



Control Number: 43452



Item Number: 16

Addendum StartPage: 0

DOCKET NO. 43452

RECEIVED

2015 APR -9 PM 2:07

PUBLIC UTILITY COMMISSION
OF TEXAS
CLERK

APPLICATION OF THE TOWN OF §
LITTLE TO AMEND ITS §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY AND TO §
DECERTIFY PORTIONS OF §
CERTIFICATES HELD BY MUSTANG §
SPECIAL UTILITY DISTRICT AND §
TERRA SOUTHWEST INC. IN §
DENTON COUNTY (37896-C, 37897-C) §

COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Supplemental Recommendation. Staff recommends that the Commission find that the application is not administratively complete. In support of its Supplemental Recommendation, Staff states the following:

I. Background

On April 24, 2014, the Town of Little Elm filed an application with the Texas Commission of Environmental Quality (TCEQ). The Town of Little Elm requested an amendment to its water and sewer certificates of convenience and necessity (CCN Nos. 11202 and 20931, respectively) and to decertify portions of CCNs held by Mustang Special Utility District and Terra Southwest Inc. The Town of Little Elm also requests the approval of the addition of certain service areas currently served by Terra Southwest Inc., an investor-owned utility. The Town of Little Elm's service area is in Denton County, Texas.

On September 1, 2014, the processing of the Town of Little Elm's application was transferred from the TCEQ to the Commission.

On November 4, 2014, the Administered Law Judge entered Order No. 2, which required Staff to file a status update regarding the Town of Little Elm's application by December 12, 2014.

On December 12, 2014, Staff filed its Status Update. In its Status Update, Staff identified certain deficiencies in the Town of Little Elm's application. Staff recommended that the Town of Little Elm be given time to cure the deficiencies identified by Staff. Additionally, Staff recommended that the Town of Little Elm's application should exclude any transfer of

16

service areas from the Town of Little Elm to Terra Southwest Inc. Because Terra Southwest Inc. is an investor-owned utility, the Texas Water Code requires Terra Southwest Inc. to file an application for the transfer of such service areas.¹

On February 12, 2015, the Administrative Law Judge entered Order No. 5, which extended the deadline for the Town of Little Elm to cure its deficiencies to April 2, 2015. Order No. 5 also required Staff to file a supplemental recommendation regarding cured deficiencies within ten (10) working days of such cure.

On March 12, 2015, the Town of Little Elm filed additional documents in response to Staff's Status Update.

On March 27, the Administrative Law Judge entered Order No. 5, which extended the deadline for Staff to file its supplemental recommendation to April 9, 2015.² Staff's Supplemental Recommendation is timely filed.

II. Applicable Statutes and Rules

A. Amendment to a Certificate of Convenience and Necessity

The Texas Water Code details the requirements for amending 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."³ The Commission must 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 supply of water.⁴ 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.⁵

¹ See TEX. WATER CODE § 13.002(23) (defining "utility"); TEX. WATER CODE § 13.301 (requiring a utility to file a sale, transfer, merger application for the transfer of a water system).

² Two Order No. 5s were entered in this docket.

³ TEX. WATER CODE § 13.241(a).

⁴ TEX. WATER CODE § 13.241(b)(1)-(2).

⁵ TEX. WATER CODE § 13.246(c); 16 Tex. Admin Code § 24.102(a)(1)-(2), (d).

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 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.⁶

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.”⁷ 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.⁸

C. Administrative Completeness

In order for a CCN amendment application to be processed, the Commission’s substantive rules require that the Commission make a determination of administrative completeness. The Commission’s substantive rules state:

Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the applicant shall be notified by mail of that determination. If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other

⁶ 16 Tex. Admin Code § 24.106(b)(2).

⁷ 16 Tex. Admin Code § 24.106(c).

⁸ 16 Tex. Admin Code § 24.106(b)(6), (c).

requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.⁹

III. Staff's Supplemental Recommendation

After a review of the additional documents submitted by the Town of Little Elm, Staff has identified the following deficiencies:

- a. The maps should only delineate the proposed water or proposed sewer service areas.
- b. The maps should clearly label each proposed service area and surrounding roads, streets and highways, so staff may accurately locate and position their proposed digital data.
- c. The labeling on the maps submitted for the Town of Little Elm's proposed sewer CCN must be revised to clearly reflect the intent of their application. The Applicant should use the term "add," to describe CCN service areas being *added* to their existing CCN; and use the term, "decertify" to describe CCN service areas to be *removed* from their existing CCN. If the large scale sewer CCN map is to be used to notice neighboring entities, the Applicant should only show the proposed sewer CCN service areas being amended with this application.

The attached memorandum from Debbie Reyes Tamayo, Program Specialist in the Water Utility Division, further details the deficiencies in the Town of Little Elm's application.

Given the deficiencies identified by Staff, Staff recommends that Town of Little Elm's application not be deemed administratively complete. Staff recommends that the Town of Little Elm be given thirty (30) days to cure the deficiencies by Staff. Once the Town of Little Elm cures the deficiencies identified by Staff, Staff will review the Town of Little Elm's application for administrative completeness. In the event that Staff determines that the Town of Little Elm's application is administratively complete, Staff will propose a procedural schedule.

IV. Conclusion

The Town of Little Elm's application is not administratively complete due to certain deficiencies identified by Staff. Staff recommends that the Town of Little Elm be given thirty

⁹ 16 Tex. Admin Code § 24.8.

(30) days to cure the deficiencies by Staff. Staff requests that the Administrative Law Judge issue an order consistent with the recommendations in this Supplemental Recommendation.

Date: April 9, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division



Sam Chang
State Bar No. 24078333
Attorney, Legal Division

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
sam.chang@puc.texas.gov

DOCKET NO. 43452

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 9, 2015, in accordance with 16 Tex. Admin. Code § 22.74.



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utility Division

From: Debbie Reyes Tamayo, Program Specialist
Tracy Harbour, GIS Specialist
Water Utility Division

Date: April 7, 2015

Subject: Docket No. 43452, Applications of Town of Little Elm, to amend its Certificates of Convenience and Necessity (CCN's) in Denton County (Application Nos. 37896-C and 37897-C)

On April 24, 2011, Town of Little Elm (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend CCN Nos. 11202 and 20931 in Denton County, pursuant to the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), Section 291.101 – 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 Subst. R in Chapters §§24.101 – 24.107.

Based on my review of the information in the application, I recommend the application be deemed insufficient for filing due to issues with the Applicant's maps and digital data submitted on March 12, 2015. The Applicant has not satisfied the mapping requirements as listed on page 5 of the CCN Amendment Application and as required in the P.U.C. SUBST. Rule in Chapter 24.105(a) (2). In order to continue processing this application, the Applicant should do the following:

1. Submit large scale (detailed) maps for both the proposed water and proposed sewer service areas being requested with this application. These maps will be used for notice purposes.
 - a. The maps should only delineate the proposed water or proposed sewer service areas.
 - b. The maps should clearly label each proposed service area and surrounding roads, streets and highways, so staff may accurately locate and position their proposed digital data.
 - c. The labeling on the maps submitted for the Town of Little Elm's proposed sewer CCN must be revised to clearly reflect the intent of their application. The Applicant should use the term "add," to describe CCN service areas being

added to their existing CCN; and use the term, “decertify” to describe CCN service areas to be *removed* from their existing CCN. If the large scale sewer CCN map is to be used to notice neighboring entities, the Applicant should only show the proposed sewer CCN service areas being amended with this application.

TB/DRT