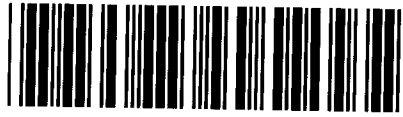




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PUC DOCKET NO. 42852

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

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§  
§

BEFORE THE STATE OFFICE  
PUBLIC UTILITY COMMISSION  
OF  
FILING CLERK

ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 7  
DENYING MOTION TO RECONSIDER MOTION TO INTERVENE

Counsel for Mark and Stacey Martin (Martin) moved to intervene in this matter during the first prehearing conference. The Applicant opposes the motion to intervene because Martin did not timely file a request for a contested case hearing. The Applicant filed a Motion to Reconsider Martin's Motion to Intervene on March 20, 2015. Staff filed a Response on March 27, 2015. Martin filed no Response.

Pursuant to P.U.C. Subst. R. 22.104(d)(1), a motion to intervene that was not timely filed may be granted upon consideration of certain factors. The first factor is any objections that are filed.<sup>1</sup> The ALJ has considered the objection of the Applicant, urged at the prehearing conference and later filed on March 20, 2015. The ALJ has also considered Staff's Response to the Applicant's objection, which supports Martin's Motion to Intervene.

The second factor is whether the movant had good cause for failing to file the motion within the time prescribed.<sup>2</sup> Because Martin did not own the affected property during the time period by which motions to intervene were required to be filed, it was impossible for Martin to comply with the deadline. The Applicant argues that Martin should have performed due diligence to determine if the land was subject to a pending water CCN application prior to purchasing the land. To the ALJ's knowledge, this information is not available in the property records or tax records, which are the customary sources of information for due diligence prior to purchasing real property. Additionally, it appears that Martin attempted to gain party status as soon as it learned of the filing of the Application and has participated in this proceeding since the

<sup>1</sup> P.U.C. Subst. R. 22.104(d)(1)(A).

<sup>2</sup> P.U.C. Subst. R. 22.104(d)(1)(B).

very first prehearing conference. Thus, the ALJ believes Martin had good cause for its late motion to intervene.

The third factor is whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention.<sup>3</sup> The Applicant argues that having another intervening party to negotiate with, and the fact that the two intervening parties may have different issues with the Application, will prejudice the Applicant. The ALJ is not persuaded by these arguments. Any time there are different intervening parties involved in a matter, there is the potential that each party will have different concerns.

The fourth factor is whether any disruption of the proceeding might result from permitting late intervention.<sup>4</sup> The Applicant argues that Martin's intervention will disrupt the proceeding because it will impede its ability to settle with the other intervenor, Patton Village and extend the proceeding. As Staff notes in its Response, this allegation is speculative. The ALJ notes that Martin became involved before a procedural schedule was set and has been involved in the proceeding since the first prehearing conference. Thus, the ALJ does not believe that the proceeding has been disrupted since Martin has intervened.

The fifth factor is whether the public interest is likely to be served by granting the intervention.<sup>5</sup> In regards to this factor, the Applicant first discusses the Texas Water Code opt-out provision, which it correctly argues does not address a subsequent purchase of property outside of the timeframe for opting out. Martin's Motion to Intervene was not granted on the Texas Water Code opt-out provision; however, it was granted based on Commission rules, which provide that untimely motions to intervene may be granted. The Applicant also argues that granting Martin's Motion to Intervene will open the door for any subsequent landowner to intervene "at any point in the process" in future CCN cases. The ALJ's ruling in this case is based upon the facts now before the ALJ. These facts are that Martin came to the table as soon as it received notice of the Application and appeared at the first prehearing conference before

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<sup>3</sup> P.U.C. Subst. R. 22.104(d)(1)(C).

<sup>4</sup> P.U.C. Subst. R. 22.104(d)(1)(D).

<sup>5</sup> P.U.C. Subst. R. 22.104(d)(1)(E).

any procedural schedule was in place. Thus, the ALJ believes that granting Martin's intervention is in the public interest.

The ALJ has considered all factors addressed in the Commission's rules and concludes that granting Martin's Motion to Intervene was proper. In addition, the ALJ is not persuaded that any limitations should be placed on Martin's participation in this case. Had Martin moved to intervene after a scheduling order was in place or after the discovery period had ended, the ALJ would likely be inclined to limit its participation. However, Martin has been present from the beginning of this proceeding at the State Office of Administrative Proceedings and the ALJ declines to do so.

Therefore, the Applicant's Motion to Reconsider is **DENIED**.

**SIGNED April 14, 2015.**



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**HOLLY VANDROVEC**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**