

Control Number: 44380



Item Number: 12

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**PUC DOCKET NO. 44380**

**APPLICATION OF THE CITY OF  
AUSTIN TO CANCEL WATER AND  
SEWER CERTIFICATES OF  
CONVENIENCE AND NECESSITY  
HELD BY LOST CREEK MUNICIPAL  
UTILITY DISTRICT, IN TRAVIS  
COUNTY**

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**PUBLIC UTILITY COMMISSION  
OF  
TEXAS**

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PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 4**

Comes Now, Staff of the Public Utility Commission of Texas (Staff) and files this Response to Order No. 4. In support of this filing, Staff states the following:

**I. BACKGROUND**

On January 28, 2015, the City of Austin (COA) filed with the Commission an application (Application) requesting to cancel Lost Creek MUD's (Lost Creek or Applicant) water certificate of convenience (CCN) No. 10307 and wastewater CCN No. 20118 in Travis County, Texas. The Application is being reviewed under the 16 Tex. Admin. Code § 24.115 (TAC).

COA filed the Application on behalf of the Applicant, as is noted in the supplemental materials filed on June 5, 2015. COA annexed the Applicant and all of its water and wastewater customers on December 1, 2014. The Applicant asked that the Commission waive newspaper notice, as it believes the newspaper notice provided to the customers during the annexation process was sufficient to alert affected parties that COA was taking over.

Order No. 4 deemed the Application insufficient and allowed the Applicant time to cure the deficiencies. The Applicant timely supplemented the Application on June 5, 2015. Order No. 4 instructed Staff to file a supplemental recommendation by July 7, 2015. Therefore, this pleading is timely filed.

**II. RECOMMENDATION**

As noted by the attached memorandum (Attachment A) of Elizabeth English and Komal Patel of the Water Utilities Division, Staff recommends that the supplemental filing cured the Application's previously noted deficiencies, and the Application should now be deemed sufficient

for filing. Staff further recommends that the Applicant should issue notice as adjusted by the attached proposed notice form (Attachment B). Attachment A provides detailed instructions on how the Applicant may issue notice, and recommends that newspaper notice not be required. Attachment C is a sample draft affidavit of notice.

The Applicant shall not issue notice until the Commission's Administrative law Judge issues an order accepting the application for filing and directing the Applicant to issue notice.

### III. PROPOSED PROCEDURAL SCHEDULE

Staff proposes the following procedural schedule:

Deadline for the Applicant to submit an affidavit of notice, the notice actually issued, and the attached map.	August 7, 2015
Deadline for affected parties, other than Staff, to file comments, intervene, or request a hearing.	30 days after notice is issued
Deadline for Commission Staff to request a hearing or to file a supplemental procedural schedule.	September 18, 2015

### IV. 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  
Legal Division



Douglas M. Brown  
Attorney, Legal Division  
State Bar No. 24048366  
(512) 936-7203  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**DOCKET NO. 44380**  
**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on July 7, 2015 in accordance with 16 TAC § 22.74.

  
Douglas M. Brown

**ATTACHMENT A**

## PUC Interoffice Memorandum

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**To:** Doug Brown, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Water Utilities Division

**From:** Elisabeth English, Engineering Specialist  
Komal Patel, GIS Specialist  
Water Utilities Division

**Date:** July 6, 2015

**Subject:** Docket No. 44380: *Application of the City of Austin to Cancel Water and Sewer Certificates of Convenience and Necessity Held by Lost Creek Municipal Utility District in Travis County*

On January 28, 2015, the City of Austin (City) filed with the Public Utility Commission of Texas (Commission) on behalf of Lost Creek Municipal Utility District's (MUD or Applicant) an application requesting to cancel the MUDs water and sewer Certificates of Convenience and Necessity (CCN), Nos. 10307 and 20118 respectively, in Travis County, Texas. The application is being reviewed under Tex. Water Code Ann. § 13.250 (TWC) and 16 Tex. Admin. Code § 24.115 (TAC). Staff was originally requested to review the application for administrative completeness and file a recommendation no later than February 24, 2015 via Order No. 1.

The application was found to be deficient during the initial Staff review, and Order No. 2 instructed the City to cure the noted deficiencies no later than March 25, 2015. The City supplemented the application on April 14, and Order No. 3 requested that staff file a second recommendation. Order No. 4 found the application deficient for a second time, and ordered the City to cure the deficiencies no later than June 15, 2015; the City supplemented their application on June 5, 2015.

Order No. 4 requested that Staff provide a recommendation regarding sufficiency no later than July 7, 2015. Upon review of the supplemental information provided by the City, Staff recommends the application be deemed administratively complete and sufficient for filing.

The following was provided by the City to cure the deficiencies noted in the previous Staff recommendation:

1. A revised application, including amended responses for questions 2, 8-B, 11, 13, 15, and 16;
2. Revised Public Notice for current customers, neighboring systems and cities;
3. And a new map with digital data for the applicable sewer CCN.

The Applicant requested a waiver of the notice requirements in its original filing. Pursuant to 16 TAC § 24.105(c), the Applicant shall notice customers and neighboring systems providing the

same utility service as the Applicant. 16 TAC § 24.105(d) permits the Commission to waive the publication of notice. Staff recommends that published notice be waived as a result of the notices distributed during the annexation of the area.

Staff further recommends the following:

- 1) Notice the following entities, in addition to those entities listed in the application, located within a 2-mile buffer of the proposed water and sewer service areas requested with this application in accordance with 16 TAC § 24.106(b)(2):
  - George S. Nalle III (CCN 11728)
  - Travis County MUD 5
  - Travis County MUD 6
  - Travis County MUD 7
  - Travis County MUD 8
  - Travis County MUD 9
  - Travis County MUD 3
  - Travis County WCID 20
  - Lower Colorado River Authority
  - Barton Springs / Edwards Aquifer Conservation District
- 2) Provide the correct notice of the application to the following in accordance with 16 TAC § 24.115(c):
  - i. any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service areas;
  - ii. any city with an extraterritorial jurisdiction which overlaps the proposed service areas; and
  - iii. any customers transferred, or other affected parties in the requested area.
- 3) Include a copy of a map showing the proposed service areas with the individual notices to neighboring utilities, customers and other affected parties in accordance with 16 TAC § 24.106(a)(2). It is the Applicant's burden to provide an accurate map delineating the proposed service areas 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/>

Staff has attached notice documents, which have been corrected to include the applicable language. The Applicant should submit a copy of the actual notice and the map issued with the individual mailed notice, and the signed affidavits (copies attached), indicating the notice was given in accordance with 16 TAC § 24.106(b)(6).

**ATTACHMENT B**



**NOTICE FOR CUSTOMERS AND NEIGHBORING UTILITIES**

**NOTICE OF CANCELATION OF CERTIFICATE OF CONVENIENCE AND NECESSARY NOS. 10307 AND 20118 IN TRAVIS COUNTY, TEXAS**

To: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_, 2015  
(Name of Customer, Neighboring System, or City)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(City State Zip)

Lost Creek MUD has filed a petition with the Public Utility Commission of Texas to cease operations, discontinue providing water and sewer utility service, and to cancel Certificate of Convenience and Necessity Nos. 10307 and 20118 in Travis County, Texas.

The proposed effective date of the action is approximately November 3, 2015. There is no anticipated effect of the cessation of operations on the rates and services provided to the customers, as service is currently being provided by the City of Austin as a result of the area being annexed by the City.

The water and sewer utility service area is located approximately 6 miles west of downtown Austin, Texas, and is generally bounded on the north by Whitemarsh Valley Walk; on the east by Capital of Texas Highway; on the west and south by Barton Creek.

A copy of the service map is available at: 625 E 10th Street, Austin, TX 78701

The utility operations will be continued by the City of Austin

The owner, Lost Creek MUD, may be contacted at: 1305 Quaker Ridge Drive Austin TX 78746, or by telephoning 512-327-6243.

If you wish to protest or comment on this petition, you should notify the utility and must file your protest in writing with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Ave, P.O. Box 13326, Austin, Texas 78711-3326 within (30) days of the date of this notice. Only those individuals who submit a written protest will receive notice if a hearing is scheduled.

Tom Clark (General Manager)  
Utility Representative

Lost Creek MUD  
Utility Name

1305 Quaker Ridge Drive Austin TX 78746  
Mailing Address

512-327-6243  
Telephone No.

**Si desea informacion en Espanol, puede llamar al 1-512-239-0200.**

**ATTACHMENT C**

# PUBLIC UTILITY COMMISSION



AFFIDAVIT OF NOTICE TO NEIGHBORING UTILITIES, LANDOWNERS AND AFFECTED PARTIES  
DOCKET NO. 44380

STATE OF TEXAS  
COUNTY OF Travis

City of Austin (on behalf of Lost Creek MUD) has provided individual notice to the following entities:

	DATE
_____	_____
_____	_____
_____	_____
_____	_____

### OATH

I, \_\_\_\_\_, being duly sworn, file this form as

\_\_\_\_\_ (indicate relationship to applicant, that is, owner, member of partnership, title of officer of corporation, or other authorized representative of applicant); that in such capacity, I am qualified and authorized to file and verify such form, am personally familiar with the notices given with this application, and have complied with all notice requirements in the application and application acceptance letter; and that all such statements made and matters set for therein are true and correct.

\_\_\_\_\_  
Applicant's Authorized Representative

If the applicant to this form is any person other than the sole owner, partner, officer of the applicant, or its' attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Print or Type Name of Notary Public

Commission Expires \_\_\_\_\_