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

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 3
DENYING MOTION TO DISMISS; GRANTING INTERVENTION;
AND REQUIRING PARTIES TO CONFER

On May 20, 2016, the Administrative Law Judge (ALJ) convened a telephonic prehearing conference on the Application of the City of Dorchester to amend a Certificate of Convenience and Necessity in Grayson County (Application). Appearing at the Prehearing Conference were: Douglas Brown for the Staff of the Public Utility Commission of Texas (Commission); Bill Dugat for the City of Dorchester (Dorchester); and Angela Stepherson for Walton Texas, LP. The City of Howe (Howe), represented by Joe Shephard (who does not appear to be an attorney), was called at the number indicated on Order No. 1 setting the May 20, 2016 Prehearing Conference, but Mr. Shepard declined to participate in the call.

On June 1, 2016, Dorchester filed a motion to dismiss Howe for failure to prosecute, citing 16 Texas Administrative Code § 22.181(a)(1). Dorchester further notes that Howe's list of issues relate to purported overlap with Dorchester's CCN, which Dorchester has addressed with revised digital mapping, and Dorchester claims that Howe has failed to show a justiciable interest.

Howe late-filed a response to Dorchester's motion to dismiss.¹ Howe indicated that Joe Shephard, Howe's representative, was unaware that a telephone prehearing conference had been set and he attached an affidavit affirming that he had not received notice of the prehearing conference. At the time, he was involved in a previously scheduled matter. Howe claims it is an affected entity and extent and scope of the requested CCN amendment are issues that remain unresolved.

¹ Howe's pleading was filed one day late on June 7, 2016 at approximately 10:30 a.m.

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At the outset, it appears that Howe has not formally requested to intervene in this matter. However, the ALJ notes the following:

- Howe filed a request for a public hearing on January 14, 2016;
- the Commission referred this matter to the State Office of Administrative Hearings (SOAH) based on this request for hearing;
- Howe filed a list of issues and again requested a hearing;
- Issue No. 4 in the Commission's Preliminary Order includes Howe's issue;² and
- Dorchester is treating Howe as an intervenor (although Dorchester alleges Howe has not demonstrated it is an affected person and seeks its dismissal).

The ALJ finds it appropriate to treat Howe's repeated requests for hearing as a request for intervention. Moreover, Howe demonstrated its failure to appear at a telephone prehearing conference should be excused. The ALJ further finds that Howe has demonstrated a justiciable interest. Dorchester's motion to dismiss Howe is DENIED.

On or before June 30, 2016, the parties are instructed to confer and propose either: (1) a procedural schedule or (2) three dates and times for a second prehearing conference. In the latter event, the ALJ will issue an order scheduling the prehearing conference. As it appears that the issues between Dorchester and Howe may be resolved if information can be exchanged, the ALJ strongly encourages the parties include a settlement conference in any proposed procedural schedule. Alternatively, the parties may request a SOAH mediation.

SIGNED June 20, 2016.



LAURA M. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

² See Preliminary Order at 2 (May 23, 2016).