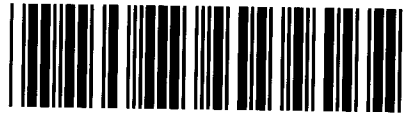




Control Number: 43832



Item Number: 14

Addendum StartPage: 0

PUC DOCKET NO. 43832

**APPLICATION OF PALO DURO
SERVICE COMPANY, INC. TO
AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN PARKER AND WISE COUNTIES**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

2015 JUN 25 AM 10:59

CLERK

CITY OF FORT WORTH'S REQUEST FOR PUBLIC HEARING

To the Honorable Administrative Law Judge, Susan E. Goodson:

COMES NOW the City of Fort Worth (the "City" or "Fort Worth"), acting by and through the undersigned attorney, and files this request for public hearing on the above-referenced application. The City would respectfully show as follows:

I. PROCEDURAL HISTORY

On February 9, 2015, Palo Duro Service Company, Inc. ("Palo Duro") filed its application (the "Application") to amend its Certificate of Convenience and Necessity ("CCN") No. 12200 in Parker and Wise Counties to add the 33-acre Aledo Ridge tract to its certificated service area. Palo Duro's Application was deemed administratively complete pursuant to Order No. 4 in this docket issued on May 7, 2015. Pursuant to Order No. 4, Palo Duro published a notice of its Application in both the Weatherford Democrat newspaper and the Wise County Messenger newspaper on May 20 and May 27, 2015. As stated in the public notices of Application (which are attached to the publishers affidavits filed on the PUC Interchange in this docket as Item No. 13), the deadline for filing a request for hearing in this case is thirty days from the last date of publication, or June 26, 2015. Accordingly this request for hearing is timely filed.

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II. REQUEST FOR PUBLIC HEARING

As required by PUC Rules and the public notices of Application, the City states as follows:

- (1) The name, mailing address and daytime telephone number of the hearing requester for purposes of this docket:

City of Fort Worth
c/o Stephen C. Dickman, Attorney
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
Tel: (512) 495-6413
Email: stephen.dickman@kellyhart.com

- (2) Applicant: Palo Duro Service Company, Inc.
Application: Application to Amend CCN No. 12200 in Parker and Wise Counties;
PUC Docket No. 43832
- (3) The City of Fort Worth requests a public hearing.
- (4) Justiciable Interest and Basis for Hearing Request.

The City would be adversely affected by the granting of the Application for CCN amendment in a way not common to the general public because the 33-acre Aledo Ridge tract (described as the “Second Tract” in the notices of Application) is located entirely within the City’s extra-territorial jurisdiction (“ETJ”) where the City has distinct governmental interests in and jurisdiction over health and safety and utility design and service activities. Sections 42.001, 212.002, 212.003, and 551.002 of the Texas Local Government Code establish Fort Worth’s statutory authority over the health and safety of its citizens and of persons in its ETJ, and over development – including the provision of utilities – in its ETJ. Under the municipal annexation statutes set forth in Chapter 43 of the Local Government Code, areas within a city’s ETJ are

subject to annexation and incorporation into a city. Section 551.002 of the Texas Local Government Code authorizes Fort Worth to protect its drinking water supply in its ETJ as well as in its city limits. Section 212.002 of the Local Government Code provides that the City may adopt rules regulating development to promote the health, safety, morals or general welfare of the municipality and the safe, orderly and healthful development of the municipality.¹ Section 212.003 provides that the city may extend those laws to the ETJ.² Under sections 212.002-.003, the City has authority to regulate development in its ETJ, and that authority includes the power to regulate the design criteria of utilities.³ Thus, Fort Worth's specific governmental interests are affected by the application.

In the case of granting Palo Duro the exclusive right to provide retail water service to persons within the Aledo Ridge tract, the City is specifically concerned that Palo Duro's design of the water facilities will be inconsistent and incompatible with the water facilities that comprise Fort Worth's public water system and that, once annexed into the City, the City will need to incur additional costs and delays in correcting these deficiencies and incompatibilities in the Aledo Ridge water facilities constructed by Palo Duro. Furthermore, any such deficiencies and incompatibilities with the Fort Worth system could constitute, or result in, a potential threat to the public health and safety of persons consuming water from the Aledo Ridge water facilities if the Aledo Ridge water facilities constructed by Palo Duro do not meet City Code requirements.

¹ Section 212.002 provides that: "After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality." TEX. LOC. GOV'T CODE ANN. § 212.002. Fort Worth has adopted such rules.

² Section 212.003(a) provides, "The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 . . ." TEX. LOC. GOV'T CODE ANN. § 212.003. Fort Worth's rules extend to its ETJ.

³ *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811, 823 (Tex. App.-Dallas 1986, writ ref'd n.r.e.).

Furthermore, the City is concerned that Palo Duro does not have the requisite financial, managerial and technical resources to provide continuous and adequate water service to the Aledo Ridge tract, especially in light of the costs and burdens on Palo Duro of serving all of its other certificated retail water service areas in Parker and Wise Counties.

Finally, Palo Duro has not met all requirements for obtaining certification of the Aledo Ridge tract, including but not limited to the submission of plans, planning material and a business plan to the Texas Commission on Environmental Quality as required by 30 TAC § 290.39(d), (e) and (f), nor has Palo Duro made a written application for water service from the City as required by 30 TAC § 290.39(c)(1) since the public water system proposed for the Aledo Ridge tract will be located within the City's ETJ.

(5) The City's concerns would be satisfied so that the City would withdraw this request for hearing if an agreement could be reached with the Applicant for dual certification of the Aledo Ridge tract with the City under which agreement Palo Duro would have primary responsibility for serving the area for a term of years, followed by single certification to the City. Such agreement should also require Palo Duro to construct water facilities that met all applicable City Code requirements, or were otherwise approved in writing by the City.

WHEREFORE, the City of Fort Worth respectfully requests that a public hearing be held on the Application and that this matter be referred for an evidentiary hearing to the State Office of Administrative Hearings. The City further requests all such other relief as to which it may show itself entitled at law or in equity.

Respectfully submitted,

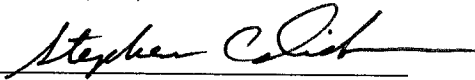
KELLY HART & HALLMAN LLP

303 Colorado Street, Suite 2000

Austin, Texas 78701

Telephone: (512) 495-6413

Facsimile: (512) 495-6613

By: 

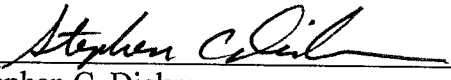
Stephen C. Dickman

State Bar No. 05836500

**ATTORNEYS FOR
THE CITY OF FORT WORTH**

**CERTIFICATE OF SERVICE
PUC DOCKET NO. 43832**

I hereby certify that a true and correct copy of the foregoing document has been served on the Parties of record in this docket on this 25th day of June, 2015 in accordance with PUC Rule 22.74.



Stephen C. Dickman