



Control Number: 44333



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DOCKET NO. 44333

**APPLICATION OF THE CITY OF
DEKALB TO AMEND A
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN BOWIE
COUNTY**

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PUBLIC UTILITY COMMISSION

OF TEXAS

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PUBLIC UTILITY COMMISSION
FILING CLERK

STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Final Recommendation. In support thereof, Staff would show the following:

I. BACKGROUND

On January 16, 2015, City of DeKalb (DeKalb) filed with the Commission an application (Application) to amend its water certificate of convenience (CCN) in Bowie County, Texas pursuant to Tex. Water Code §§ 13.242-50 (TWC) and Title 16 Tex. Admin. Code (TAC) §§ 24.101-07 (TAC). DeKalb seeks to amend its CCN to extend its service area as a result of the need for water service in the proposed area.

In Order No. 3, the Administrative Law Judge (ALJ) deemed the Application administratively complete and instructed the Applicant to submit proof of notice. Order No. 4, issued on July 21, 2015, instructed the Applicant to reissue notice and allowed it until August 20, 2015 to provide proof of the reissued notice. The Applicant filed notice documents on August 21, 2015. Order No. 6 allowed the Applicant until December 1, 2015 to file supplemental notice. Order No 7 allowed the Applicant to provide proof of the reissuance of notice by February 5, 2016. The Applicant filed proof of notice on January 16, 2016 and January 29, 2016.

II. RECOMMENDATION

As detailed in the attached memorandum of Leila Guerrero of the Water Utilities Division (Attachment A), Staff recommends that the notice remains deficient. The most recent notice issued by the Applicant contains incorrect language. The Applicant has now issued incorrect notice on three different occasions. Staff is unaware of what other actions it can take to

assist the Applicant. Therefore, Staff recommends that the Application be dismissed without prejudice pursuant to 16 TAC § 22.181.

Staff further recommends that the Applicant be allowed until April 12, 2016 to respond to Staff's recommendation. If the Applicant chooses to file a response, it could be helpful if the Applicant includes suggestions for remedying the notice deficiency or a clarification explaining the discrepancy between the proposed language of the notice that Staff provided and the language contained in the notice most recently issued by the Applicant.

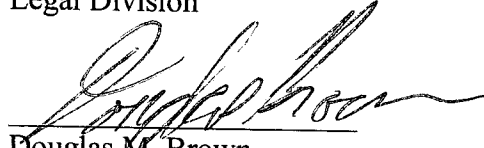
III. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above recommendations.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on or before March 21, 2016 in accordance with 16 TAC § 22.74.


Douglas M. Brown

ATTACHMENT A

PUC Interoffice Memorandum

To: Douglas Brown, Attorney
Legal Division

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

From: Leila Guerrero, Regulatory Accountant/Auditor
Water Utilities Division

Date: January 25, 2016

Subject: *Docket No. 44333, Application of City of DeKalb to amend water Certificate of Convenience and Necessity in Bowie County, Texas*

On January 16, 2015, the City of DeKalb ("Applicant" or "City") filed with the Public Utility Commission of Texas ("Commission" or "PUC") an application to amend its water Certificate of Convenience and Necessity (CCN) No. 10524 and to obtain dual certification with a portion of Central Bowie County WSC, CCN No. 10525, in Bowie County, Texas. This application is being reviewed pursuant to the criteria in the Tex. Water Code Ann. §§ 13.241 – 13.242, 13.244, 13.2451 and 13.246 (TWC) and 16 Tex. Admin. Code §§24.102 – 24.107 (TAC).

On April 16, 2015, Staff filed a recommendation deeming the application sufficient for filing and further recommended the Applicant be ordered to do provide proper public notice.

On April 20, 2015, the Commission issued Order No. 2 requiring the Applicant to file affidavit of notice by June 10, 2015.

On June 10, 2015, the Applicant filed affidavits of notice in the PUC's filing interchange. Upon review of the filed documents, Staff found that the notices provided were insufficient. Therefore, on July 20, 2015, Staff recommended that the Applicant be required to *re-publish notice once each week for two (2) consecutive weeks in a newspaper of general circulation in Bowie County*, and to send notice to *Sulphur River Basin Authority, Red River Authority of Texas and Bowie County* as instructed.

On July 21, 2015, the Commission issued Order No. 4 requiring the Applicant to re-submit affidavits of notice and the actual notice issued by August 20, 2015.

On August 21, 2015, the Applicant filed affidavits of notice in the PUC's filing interchange. Upon review of the filed documents, Staff found that they are still insufficient. The Applicant complied with the newspaper publication requirement; however, notice has not been provided to the *Sulphur River Basin Authority, Red River Authority of Texas and Bowie County*.

On September 25, 2015, Order No. 5 was issued, requiring the City to again re-issue notice and establishing October 15, 2015 deadline for the City to file proof of notice. The City did not comply with Order No. 5.

On November 17, 2015, Staff recommended to the Commission that the application remains deficient because the Applicant has not re-issued notice as it has been instructed and to cure the remaining notice deficiencies. Order No. 6 allowed the Applicant until December 1, 2015 to file supplemental notice documents and allowed Staff until January 7, 2016, to file a recommendation, request for a hearing, and/or an additional procedural schedule.

In response to Order No. 6, Staff specified that the notice remains deficient because the Applicant did not file a response to Order No. 6. Staff spoke with a representative of the Applicant on January 6, 2016, who said the Applicant was working to cure the notice deficiencies as soon as possible. Staff recommended the Applicant be allowed one more opportunity to cure the deficiencies.

On January 29, 2016, the Applicant filed affidavits of notice in the PUC's filing interchange. However, upon review of the filed documents, Staff found that the Applicant did not use the Staff's recommended notice form. The Applicant included on the notice the phrase: "***to decertify a portion (s) of 10525***", instead of "***to obtain dual certification with a portion of Central Bowie County WSC, CCN No 10525***" that was indicated on the notice form.

Based on the foregoing, Staff recommends dismissal of the application. The Applicant may file a new application if still interested in amending its CCN and obtaining dual certification.