FROM THE CITY OF §  
SPLENDORA TO AMEND CCN NO. §  
11727 IN MONTGOMERY AND §  
LIBERTY COUNTIES §

BEFORE THE STATE OFFICE  
OF ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO THE CITY OF SPLENDORA'S MOTION TO RECONSIDER MARK AND STACEY MARTIN'S UNTIMELY MOTION TO INTERVENE**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to the City of Splendor's Motion to Reconsider and would show the following:

**I. BACKGROUND**

The City of Splendor (Splendor) filed its Application to Amend Water Certificate of Convenience and Necessity (CCN) No. 11727 (Application) with the Texas Commission on Environmental Quality (TCEQ) on April 1, 2013. On April 29, 2014, the TCEQ referred this matter to the State Office of Administrative Hearings (SOAH). The Commission again referred this matter to SOAH on September 26, 2014. On October 6, 2014, Martin filed a letter 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, or, in the alternative, Martin requested a contested case hearing regarding the Application. On February 27, 2015, the SOAH Administrative Law Judge (ALJ) issued SOAH Order No. 5, in which the ALJ granted Martin's request to intervene. At the prehearing conference held on March 10, 2015, Splendor moved to reconsider the ALJ's decision to grant intervention. Pursuant to SOAH Order No. 6, Splendor filed its Motion to Reconsider on March 20, 2015. Responses to the Motion for Reconsideration are due by March 27, 2015. Accordingly, this response is timely filed.

**II. RESPONSE TO MOTION TO RECONSIDER**

Staff supports the ALJ's decision to grant Martin's motion to intervene and the rationale for granting intervention. The intervention meets the criteria listed in P.U.C. PROC. R. 22.104(d)(1). Splendor's arguments against the intervention request are based on speculative

actions, and goes against Commission precedent in other CCN proceedings. Staff will address the substantive requirements from P.U.C. PROC. R. 22.104(d)(1) below.

First, Splendorra argues that Martin does not have good cause for failing to file its motion within the prescribed time. However, good cause exists because Martin did not own the affected property during the time period by which motions to intervene were required to be filed. Second, Splendorra argues that it would be prejudiced and the proceeding would be disrupted if Martin were granted intervention. Splendorra raises the argument that the intervention would impede settlement discussions with the other intervenor in this proceeding, the City of Patton Village, and in that case, the proceeding could progress for a year, if fully litigated. However, at this point it is entirely unknown whether Splendorra and Patton Village would be able to reach a settlement. In fact, this proceeding was abated from November 2014 through February 2015 to conduct settlement negotiations, and no settlement was reached. There is no potential disruption when it is uncertain that a settlement would even occur. In addition, as the ALJ noted, at the time that Martin made the request to intervene, there was no procedural schedule to disrupt.

Third, Splendorra argues that the intervention is not in the public interest because this would lead to future situations where any subsequent owner of 25 acres or more could intervene in a contested case hearing on a CCN at any point in the process, causing the proceeding to be unnecessarily and indefinitely delayed. However, this situation has been addressed in electric CCN proceedings at the Commission. While it is only recently that the Commission has begun processing water CCN proceedings, it is not uncommon to see late-filed interventions granted in electric CCN proceedings before the Commission, and the treatment of these intervenors can provide guidance in this proceeding where the objections to late-filed interventions have been overruled.<sup>1</sup> P.U.C. Proc. R. 22.104(d)(3) provides that late file intervenors must “accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene” Considering that the intervention request occurred early in the procedural process, at the first prehearing conference, and the intervenor takes the case as it existed on the date of the

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<sup>1</sup> See, e.g. *Application of Electric Transmission Texas, LLC To Amend a Certificate of Convenience and Necessity for the Clear Crossing to Dermott 345-kV CREZ Transmission Line (Formerly Central B to Clear Crossing) in Haskell, Jones, Stonewall, Fisher, Kent, and Scurry Counties*, Docket No. 37951, SOAH Order No. 5 (July 20, 2010); *Application of Oncor Electric Delivery Company, LLC to Amend Its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Denton, Tarrant and Wise Counties (Hicks-Elizabeth Creek CCN)*, Docket No. 42087, SOAH Order No. 3 (Mar. 10, 2014).

intervention, no disruption occurs. Staff believes that the public interest is served by allowing the intervention.

Finally, Splendora recommends that, if Martin's Motion to Intervene is upheld, 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. There is no reason why there should be any limitation on Martin's participation in this proceeding, nor does Splendora provide any basis for this alternative request. Martin should be allowed to fully participate in this proceeding without restriction.

### III. CONCLUSION

Staff agrees with the ALJ's reasoning in SOAH Order No. 5 that Martin's Motion to Intervene meets the requirements of P.U.C. PROC. R. 22.104(d)(1), that the decision to grant intervention should be upheld, and Splendora's Motion to reconsider should be denied.

**Dated: March 27, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

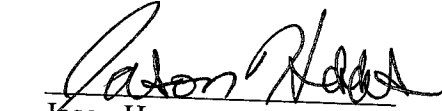
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 27, 2015 in accordance with P.U.C. Procedural Rule 22.74.

  
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Jason Haas