



Control Number: 42962



Item Number: 61

Addendum StartPage: 0

APPLICATION OF THE CITY OF
LYFORD FOR A WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN WILLACY
COUNTY (33791-C)

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PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY COMMISSION
OF TEXAS
HEARING CLERK

COMMISSION STAFF'S MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Motion to Dismiss. In support thereof, Staff shows the following:

I. BACKGROUND

In 2001, the City of Lyford filed an application with the Texas Natural Resource Conversation Commission (TNRCC) to obtain a water certificate of convenience and necessity (CCN) in Willacy County. The City of Lyford's application was protested by North Alamo Water Supply Corporation (North Alamo WSC)¹ and was referred to the State Office of Administrative Hearings (SOAH). In 2002, the TNRCC changed its name and began doing business as the Texas Commission on Environmental Quality (TCEQ). The City of Lyford and North Alamo WSC reached a settlement agreement on December 18, 2002.²

On September 12, 2005 the TCEQ issued an Executive Director Order approving the settlement reached by the City of Lyford and North Alamo WSC.³ The City of Lyford filed a Motion to Overturn, stating that the final map attached to the Order did not accurately reflect the agreement of the parties.⁴ On November 2, 2005, the Executive Director filed a response to the City of Lyford's Motion, recommending that the Commissioners grant the motion and order the issuance of a revised CCN map.⁵

¹ Letter Requesting Public Hearing and Attachments, AIS Item No. 7.

² Copies of Settlement and Map, AIS Item No. 35 at 6; TCEQ Order, AIS Item No. 35 at 14.

³ Executive Director's Response to the City of Lyford's Motion to Overturn, AIS Item No. 31.

⁴ *Id.*

⁵ *Id.*

On September 1, 2014, pursuant to House Bill 1600 and Senate Bill 567 of the 83rd Legislature, Regular Session, functions relating to the economic regulation of water and sewer utilities were transferred to the Public Utility Commission (Commission). The Public Utility Commission (Commission) received the application on November 20, 2014. After multiple deficiency recommendations, on November 18, 2016, Staff recommended that the City of Lyford's mapping information was administratively complete. On November 22, 2016, the Administrative Law Judge (ALJ) issued Order No. 9, deeming the application administratively complete, and establishing a procedural schedule for the processing of this matter. On January 10, 2017, Staff provided the City of Lyford with a final map and certificate. On January 31, 2017, the City of Lyford filed a consent form, indicating that it does not consent to the final map and certificate provided. Order No. 9 required Staff to file a final recommendation by February 6, 2017. Therefore, this pleading is timely filed.

II. MOTION TO DISMISS

As reflected in the above background, the Commission received this application on November 20, 2014. Since then, Staff has worked diligently with the City of Lyford to finalize a map that accurately reflects its agreement with North Alamo WSC. Throughout this time, Staff has reviewed mapping information provided by the City of Lyford both formally and informally. On November 3, 2016, the City of Lyford filed maps and digital data that purported to accurately reflect the location of the proposed water service area. Staff worked from the mapping information filed by the City of Lyford, which was consistent with the parties' December 18, 2002 agreement map, to create the final map. Staff also made adjustments to avoid overlapping existing CCN No. 11041, which belongs to Sunny Dew WSC.

The City of Lyford and North Alamo WSC have now indicated that they do not consent to the final map prepared by Staff, and have both filed consent forms to that effect. Staff has conferred with the parties, and they assert that the final map does not accurately reflect their settlement agreement: that the boundaries shown are not consistent with the agreement, and that they intended to decertify North Alamo WSC and certify only the City of Lyford in areas that were shown as overlapping dual CCN areas. Based on a review of items filed in this docket,⁶ as well as the digital mapping data provided by the City of Lyford, it appears that the agreement between North Alamo WSC and the City of Lyford included dual certification in some areas.

Both parties have advised Staff that the mapping information filed by the City of Lyford on November 3, 2016 is incorrect, and that the boundaries of their respective service areas, as they have agreed between themselves, should be different than those shown on Staff's final map. Based on this conversation, and the mapping information that has been provided by the City of Lyford in the past, it is unclear whether the agreement may have been slightly modified since 2002, and whether the City of Lyford has provided mapping information to Staff that reflects this agreement. At a minimum, it is unclear which of the sets of maps and digital data that have been filed in this matter, if any, the parties assert are accurate. Additionally, Staff is concerned that the technical review of this application, which occurred over ten years ago at the TCEQ, may no longer be accurate in light of all the potential changes to the City of Lyford's financial, managerial, and technical capability that could have taken place since that time. Staff recommends that the parties continue to work with a mapping contractor to create a map and digital data that accurately reflects their current agreement, and refile a new CCN application that contains current information.

⁶ City of Lyford's Application, AIS Item No. 1; City of Lyford's Affidavit of Notice (indicating that "City of Lyford has filed an application for a water and sewer CCN and for dual certification of a portion of North Alamo Water Supply Corporation, water CCN No. 10553, and Sunny Dew Water Supply Corporation, water CCN No. 11041"), AIS Item No. 11; City of Lyford's Brief in Opposition to Proposal for Decision, ("In its final application, it [the City of Lyford] is not attempting to ask or require decertification of North Alamo Water Supply Corporation's CCN but rather co-certification in some areas surrounding the City. The Mayor of Lyford and the Manager of North Alamo Water Supply Corporation have signed and filed an Agreement that designates the intended boundary line between areas of service of both parties."), AIS Item No. 23.

Therefore, as supported by the attached memorandum of Lisa Fuentes and Tracy Montes of the Water Utilities Division, Staff requests that the ALJ dismiss the application pursuant to 16 Tex. Admin. Code § 22.181(d)(7) for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, without prejudice to the filing of a new, complete application that accurately reflects the agreement reached between the parties.

III. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above recommendations.

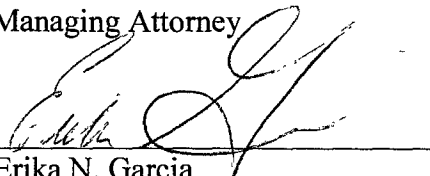
Date: February 6, 2017.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

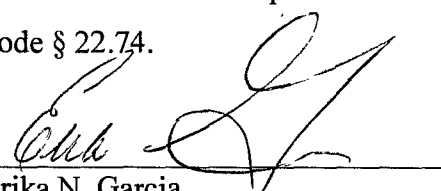
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DOCKET NO. 42962
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 6, 2017, in accordance with 16 Tex. Admin. Code § 22.74.



Erika N. Garcia

PUC Interoffice Memorandum

To: Erika Garcia; Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Lisa Fuentes, Manager
Tracy Montes, GIS Specialist
Water Utilities Division

Date: February 6, 2017

Subject: **Docket No. 42962**, *Application of the City of Lyford for a Water Certificate of Convenience and Necessity (CCN) in Willacy County (33790-C)*

On December 5, 2001, the City of Lyford filed an application with the Texas Natural Resource Conversation Commission (TNRCC) to obtain a water certificate of convenience and necessity (CCN) in Willacy County, pursuant to Tex. Water Code §§ 13.244 (TWC) and 16 Tex. Admin. Code §§ 24.102-24.107 (TAC). In 2002, the TRNCC changed its name and began doing business as the Texas Commission on Environmental Quality (TCEQ). On September 1, 2014, the application was transferred to the Commission as part of the transfer of the economic regulation of water and sewer utilities in Texas, pursuant to House Bill (HB) 1600 and Senate Bill (SB) 567.

Staff has worked with the City of Lyford to create a map that accurately reflects the intention of its application. Specifically, Staff has consistently recommended the City of Lyford file revised mapping documentation to accurately show the same proposed water service area as indicated on the agreement map executed between the City of Lyford and North Alamo Water Supply Corporation (North Alamo WSC) on December 18, 2002. Between August and November of 2016, Staff worked diligently to provide mapping guidance to the City of Lyford by conducting teleconferences, web meetings and previewing maps and digital data before the City of Lyford's filing on November 3, 2016.

On November 18, 2016, Staff recommended the City of Lyford's November 3, 2016, mapping documentation was sufficient. The City of Lyford's maps and digital data accurately showed the same proposed water service area as indicated on the agreement map between the City of Lyford and North Alamo WSC settled on December 18, 2002. The proposed digital data resulted in dual certification for those portions the City of Lyford overlapped with North Alamo WSC's water CCN No. 10553. Staff used the November 3, 2016, proposed map and digital data to create the final map for this docket.

On January 10, 2017, Staff provided the City of Lyford and North Alamo WSC with a final map and certificates. On January 31, 2017, the City of Lyford filed a consent form, indicating that it does not consent to the final map and certificate provided. On February 2, 2017, North Alamo WSC filed a consent form, indicating that it does not consent to the final map and certificate provided.

In conferring with the City of Lyford and North Alamo WSC, Staff has been advised that the mapping documentation filed on November 3, 2016, was incorrect, and that the boundaries of their

respective service areas, as they have agreed to amongst themselves, are different than what is shown on Staff's final map. Therefore, it appears that the City of Lyford is seeking to change its proposed water service area from the area depicted on the agreement map from December 18, 2002.

The mapping documentation filed on November 3, 2016, does not reflect the agreement between the City of Lyford and North Alamo WSC, and no corrected information has been filed. Further, it is unclear whether the agreement map from December 18, 2002 represents the final agreement between the City of Lyford and North Alamo WSC. Due to this conflicting information, Staff is unable to continue processing this matter.