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DOCKET NO. 43372

APPLICATION OF THE CITY OF
MCALLEN TO AMEND A
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN HIDALGO
COUNTY (37982-C)

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 7, SUPPLEMENTAL
RECOMMENDATION ON THE APPLICATION, AND PROPOSED PROCEDURAL
SCHEDULE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Response to Order No. 7, Supplemental Recommendation on the Application, and Proposed Procedural Schedule and would show the following:

I. BACKGROUND

On July 14, 2014, the City of McAllen (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend its sewer certificate of convenience and necessity (CCN) No. 20524 in Hidalgo County, Texas pursuant to TEX. WATER CODE ANN. Subchapter G and Title 30, TEX. ADMIN. CODE (30 TAC) Subchapter G.¹ In the cover letter to its application, the Applicant indicated that the proposed amendment would add approximately 13,320 acres of service area to the City of McAllen's Sewer CCN No. 20524.²

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. On October 2, 2014, the Commission Administrative Law Judge (ALJ) issued Order No. 2, requiring Commission Staff to file an update on the status of this proceeding, a recommendation on the need for a hearing or on final disposition of the application, if appropriate at this time, or

¹ This citation refers to the rule in place at the time the application was filed. On September 1, 2014, jurisdiction over the water utilities and rates program transferred from the Texas Commission on Environmental Quality (TCEQ) to the Commission. Applicant'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. The current versions of the rules are located at Title 16, TEX. ADMIN. CODE (16 TAC) Subchapter G.

² Application of the City of McAllen to Amend a Certificate of Convenience and Necessity in Hidalgo County (Application) at 1.

to propose a procedural schedule, if necessary, by October 31, 2014. On October 30, 2014, Staff filed its Response to Order No. 2 in which Staff identified multiple deficiencies in the mapping information submitted in the application. On November 3, 2014, the ALJ issued Order No. 3 Finding the Application Incomplete and Deficient, directing the Applicant to cure the identified deficiencies by December 1, 2014. In Order No. 3, the ALJ also directed Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule within ten working days of receipt of the amended application. On December 1, 2014, the Applicant filed its Response to Order No. 2 and requested that the deadline to cure the deficiencies be extended for 30 days. On December 4, 2014, the ALJ issued Order No. 4 extending the deadline for the Applicant to amend its application until January 5, 2014 and requiring Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule within ten working days of receipt of the amended application.

On December 15, 2014, the Applicant filed supplemental mapping information to address the deficiencies in its application. On January 2, 2015, Staff filed its Response to Order No. 4 and requested an extension of the deadline to file a recommendation on the application. On January 8, 2015, the ALJ issued Order No. 5 granting Staff's request and directing Staff to file comments on the administrative completeness of the amended application and a proposed notice and a proposed procedural schedule by February 2, 2015. On February 2, 2015, Staff filed its Response to Order No. 5 and Recommendation on the Application, recommending that the Applicant had not cured the deficiencies and that the application remained administratively incomplete. On February 3, 2015, the ALJ issued Order No. 6 finding the application incomplete and deficient and directed the Applicant to amend its application to cure the deficiencies by March 6, 2015. Further, the ALJ directed Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule by March 26, 2015.

On March 30, 2015, the ALJ issued Order No. 7 finding that the application remained deficient. Also in Order No. 7, the ALJ directed the Applicant to file supplemental information to cure the deficiencies by April 30, 2015 and Staff to file a supplemental recommendation

regarding administrative completeness of the amended application and notice along with a proposed procedural schedule by June 5, 2015. This Response is timely filed.

II. SUPPLEMENTAL RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS

On March 6, 2015, the Applicant filed supplemental mapping information in response to the deficiencies identified in Staff's February 2, 2015 Response. Staff has reviewed the supplemental information and, as stated in the memo (Attachment A) of Leila Guerrero and Tracy Harbour of the Commission's Water Utilities Division, Staff recommends that the Applicant has cured the identified deficiencies. Therefore, Staff recommends that the application and notices are administratively complete and sufficient for filing.

Staff has reviewed the notices filed with the application by the Applicant and recommends that the Applicant be ordered to provide mailed notice of the application to the following entities: any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two miles of the proposed service area; any city with an extraterritorial jurisdiction which overlaps the proposed service area; landowners with more than 25 acres;³ and any affected parties in the proposed CCN area. *In addition* to the entities listed by the Applicant in its proposed notices, Staff recommends that the Applicant be directed to provide notice to: Hidalgo County; Hidalgo County Irrigation District 6 (4445260); Hidalgo County Irrigation District 16 (4445294); Rio Grande Regional Water Authority (7283500); Santa Cruz Irrigation District 15 (7538000); and United Irrigation District (8100000). Staff further recommends that the Applicant include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties, and each landowner.

Additionally, Staff recommends that the Applicant provide notice to the public which must be published once each week for two consecutive weeks in a newspaper of general circulation in Hidalgo County.

Staff has attached the approved forms of notice (Attachment B). Staff recommends that the Applicant must include with its mailed notices a copy of a map showing the proposed service area. Staff recommends that the Applicant be directed to file a copy of the actual notices issued,

³ The landowner information may be obtained from the county appraisal district tax rolls for the county or counties in which the proposed CCN lies.

the map issued with the individual mailed notices, tear sheets of the newspaper notice published, and signed affidavits (Attachment C) indicating that notice was provided in accordance with TEX. WATER CODE ANN. § 13.246 and 16 TAC § 24.106 by **July 15, 2015**. Upon receipt of signed affidavits of notice, Staff proposes to file a supplemental procedural schedule to govern the remainder of the proceeding by **August 28, 2015**.

III. PROPOSED PROCEDURAL SCHEDULE

In support of the recommendation stated above, Staff proposes the following procedural schedule:

EVENT	DATE
Deadline for the Applicant to file a copy of the actual notices issued, the map issued with the individual mailed notices, tear sheets of the newspaper notice published, and signed affidavits of notice.	July 15, 2015
Deadline for Comments, intervention or requests for hearing	30 days after notice provided
Deadline for Staff to file a supplemental procedural schedule. ⁴	August 28, 2015

IV. CONCLUSION

For the reasons stated above, Staff recommends the application be deemed administratively complete and respectfully requests the adoption of Staff's proposed procedural schedule.

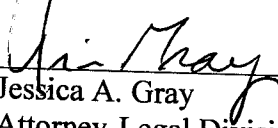
DATE: June 5, 2015

⁴ Staff notes that it is not able to set additional deadlines, such as deadline for Staff to file a final recommendation or request for hearing, until the Applicant files the affidavits of notice specifying when notice was complete.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

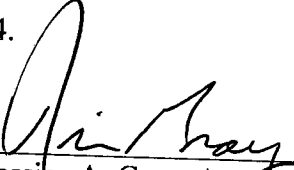
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 5th day of June, 2015 in accordance with 16 TAC § 22.74.


Jessica A. Gray, Attorney

ATTACHMENT A

PUC Interoffice Memorandum

To: Jessica Gray, Attorney
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Work Leader
Water Utilities Division

From: Leila Guerrero, Regulatory Accountant/Auditor
Tracy Harbour, GIS Specialist
Water Utilities Division

Date: June 3, 2015

Subject: Docket No. 43372, Application of City of McAllen to amend its Certificate of Convenience and Necessity (CCN) in Hidalgo County (Application No. 37982-C)

On July 14, 2014, the City of McAllen (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend sewer Certificate of Convenience and Necessity (CCN) No. 20524 in Hidalgo County. The application was filed under the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), Sections 291.102 - 291.107. On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under the PUC's Substantive Rules in Chapter 24, §§24.102 - 24.107.

On October 30, 2014, Commission Staff filed comments that the application was not administratively complete because it contained material deficiencies. On November 3, 2014, Order No. 3 was issued, finding the application incomplete and deficient, and directed the Applicant to cure the identified mapping deficiencies by December 1, 2014.

On December 15, 2014, the Applicant submitted a hard copy map and revised digital data including the projection file (metadata). Although the Applicant may not have intended to overlap existing CCN providers, the revised digital data included slight overlaps with Agua SUD (20785) and the City of Mission (20768).

On April 27, 2015, the Applicant submitted a hard copy map and revised digital data including the projection file (metadata) in response to Order No. 7.

Based on staff's review of the information in the application and the new mapping information, Staff recommends that the application be deemed sufficient for filing. Staff further recommends the following:

- 1) The Applicant be ordered to provide correct notice of the application to the following:
 - a) any districts, utilities and cities within two (2) miles of the proposed service area;
 - b) any city with an extraterritorial jurisdiction which overlaps the proposed service area;
 - c) county judge of each county;
 - d) any groundwater conservation district that is wholly or partly included in the proposed area;

- e) landowners with more than 25 acres and any affected parties in the proposed CCN area. The landowner information may be obtained from the county appraisal district tax rolls for the county or counties in which the proposed CCN lies; and
 - f) publish notice once each week for two (2) consecutive weeks in a newspaper of general circulation in Hidalgo County.
- 2) The Applicant should include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed area with each individual notice. Information related to districts including addresses can be obtained by the Applicant from the TCEQ web site located at <http://www14.tceq.texas.gov/iwud/>.
- 3) Notify the entities shown below in addition to the neighboring entities listed in the application:
- a) Hidalgo County
 - b) Hidalgo County Irrigation District 6 (4445260)
 - c) Hidalgo County Irrigation District 16 (4445294)
 - d) Rio Grande Regional Water Authority (7283500)
 - e) Santa Cruz Irrigation District 15 (7538000)
 - f) United Irrigation District (8100000)
- 4) Within 30 days of the Commission order, submit a copy of the actual notice issued, the map issued with the individual mailed notice, tear sheets of the newspaper notice, and the signed affidavits (copies attached) indicating that notice was given.