

Control Number: 43082



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DOCKET NO. 43082

APPLICATION OF THE CITY OF §  
ROYSE CITY TO AMEND A §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN COLLIN, HUNT, §  
AND ROCKWALL COUNTIES §

PUBLIC UTILITY COMMISSION

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**COMMISSION STAFF'S STATUS UPDATE**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Status Update in response to Order No. 2. In support of its Status Update, Staff states the following:

**I. Background**

On June 18, 2014, the City of Royse City (Royse City) filed an application with the Texas Commission of Environmental Quality (TCEQ). In its application, Royse City requested an amendment its sewer certificate of convenience and necessity (CCN No. 20813). Royse City's service area is located in Collin, Hunt, and Rockwall Counties.

On July 18, 2014, the TCEQ sent Royse City a letter stating that its application had been accepted for filing. The letter also stated that Royse City was required to send notice of its application to the following:

- a. Any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area.
- b. Any city with an extraterritorial jurisdiction which overlaps the proposed service area.
- c. Landowners with more than twenty-five (25) acres and any affected parties in the proposed service area.

Additionally, the letter stated that Royse City was required to publish notice of its application in newspapers having general circulation in Collin, Hunt, and Rockwall Counties.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities. Royse City's application, which was being processed at the TCEQ, was transferred to the Commission for processing.

From October 9, 2014 through November 3, 2014, the following landowners filed either a

request to opt out or a protest letter:

- a. Steve Woody, owner of two tracts of land in Hunt County, Texas, requested to opt out from Royse City's service area.
- b. Gerald Gray, owner of one tract of land property in Hunt County, Texas, requested to opt out from Royse City's service area.
- c. Michael Gray and Theresa Gray requested a public hearing.
- d. Melvin Joslin stated that he was not in favor of Royse City's application.

On November 13, 2014, the Administrative Law Judge entered Order No. 2, which required Staff to file a status update regarding Royse City's application by December 30, 2014. This Status Update is timely filed.

On December 2, 2014, Royse City filed affidavits regarding the provision and publication of notice of its application.

On December 29, 2014, Royse City filed certain revisions to its application. Royse City revised its application such that the real properties owned by Steve Woody, Gerald Gray, Michael Gray and Theresa Gray, and Melvin Johnson are now excluded from its service area. In making these revisions to its application, Royse City stated that although only Steve Woody qualified to opt out of Royse City's service area under the Texas Water Code and the Commission's substantive rules, it was voluntarily permitting Gerald Gray, Michael Gray and Theresa Gray, and Melvin Johnson to opt out of its service area as well. As part of the revisions to its application, Royse City submitted additional mapping data.

## **II. Applicable Statutes and Rules**

### **A. Amendment to a Certificate of Convenience and Necessity**

The Texas Water Code details the requirements for approving the amendment of a certificate of convenience and necessity (CCN). In determining whether to approve the amendment of a CCN, the Commission "shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service."<sup>1</sup> The Commission must also ensure that the applicant is capable of providing drinking water that meets the requirements of Chapter 341 of the Health and Safety Code and has access to an adequate

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<sup>1</sup> TEX. WATER CODE § 13.241(a).

supply of water.<sup>2</sup> The Texas Water Code and the Commission's substantive rules list the factors that are to be considered by the Commission in determining whether to approve the amendment of a CCN.<sup>3</sup>

In addition to detailing the requirements for approval of an amendment to a CCN, the Texas Water Code and the Commission's substantive rules permit certain landowners to be excluded—i.e. out opt—from a CCN holder's service area. The relevant portion of the Texas Water Code states:

[A] landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.<sup>4</sup>

The Commission's substantive rules contain similar language regarding landowner exclusion from a service area.<sup>5</sup>

## **B. Notice**

With regards to the required notice for an amendment to a certificate of convenience and necessity, an applicant must provide notice to the following:

- a. Any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the service area.
- b. Any city with an extraterritorial jurisdiction which overlaps the service area.
- c. Landowners with more than twenty-five (25) acres and any affected parties in the

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<sup>2</sup> TEX. WATER CODE § 13.241(b)(1)-(2).

<sup>3</sup> See generally TEX. WATER CODE § 13.246(c); P.U.C. SUBST. R. 24.102(a)(1)-(2), (d).

<sup>4</sup> TEX. WATER CODE § 13.246(h).

<sup>5</sup> P.U.C. SUBST. R. 24.102(h).

service area.<sup>6</sup>

Additionally, the applicant must “publish notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission.”<sup>7</sup> Once notice is provided and published, the applicant must file an affidavit regarding such notice within thirty (30) days of the provision or publication of such notice.<sup>8</sup>

### III. Staff's Status Update and Request for a Procedural Schedule

Given that Roysel City recently revised its application to exclude Steve Woody, Gerald Gray, Michael Gray and Theresa Gray, and Melvin Johnson from its service area, it is Staff's position that a hearing, as requested by Michael Gray and Theresa Gray, may not be necessary. Staff therefore requests that: (1) Roysel City be given additional time to confer with these landowners in order to determine whether the revisions to Roysel City's application address the landowners' concerns and (2) any landowners satisfied with Roysel City's revisions to its application be given time to withdraw their protests or requests for hearing.

Staff also requests that the Commission adopt the following procedural schedule in order to process Roysel City's application:

<b>Event</b>	<b>Deadline</b>
Royse City's status update regarding excluded landowners	February 2, 2015
Landowner withdraw of protests or requests for hearing	February 9, 2015
Request for referral to the State Office of Administrative Hearings (if necessary) or if no request for referral, Staff's recommendation on final disposition	April 6, 2015
Response to Staff's recommendation or proposed notice of approval that includes proposed findings of fact, proposed conclusions of law, and proposed ordering paragraphs	April 20, 2015

<sup>6</sup> P.U.C. SUBST. R. 24.106(b)(2)-(3).

<sup>7</sup> P.U.C. SUBST. R. 24.106(c).

<sup>8</sup> P.U.C. SUBST. R. 24.106(b)(6), (c).

#### IV. Conclusion

Staff therefore requests that: (1) Royse City be given additional time to confer with the landowners identified above in order to determine whether the revisions to Royse City's application address the landowners' concerns; (2) any landowners satisfied with Royse City's revisions to its application be given time to withdraw their protests or requests for hearing; and (3) the Commission adopt the proposed procedural schedule detailed above.

Date: December 30, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division



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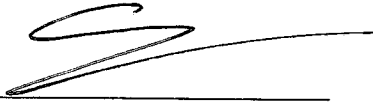
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on December 30, 2014 in accordance with P.U.C. Procedural Rule 22.74.

  
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Sam Chang