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APPLICATION OF THE CITY OF § BEFORE THE STATE COMMISSION
DORCHESTER TO AMEND A § FILING CLERK
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY IN GRAYSON §
COUNTY (37917-C) § ADMINSTRATIVE HEARINGS

CITY OF HOWE'S RESPONSE IN OPPOSITION TO
MOTION OF CITY OF DORCHESTER, TEXAS TO DISMISS
INTERVENOR CITY OF HOWE, TEXAS

COMES NOW, the City of Howe, Texas, (City) and respectfully shows the following:

Summary

Today, on June 6, 2016, the City of Howe, Texas, received in the mail the Motion of City of Dorchester, Texas To Dismiss Intervenor City of Howe, Texas, and has quickly submitted this response due to the motion being dated June 1, 2016, and order signed May 25, 2016, stating that responses are to be filed within 5 days of the motion. The City of Howe, Texas, respectfully requests that the Motion of City of Dorchester, Texas To Dismiss Intervenor City of Howe, Texas, be denied. The City of Howe's failure to appear was unintentional, as its designated representative did not know of the hearing due to an accidental filing issue, and such an accident does not warrant such a harsh result as dismissal. The motion to dismiss based on alleged default should be denied for good cause shown and/or in the interest of justice.

Background

The City of Howe, Texas, requested a public hearing and seeks clarification of CCN mapping submitted by the City of Dorchester, Texas (Dorchester) showing an

overlap of CCN in an area near Highway 902, which is in the upper portion of the mapping submitted by Dorchester. The City of Howe's Request for Public Hearing is incorporated herein by reference as if set out in full, including all attachments and exhibits. The City of Howe seeks to preserve and protect its CCN which was preexisting, and rejects and opposes any encroachment or overlap claimed by the Applicant or any other party or entity. Howe seeks clarification of the Applicant's request and the City of Howe's rights as established by the City of Howe's CCN and ETJ.

Failure to Appear Unintentional

The undersigned, Joe Shephard, is the representative for the City of Howe, Texas, in these proceedings. I was unaware that a telephonic prehearing conference had been set and did not receive a copy of the notice prior to the time for the prehearing conference. At the time of the conference, I had a previously scheduled matter. If I had known of the conference I would have rescheduled my preexisting matter or stopped that matter in order to take the conference call. I was unaware of what was occurring. The first I learned about the prehearing conference and my need to appear was when I received a copy of the SOAH Order No. 2 Memorializing Prehearing Conference. At the time of the call, I was not aware of my need to immediately join and appear. After receiving the SOAH Order No. 2 Memorializing Prehearing Conference, I realized that I had missed the prehearing conference and did not understand how that occurred. I had not gotten any notice of the prehearing conference. I then conducted an internal investigation into why I had not received any notice of the prehearing conference. After investigation by me and by City of Howe staff, it was discovered that the fax that was

notice of the prehearing conference had been misfiled and never submitted to me. This was an unintentional accident by a City staff member, but it had the result of the notice being filed without me or other staff realizing a conference had been set. Had I known of the prehearing conference, I would have joined and participated.

The failure to appear was due to an unintentional document handling error by a city clerk. The City of Howe respectfully requests that the dismissal be denied based upon this accidental situation. The City of Howe would have participated had it been realized that the prehearing conference was occurring. (See Affidavit below.)

Howe is an affected person

As clearly set out in prior filings, the City of Howe is an affected person. The proper representation and understanding of CCN of Howe and Dorchester is necessary and important in these proceedings. It is Dorchester who has created this issue in these proceedings by improperly showing an overlap of Howe and Dorchester's CCN. As such, these matters should be reviewed in these proceedings.

CCN issues still exist

Howe has not been provided copies of certain documents and even the PUC could not provide conclusive documents in response to a Public Information Act request. As a result, there are still issues and concerns over the mapping issues that need to be reviewed and addressed. The City of Howe does not want to be later accused of waiving any right or claim. These proceedings are a proper forum for the parties to address the City of Howe's concerns and confirm that Howe's CCN and ETJ are fully recognized as presented by the City of Howe and as shown on PUC mapping, without any overlap or encroachment. (See prior Exhibits 2 and 3 attached to City of

Howe's Request for Public Hearing) Based on the City of Howe's review of provided documents, important CCN issues remain.

Service Issues Remain

Further, as noted in the City of Howe's filings and the PUC's Preliminary Order, service issues and CCN issues remain.

Conclusion

Howe prays that Dorchester's motion to dismiss Howe be denied and that Dorchester's motion be denied in all matters. The motion to dismiss based on alleged default should be denied for good cause shown and/or in the interest of justice.

Respectfully submitted,

CITY OF HOWE, TEXAS

By: 
Joe Shephard

City Administrator

City of Howe, Texas
P.O. Box 518
Howe, Texas 75459

AFFIDAVIT

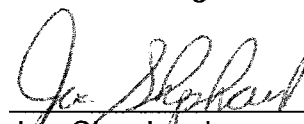
State of Texas §
 §
County of Grayson §

BEFORE ME, the undersigned authority, personally appeared Joe Shephard, known to me to be the person whose name is subscribed below, and after duly sworn by me stated on oath as follows:

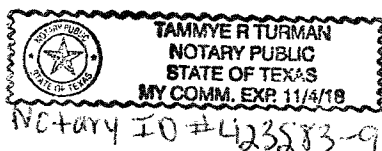
I am the City Administrator of the City of Howe, Texas, and serve as the representative for the City of Howe, Texas, in these proceedings. I was unaware that a telephonic prehearing conference had been set on May 20, 2016, and did not receive a

copy of the notice prior to the time for the prehearing conference. (I later discovered that there was a notice of telephonic prehearing conference in SOAH Order No. 1 Jurisdiction, Notice of Prehearing Conference, and General Procedures. Prior to May 20, 2016, I had not received a copy of this Order, as discussed below.) At the time of the conference, I had a previously scheduled matter. If I had known of the Order or the conference I would have rescheduled my preexisting matter or stopped that matter in order to take the conference call. I was unaware of what was occurring. The first I learned about the prehearing conference and my need to appear was when I received a copy of the SOAH Order No. 2 Memorializing Prehearing Conference. At the time of the call, I was not aware of my need to immediately join and appear. After receiving the SOAH Order No. 2 Memorializing Prehearing Conference, I realized that I had missed the prehearing conference and did not understand how that occurred. I had not gotten any notice of the prehearing conference. I then conducted an internal investigation into why I had not received any notice of the prehearing conference. After investigation by me and by City of Howe staff, it was discovered that the fax of SOAH Order No. 1 Jurisdiction, Notice of Prehearing Conference, and General Procedures, that was notice of the prehearing conference, had been misfiled and never submitted to me. This was an unintentional accident by a City staff member, but it had the result of the notice being filed without me or other staff realizing a conference had been set. Had I known of the prehearing conference, I would have joined and participated.

The failure of the City of Howe, Texas, to appear was due to an unintentional document handling error by a city clerk. The City of Howe would have participated had it been realized that the prehearing conference was occurring.


Joe Shephard

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 6th day of June, 2016, to certify which witness my hand and seal of office.




Notary Public, State of Texas

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing City of Howe's Response in Opposition to Motion of City of Dorchester, Texas To Dismiss Intervenor City of Howe, Texas, was served on the 6th day of June 2016, on the following:

Certified Mail RRR #7015 3430 0000 8824 2315

Public Utility Commission of Texas

Margaret Uhlig Pemberton

Division Director

Legal Division

Stephen Mack

Managing Attorney

Legal Division

Douglas M. Brown

Attorney – Legal Division

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Austin, TX 78711-3326

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City of Dorchester

c/o

Angela M. Stepherson

Coats/Rose

Two Lincoln Centre

5420 LBJ Freeway, Suite 600

Dallas, TX 75240

And

Certified Mail RRR #7015 3430 0000 8824 2339

City of Dorchester

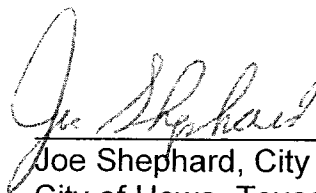
c/o

Eddy Daniel PE

Daniel & Brown Inc.

P.O. Box 606

Farmersville, TX 75442



Joe Shephard, City Administrator
City of Howe, Texas