



Control Number: 44541



Item Number: 8

Addendum StartPage: 0

DOCKET NO. 44541

RECEIVED

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

PUBLIC UTILITY COMMISSION
OF TEXAS
2015 APR 8 PM 2:27
FILING CLERK

CITY OF HEATH'S RESPONSE TO ORDER NO. 1

Now comes the City of Heath ("Heath") and files its response to Order No. 1 and in support thereof show the following.

I. Background

This case concerns the City of Heath's application for single certification *solely* to serve new customers not currently receiving water utility service within Heath's corporate limits. This case is related to Forney Lake Water Supply Corporation's (FLWSC) petition for a cease and desist order which is currently pending at the State Office of Administrative Hearings under PUC docket number 43463, SOAH docket number 473-15-2102.WS.

On June 2, 2011 Heath provided Forney Lake Water Supply Corporation the City's notice of intent to provide retail water utility service, without first obtaining a certificate of convenience and necessity, to areas or customers not currently being served within its corporate limits as authorized Texas Water Code §13.242(c) and 30 TAC §291.103(c).¹ Despite efforts to negotiate, Heath and FLWSC have not reached an agreement concerning the City's service to new customers not currently receiving service within the City's corporate limits.

On October 2, 2014 Forney Lake filed an unverified petition with PUC alleging that Heath was knowingly providing retail water utility service within Forney Lake's certificated service area. The City of Heath filed a response to FLWSC's cease and desist petition that included the sworn affidavit of Heath's City Manager. The City Manager testified under oath that Heath was not providing retail water service within FLWSC'S certificated service area, but that the City had filed its June 2, 2011 notice with FLWSC stating the City's intent to provide such service to new customers within its corporate limits.² The City Manager also testified that

¹ PUC has adopted the language of 30 TAC §291.103(c) as PUC Substantive Rule 24.103(c)

² See PUC docket No. 43463, City of Heath's Response to Forney Lake WSC's request for cease and desist order, Attachment A, Paragraphs 1&3

8

the City planned to file for single certification before it provides water utility services to new customers.³ That application is the subject of this docket.

II. Heath's recommendation regarding how this Petition should be processed

FLWSC's Response to Order No. 1 states that Tex. Water Code §13.255 "requires compensation to be determined". This assertion reflects a misreading of the governing statute. Compensation is required only if the utility commission "*determine[s]* whether single certification *as requested by the municipality* would result in property of a retail public utility being rendered useless or valueless."⁴ FLWSC has not alleged that any of its property will be rendered useless and valueless as a result of Heath's request for single certification. Perhaps this allegation has been omitted because it cannot be sustained.

Heath submits that the PUC could determine, as a matter of law, that the single certification "as requested by the municipality" would not result in property of FLWSC being rendered useless or valueless. Heath's application expressly seeks "single certification *solely* to serve *new customers* in specified tracts anticipated for development as residential subdivisions in Heath's corporate limits."⁵ Heath's application makes it clear that if FLWSC is currently providing water utility service within any of the tracts where Heath intends to serve new customers, FLWSC can continue to serve its existing customers because they are beyond the scope of Heath's application for single certification "solely to serve new customers".⁶ Moreover, Heath's application does not request the transfer of any specified property of FLWSC. Accordingly, the commission should determine, as a matter of law, that no property of FLWSC will be rendered useless and valueless and proceed to process administratively Heath's application.

If the commission elects not to determine, as a matter of law, that the single certification as requested by Heath will not render property of FLWSC useless or valueless, it should refer this case to SOAH for a contested case hearing to resolve any disputed fact issues concerning whether FLWSC's property will be rendered useless or valueless. Referral to SOAH would allow this case to be processed in conjunction with FLWSC's petition for cease and desist order which is currently pending at SOAH. The commission should defer the creation of a procedural schedule to SOAH.

Based on the foregoing, the Commission should determine, as a matter of law, that single certification, as requested by Heath, would not result in property of FLWSC being rendered useless or valueless, or, in the alternative refer this case to SOAH to resolve any disputed fact

³ Id, at paragraph 8

⁴ Texas Water Code §13.255(c)

⁵ Heath's application, No. 9, description of retail public utilities

⁶ Id.

issues raised by the pleadings concerning whether single certification as requested by Heath would result in property of FLWSC being rendered useless or valueless.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Mathews", with a stylized flourish at the end.


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Heath's Response to Order No. 1 was served on all parties of record in this proceeding on this 8th day of April, 2015, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

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