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DOCKET NO. 43452

**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)**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

2014 DEC 12 1:28
FILING CLERK

COMMISSION STAFF'S STATUS UPDATE

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) file its Status Update in response to Order No. 2. In support of its Status Update, 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 certificate of convenience and necessity (CCN) and to decertify portions of CCNs held by Mustang Special Utility District and Terra Southwest Inc. The Town of Little Elm requests the approval of certain service areas to Terra Southwest Inc., an investor-owned utility. The service area is in Denton County, Texas.

On June 24, 2014, the TCEQ sent the Town of Little Elm a Notice of Deficiency. The Notice of Deficiency required the Town of Little Elm to submit a map showing the proposed service area by:

- a. A metes and bounds survey certified by a licensed state or registered professional land surveyor;
- b. Projectable digital data with meta data;
- c. Verifiable natural and man-made landmarks; or
- d. A recorded plat map with metes and bounds.

Additionally, the Notice of Deficiency required the Town of Little Elm to include in its application a list of the following:

a. Entities providing the same type of retail utility service within two miles of the proposed service area;

b. Retail public utilities, districts, groundwater conservation districts, counties; and

c. Any cities whose corporate limits and/or extra-territorial jurisdiction are within the same two mile area of the proposed service area.

On July 24, 2014, in response to the Notice of Deficiency, the Town of Little Elm submitted additional documents in support of its application.

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

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

II. Applicable Statutes and Rules

The Texas Water Code details the requirements for amending a CCN. In determining whether to amend a CCN, the Commission "shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service."¹ 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.² 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 amend a CCN.³

III. Staff's Status Update

After a review of the Town of Little Elm's application, Staff has identified the following deficiencies:

a. The Town of Little Elm must provide an agreement with Mustang Special

¹ TEX. WATER CODE § 13.241(a).

² TEX. WATER CODE § 13.241(b)(1)-(2).

³ TEX. WATER CODE § 13.246(c); P.U.C. SUBST. R. 24.102(a)(1)-(2), (d).

Utility District to decertify the relevant portion of Mustang Special Utility District's certificate of convenience and necessity.

b. The Town of Little Elm must clarify whether it intends to decertify portions of certificates of convenience and necessity held by Mustang Special Utility District (CCN Nos. 11856 and 20930), Terra Southwest Inc. (CCN No. 11608), the Town of Hackberry (CCN No. 12015) and the City of Oak Point (CCN No. 20908).

c. The Town of Little Elm must state whether the decertification of Valencia on the Lake WCID's CCN Nos. 13138 and 21015 will result in the cancellation of such CCNs.

Additionally, the application should exclude any transfer of 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.⁴ 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 in the Town of Little Elm's application identified by Staff, Staff has determined that the application is not 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 (30) days to cure the deficiencies by Staff. Staff requests that the Administrative Law Judge issue an order consistent with the recommendations in this Status Update.

⁴ 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).

Date: December 12, 2014

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 12, 2014, in accordance with P.U.C. PROC. R. 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
Water Utility Division

Date: December 10, 2014

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), Sections 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 that the application be deemed insufficient for filing.

I further recommend the Applicant be ordered to:

- Provide an agreement with Mustang SUD (11856, 20930) to decertify portions of Mustang SUD's CCNs .
- Clarify if the Applicant intends to decertify portions of the following CCNs: Mustang SUD (11856, 20930), Terra Southwest Inc., (11608), Town of Hackberry (12015), and City of Oak Point (20908). The application only mentions amending the Applicant's CCNs.
- State if the decertification of Valencia on the Lake WCID's CCN Nos.13138 and 21015, will result in cancellation of Valencia's CCNs.
- Amend the application to remove references to Terra Southwest Inc., and to submit in a STM application pursuant to Texas Water Code, Chapter 13.301 which requires a utility (Terra Southwest Inc., is a utility as defined in TWC 13.002(23)) to file a STM application to address the transfer of the facilities and CCN area.

TB/DRT