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Addendum StartPage: 0

DOCKET NO. 44541 RECEIVED

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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

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

COMES NOW the Staff ("Staff") of the Public Utility Commission of Texas ("Commission"), representing the public interest and files this Response to Order No. 1 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 March 18, 2015, Order No. 1 was entered requiring Staff to file comments regarding the administrative completeness of the application. This pleading is timely filed.

II. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS AND PROCEDURAL SCHEDULE

Based on the attached memorandum of Elisabeth English, Staff recommends that the application is not administratively complete at this time. Specifically, Ms. English notes that Heath's mapping information included with the application does not comply with the Commission's mapping requirements.

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

Pursuant to 16 TAC § 22.55, the presiding officer may require a party to provide reasonable notice to affected persons. Heath has not indicated whether it has served on Forney Lake its application or notice of its application even though Heath indicates that Forney Lake possesses water lines in the affected area.² Staff recommends that, generally, an applicant requesting single certification of an area pursuant to 16 TAC § 24.120 be required to provide notice of the application to the affected utility. However, because an attorney for Forney Lake has appeared in this proceeding through a pleading filed earlier in the day on the same date as this filing,³ Staff recommends that it is not necessary that Heath be required to provide Forney Lake with notice of its application.⁴

In addition, Heath has not provided sufficient information for the efficient review of its application, especially in light of the 90-day deadline for the Commission's processing of the application.⁵ As stated above, Heath indicates that Forney Lake possesses water lines in the affected area.⁶ However, Heath has not indicated in its application whether it expects any property possessed by Forney Lake to be rendered valueless or useless. If any such property exists, Heath and Forney Lake will be required to participate in the selection of an appraiser to determine the value of the affected property, with the process for selecting the appraiser varying depending on whether the affected area has been incorporated or annexed by Heath.⁷ Staff recommends that Heath be required to provide information regarding whether it expects any of Forney Lake's property to be rendered valueless or useless and, if so, whether Heath expects to select an appraiser and the steps Heath has taken to select one. Due to the limited 90-day period in which this matter may be processed, which is triggered by the application being deemed administratively complete, Staff recommends that Heath be required to provide this information

² Application at 2 (responding to Question 9 on the Commission's form).

³ Forney Lake Water Supply Corporation's Response to Order No. 1 (Apr. 8, 2015).

⁴ Staff notes that 16 TAC § 24.120(b) appears to require that the "commission shall . . . [give] notice of the application . . . to the retail public utility." Staff recommends that this requirement may be considered to be satisfied at this time due to the appearance of an attorney for Forney Lake in this proceeding.

⁵ The compensation, if any, due to Forney Lake must be determined by the Commission not later than the 90th calendar day after the date on which the Commission determines that the application is administratively complete. TWC § 13.255(g-1).

⁶ Application at 2 (responding to Question 9 on the Commission's form).

⁷ TWC § 13.255(l).

prior to the application being deemed administratively complete in order to ensure efficient processing of this matter.

Due to the deficiencies detailed above, Staff is not able to propose a procedural schedule at this time.⁸ Staff recommends that Heath be permitted 30 days to correct the deficiencies identified above.

Staff further recommends that Staff be required to file a supplemental recommendation regarding administrative completeness and to propose a procedural schedule by **May 20, 2015** in order to permit additional time to review any supplemental information provided by Heath to cure the deficiencies identified in Staff's recommendation.

Staff notes that Forney Lake has requested that the deadline to propose a procedural schedule be moved to April 22, 2015.⁹ However, Staff recommends that it would be preferable to permit additional time beyond April 22, 2015 for Heath to supplement its application and for Staff to review any supplemental information.

III. CONCLUSION

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

⁸ Although the Commission is only permitted 90 days to process this matter, Staff notes that the 90-day deadline begins from the date on which the application is determined to be administratively complete. TWC § 13.255(g-1).

⁹ Forney Lake Water Supply Corporation's Response to Order No. 1 (Apr. 8, 2015).

Date: April 8, 2015

Respectfully Submitted,

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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 April 8, 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
Tracy Harbour, GIS Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Water Utilities Division

DATE: April 7, 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 Rockwell 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 and necessity (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 P.U.C. SUBST. R. § 24.120.

Concerning Application Content

The City provided a notice of intent to serve customers within Forney WSC's CCN area on June 2, 2011 per the requirements in TWC §13.255. A copy of the notice was provided in the City's filing. An application for single certification was filed as a result of the City and Forney WSC failing to execute an agreement within 180 days of the notification of intent to serve. The City did not indicate that it provided notice of the application to Forney WSC.

I recommend that the application does not contain sufficient information to permit a full, timely review of the merits of the application. The application states that Forney WSC has service lines in the proposed area, and that it is seeking single certification to serve new customers only. The application does not include information pertaining to whether Forney WSC's facilities in the proposed area will be rendered valueless or useless via the CCN amendment. Furthermore, the application does not clearly state whether the area was annexed or incorporated which ultimately determines the course of appraisal following the acceptance of the application. Due to the short time frame permitted for processing the request following

the acceptance of the application (90 days), I recommend that the City provide this additional information during the administrative review phase.

I recommend that the application is deficient in content; further information is necessary in order to accept the application for filing. I recommend that the City be required to provide the following information:

1. A statement regarding the expected outcome in regards to the facilities located within the proposed area, owned and operated by Forney Lake WSC, and whether it expects the facilities to be rendered valueless or useless;
2. Clarification on whether the proposed area was annexed or incorporated;
3. A statement regarding the status of the selection of an appraiser.

Concerning Mapping Issues

Staff is unable to determine an accurate location of the proposed water service areas being requested with this application. The Applicant has not satisfied the mapping requirements as listed in the CCN Amendment Application and as required in the P.U.C. SUBST. R. §24.105(a)(2). I recommend that the City be required to submit the following items to resolve the mapping deficiencies:

1. A small scale (general location) map only showing the location of the proposed service area(s) in the vicinity of the nearest town, city, or county.
2. A detailed (large scale) map clearly delineating the proposed water service area with enough detail to accurately locate the service area in the vicinity of surrounding roads, streets, and highways.
 - a. Submit a scaled map only showing the proposed water service area and the city limit boundaries for the City of Heath. Do not show surrounding CCN service areas.
 - b. Must add a title and a legend to the map clearly stating the intent of the application, identify the utility name and CCN number being amended.
 - c. Must clearly label, mark or highlight the proposed water service area being amended.
 - d. Roads, streets and highways must be clearly labeled on all maps.
3. Revised digital data for their proposed water service area, which removes the portion not located within the City of Heath's city limit boundaries.
4. Confirm the total acreage being amended for the City of Heath's proposed water service areas. The total acreage does not match for the metes and bounds survey description and the digital data submitted for the Applicant's proposed water service areas. Confirm whether the total acreage for the proposed water service area is approximately 1,020 acres as provided with their metes and bounds description, or is approximately

1,031 acres as provided in their digital data.