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DOCKET NO. 44541

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PUBLIC UTILITY COMMISSION
CLERK

**APPLICATION OF CITY OF HEATH TO
AMEND A CERTIFICATE AND
NECESSITY AND TO DECERTIFY A
PORTION OF FORNEY LAKE WATER
SUPPLY CORPORATION'S SERVICE
AREA IN WOCKWALL COUNTY**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RESPONSE TO ORDER NO. 2

COMES NOW the Staff ("Staff") of the Public Utility Commission of Texas ("Commission"), representing the public interest and files this Response to Order No. 2 and would show the following:

I. BACKGROUND

On March 16, 2015, the City of Heath ("Heath") filed an application to amend its water certificate of convenience and necessity ("CCN") No. 12060 and to decertify a portion of the area certificated to Forney Lake Water Supply Corporation ("Forney Lake") as part of CCN No. 10086 in Rockwall County.¹

On April 10, 2015, Order No. 2 was entered requiring Heath to cure certain deficiencies in the application and directing Staff to file a recommendation on administrative completeness by May 20, 2015. This pleading is timely filed.

II. RECOMMENDATION REGARDING A PROCEDURAL SCHEDULE

The parties are jointly proposing a procedural schedule to be filed on the same day as this pleading. Staff respectfully recommends adoption of the jointly proposed procedural schedule.

¹ Application to Obtain or Amend a Certificate of Convenience and Necessity (CCN) Under Water Code Section 13.255 (Mar. 16, 2015) ("Application").

III. RECOMMENDATION REGARDING ADMINISTRATIVE COMPLETENESS

If the parties' joint proposed procedural schedule is adopted, Staff recommends that the application be deemed to be administratively complete. Staff's recommendation is, in part, based on the jointly proposed procedural schedule agreed by the parties. Staff holds the view that, ordinarily, given a 90-day deadline for the Commission to determine both whether the certification requested would result in property of a retail public utility being rendered useless or valueless and the monetary amount that is adequate and just to compensate the retail public utility for such property,² Staff would recommend that an applicant submit the appraisals required by Tex. Water Code Ann. § 13.255(l) (Vernon 2007 and Supp. 2014) (TWC) prior to the filing being deemed administratively complete. The appraisals are necessary to permit the Commission to properly evaluate any claim of property being rendered useless and valueless and to permit the Commission to determine the reasonable value at the same time as a decision on whether any property is rendered useless or valueless.

Staff further believes that, under a 90-day deadline, it may be burdensome to hold a hearing on whether property of an affected retail public utility is rendered useless or valueless, receive a decision on such a hearing, and then enter into a valuation under the procedures set out in TWC § 13.255(l). As such Staff would recommend that the appraisals required by TWC § 13.255(g) be submitted with the application in order for it to be deemed administratively complete. However, in this case, if the jointly proposed procedural schedule is adopted, it would permit the Commission to reach a determination regarding whether any of Forney Lake's property will be rendered valueless or useless, which may obviate the need to undertake the expense of hiring appraisers pursuant to TWC § 13.255(l).

As indicated in the attached memorandum of Elisabeth English, Heath has addressed the deficiencies in its application as filed. Consistent with the above discussion, Staff recommends that the application be deemed to be administratively complete.

² 16 Tex. Admin. Code § 24.120(h).

IV. CONCLUSION

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

Date: May 20, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
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DOCKET NO. 44541
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 20, 2015 in accordance with P.U.C. PROC. R. 22.74.



A. J. Smullen

Public Utility Commission of Texas

Memorandum

TO: AJ Smullen, Attorney
Legal Division

FROM: Elisabeth English, Engineering Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Water Utilities Division

DATE: May 19, 2015

RE: Docket No. 44541: *Application of City of Heath to Amend a Certificate of Convenience and Necessity and to Decertify a Portion of Forney Lake Water Supply Corporation's Service Area in Rockwall County*

On March 16, 2015, City of Heath (City) filed with the Public Utility Commission (Commission) an application to amend its water certificate of convenience (CCN) No.12060 and to decertify a portion of Forney Lake Water Supply Corporation's (WSC) service area, CCN No. 10086, in Rockwall County. The application was filed pursuant to Texas Water Code (TWC) § 13.255 and the 16 Tex. Admin. Code (TAC) § 24.120.

Order No. 1 requested that Staff provide a recommendation regarding administrative completeness of this application by April 8, 2015. The initial review found that the application was not administratively complete; specifically, that the mapping information included with the application did not comply with the Commission's mapping requirements. Furthermore, Staff concluded that the application did not contain sufficient information to permit a full, timely review of the merits of the application. Order No. 2 requested that the City cure the deficiencies in the Application, and that Staff provide a recommendation by May 20, 2015.

For the reasons discussed below, I recommend that the application be found to be administratively complete.

The City incorporated and annexed portions of the WSC's service area and provided a map detailing the aforementioned areas in relation to the proposed affected area. The City provided a copy of the notice of intent to serve, sent to the WSC on June 2, 2011, pursuant to 16 TAC §24.120(b). An application for single certification was filed as a result of the City and the WSC failing to execute an agreement within 180 days of the notification of intent to serve. The City is seeking single certification to provide water utility service to customers that are not currently receiving service by the WSC in the proposed area.

The WSC identified 8 addresses that it serves within the original proposed area. The City amended its application to exclude the tracts of land that are currently being served by the WSC, as well as areas that are not identified as having a need for service (undeveloped). As amended, the acreage provided in the City's meets and bounds descriptions is 903 acres and 903.54 acres in the digital data. Maps, tract plats, meets and bounds survey descriptions, and a written description of the proposed service area were reviewed by mapping staff and satisfied the mapping requirements as listed in the application, and as required in the 16 TAC § 24.105(a) (2).

The City, on April 24, proposed to Forney Lake WSC the names of two appraisers for its consideration.

Pursuant to 16 TAC §24.120(n) the City demonstrated compliance with TCEQ's minimum requirements for public drinking water systems pursuant to 30 TAC Chapter 290, Subchapter D by providing the most recent Comprehensive Compliance Investigation (CCI) report, and subsequent Notice of Compliance with violations noted during the investigation. The CCI was conducted May 24, 2013 and the Notice of Compliance was dated May 1, 2015.

Accordingly, I recommend that the City has addressed the issues identified in Staff's Response to Order No. 1, and I recommend that the application be accepted for filing.