



Control Number: 43360



Item Number: 44

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## OPEN MEETING COVER SHEET

**MEETING DATE:** October 8, 2015

**DATE DELIVERED:** October 1, 2015

**AGENDA ITEM NO.:** 31

**CAPTION:** Docket No. 43360; SOAH Docket No. 473-16-0101.WS - Application of City of Pleasanton for Certificates of Convenience and Necessity in Atascosa County (37978-C and 37991-C)

**ACTION REQUESTED:** Discussion and possible action with respect to Preliminary Order

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
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FILED CLERK

## *Public Utility Commission of Texas*

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Davida Dwyer, Commission Advising 

RE: October 8, 2015 Open Meeting Agenda Item No. 31  
Draft Preliminary Order; Docket No. 43360; SOAH Docket No. 473-16-0101.WS;  
*Application of City of Pleasanton for Certificates of Convenience and Necessity in*  
*Atascosa County (37978-C and 37991-C)*

DATE: October 1, 2015

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the October 8, 2015 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the October 8, 2015 open meeting.

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SOAH DOCKET NO. 473-16-0101.WS  
PUC DOCKET NO. 43360

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APPLICATION OF THE CITY OF  
PLEASANTON FOR CERTIFICATES OF  
CONVENIENCE AND NECESSITY IN  
ATASCOSA COUNTY (37978-C AND  
37991-C)

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**DRAFT PRELIMINARY ORDER**

On July 9, 2014, the city of Pleasanton filed with the Texas Commission on Environmental Quality (TCEQ) an application to obtain water and sewer certificates of convenience and necessity (CCN) in Atascosa County, Texas under Texas Water Code (TWC) subchapter G and 16 Texas Administrative Code (TAC) subchapter G.<sup>1</sup> Pleasanton sought a water service area that includes approximately 17,555 acres and 4,414 current customers.<sup>2</sup> Pleasanton's requested sewer service area included approximately 24,305 acres and 3,877 current customers.<sup>3</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 from TCEQ to the Commission.<sup>4</sup> On September 9, 2015, the Commission issued an order referring this proceeding to the State Office of Administrative Hearings (SOAH) to conduct a hearing. Commission Staff timely filed a list of issues on September 23, 2015.

**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

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<sup>1</sup> The city of Pleasanton's application was filed with TCEQ prior to the transfer; accordingly, the application filing was governed by the rules in effect at the time the application was filed, which were located at Title 30, Tex. Admin. Code Subchapter G.

<sup>2</sup> Application of the City of Pleasanton at 7 (filed in the Commission's interchange on Sep. 24, 2014); City of Pleasanton's Revised Notice Requirements at 1 (Mar. 11, 2015).

<sup>3</sup> *Id.*

<sup>4</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>5</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has the city of Pleasanton given notice consistent with TWC § 13.246 and 16 TAC § 24.106?

***Water service***

2. What modifications, if any, must be made to Pleasanton's proposed water 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 §§ 13.2451(b) and 13.246(h) and 16 TAC § 24.102(h)?
3. Does Pleasanton possess the financial, managerial, and technical capability to provide continuous and adequate water service? TWC § 13.241(a) and 16 TAC § 24.102(a).
4. Does Pleasanton 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? TWC § 13.241(b)(1) and 16 TAC § 24.102(a)(1).
5. Does Pleasanton have access to an adequate supply of water? TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(1).
6. Would the proposed water service area require construction of a physically separate water system? If so, has Pleasanton proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
7. Is the requested water certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).
8. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested water certificate? In answering this issue, please address the following sub-issues:
  - a. Is the proposed water service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
  - b. Does the proposed water service area need additional water service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).

- i. Have any landowners, prospective landowners, tenants, or residents requested water service?
  - ii. Are there economic needs for additional water service?
  - iii. Are there environmental needs for additional water service?
  - iv. Are there written applications or requests for water 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 water certificate on
  - i. Pleasanton,
  - ii. landowners in the proposed service areas, and
  - iii. any retail public utility of the same kind as Pleasanton that is already serving the area proximate to the proposed service area?
- d. Does Pleasanton have the ability to provide adequate water service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the proposed service area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).
- e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
- f. Is Pleasanton financially able to pay for the facilities necessary to provide continuous and adequate water service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- g. Is Pleasanton 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 water certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
- i. Is it probable that water service would be improved or costs to consumers in that service area would be lowered by granting the requested certificate? 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? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
- 9. Should the Commission require Pleasanton, 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 water service is provided?
- 10. If applicable, what were Pleasanton's efforts to:
  - a. extend water service to any economically distressed area, within the meaning of TWC § 15.001, located within Pleasanton's certificated service area; and
  - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

***Sewer service***

- 11. What modifications, if any, must be made to Pleasanton's proposed sewer 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 §§ 13.2451(b) and 13.246(h) and 16 TAC § 24.102(h)?
- 12. Does Pleasanton possess the financial, managerial, and technical capability to provide continuous and adequate sewer service? TWC § 13.241(a) and 16 TAC § 24.102(a).
- 13. Is Pleasanton capable of meeting TCEQ's design criteria for sewer treatment plants and the Texas Water Code? TWC § 13.241(c).
- 14. Would the proposed sewer service area require construction of a physically separate sewer system? If so, has Pleasanton proven that regionalization or consolidation with a retail public utility for sewer service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
- 15. Is the requested sewer certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).
- 16. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested sewer certificate? In answering this issue, please address the following sub-issues:
  - a. Is the proposed sewer service area currently receiving adequate sewer service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).

- b. Does the proposed sewer service area need additional sewer service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
  - i. Have any landowners, prospective landowners, tenants, or residents requested sewer service?
  - ii. Are there economic needs for additional sewer service?
  - iii. Are there environmental needs for additional sewer service?
  - iv. Are there written applications or requests for sewer 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 sewer certificate on
  - i. Pleasanton,
  - ii. landowners in the proposed service areas, and
  - iii. any retail public utility of the same kind as Pleasanton that is already serving the area proximate to the proposed service area?
- d. Does Pleasanton have the ability to provide adequate sewer service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the proposed service area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).
- e. What is the feasibility of obtaining sewer service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
- f. Is Pleasanton financially able to pay for the facilities necessary to provide continuous and adequate sewer service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- g. Is Pleasanton 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 sewer certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).



- i. Is it probable that sewer service would be improved or costs to consumers in that service area would be lowered by granting the requested certificate? 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? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
- 17. Should the Commission require Pleasanton, 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 sewer service is provided?
- 18. If applicable, what were Pleasanton's efforts to:
  - a. extend sewer service to any economically distressed area, within the meaning of TWC § 15.001, located within Pleasanton's certificated service area; 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 \_\_\_\_\_ day of October 2015.**

**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**

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