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SOAH DOCKET NO. 473-16-3809.WS  
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PUBLIC UTILITY COMMISSION

APPLICATION OF THE CITY OF  
DORCHESTER TO AMEND A  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN GRAYSON  
COUNTY (37917-C)

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**PRELIMINARY ORDER**

On May 5, 2014, the city of Dorchester filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend water certificate of convenience and necessity (CCN) number 12013 in Grayson County, Texas. Dorchester seeks to add 370 acres to its certificated area, including two small areas located in Marilee Special Utility District's CCN number 10150.<sup>1</sup> Dorchester states that Marilee Special Utility District has agreed to dual certification for water service with Dorchester in these areas.<sup>2</sup>

On September 1, 2014, the Public Utility Commission of Texas (Commission) began the economic regulation of water and sewer utilities, and jurisdiction over these cases transferred to the Commission.<sup>3</sup>

On January 14, 2016, the city of Howe protested the application and requested a public hearing. The city of Howe asserts that a portion of Dorchester's requested service area overlaps a segment of Howe's certificated area, including service areas within the city of Howe's extra territorial jurisdiction.<sup>4</sup>

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<sup>1</sup> Application of the City of Dorchester to Amend a Certificate of Convenience and Necessity in Grayson County (37917-C) at 5, 13 (May 5, 2014).

<sup>2</sup> *Id.* at 65-66.

<sup>3</sup> 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.

<sup>4</sup> City of Howe's Request for Public Hearing at 1-2 (Jan. 14, 2016).

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On April 25, 2016, the Commission issued an order referring this proceeding to the State Office of Administrative Hearings (SOAH) to conduct a hearing. Commission Staff and the city of Howe each timely filed a list of issues on May 4, 2016.

### **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.<sup>5</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Dorchester given notice consistent with Texas Water Code (TWC) § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?
2. Is the proposed service area partly, or wholly, within the extra-territorial jurisdiction of the city of Howe?
3. What modifications, if any, must be made to Dorchester'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 16 TAC § 24.102(h)?
4. Does Dorchester possess the financial, managerial, and technical capability to provide continuous and adequate service? TWC § 13.241(a) and 16 TAC § 24.102(a).
5. Does Dorchester possess a TCEQ-approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341 and TCEQ rules? 16 TAC § 24.102(a)(1).
6. Does Dorchester have access to an adequate supply of water? 16 TAC § 24.102(a)(1).
7. Would the proposed service area require construction of a physically separate water system? If so, has Dorchester proven that regionalization or consolidation with another retail public utility is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
8. Is the requested certificate amendment necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).

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<sup>5</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2016).

9. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested certificate amendment? In answering this issue, please address the following sub-issues:
- a. Is the proposed service area currently receiving adequate service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
  - b. Does the proposed service area need additional service? TWC § 13.246(c)(2) and 16 TAC § 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 16 TAC § 24.102(d)(3) of granting the requested certificate amendment on
    - i. Dorchester,
    - ii. landowners in the proposed service area, and
    - iii. any retail public utility of the same kind as Dorchester that is already serving the area proximate to the proposed service area?
  - d. Does Dorchester 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? 16 TAC § 24.102(d)(4).
  - e. What is the feasibility of obtaining service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
  - f. Is Dorchester financially able to pay for the facilities necessary to provide continuous and adequate service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
  - g. Is Dorchester financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC § 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 16 TAC § 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 16 TAC § 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 16 TAC § 24.102(d)(9).
10. Should the Commission require Dorchester, pursuant to TWC § 13.246(d) and 16 TAC § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided?
11. If applicable, what were Dorchester's efforts to:
- a. extend service to any economically distressed area, within the meaning of TWC § 15.001, located within Dorchester'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 23<sup>rd</sup> day of May 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**DONNA L. NELSON, CHAIRMAN**

  
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**KENNETH W. ANDERSON, JR., COMMISSIONER**

  
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**BRANDY MARTY MARQUEZ, COMMISSIONER**