



Control Number: 44820



Item Number: 59

Addendum StartPage: 0

RECEIVED

APPLICATION OF THE CITY OF
HACKBERRY FOR A SEWER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN DENTON
COUNTY

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PUBLIC UTILITY COMMISSION

OF TEXAS

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PUBLIC UTILITY COMMISSION
FILING CLERK

NOTICE OF APPROVAL

This Notice addresses the application of the City of Hackberry for a sewer certificate of convenience and necessity (CCN) in Denton County. Commission Staff recommended approval of the application, as amended. The application, as amended, is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. On June 9, 2015, Hackberry filed an application to obtain a sewer CCN in Denton County.
2. Hackberry requests approval to serve an area of approximately 1,035 acres and 1,182 current customers, and to have a portion of the Town of Little Elm's sewer CCN No. 20931, which lies within Hackberry's extraterritorial jurisdiction (ETJ) decertified.
3. On July 13, 2015, Order No.2 was issued, finding the application deficient for the reasons specified by Commission Staff, including overlaps, without accompanying consents, with sewer CCNs held by the City of Frisco and the Town of Little Elm and overlaps with the city boundaries of Frisco, Little Elm and The Colony. Order No. 2 also established deadlines for Hackberry to cure the deficiencies in the application and for Staff to provide a supplemental recommendation.
4. On September 30, 2015, Hackberry amended the application and provided supplemental mapping information.
5. On November 13, 2015, Commission Staff recommended that the application remains deficient for several reasons; including, mapping deficiencies, remaining unconsented overlaps with Frisco's CCN No. 20591 and with the corporate boundary of Frisco, Little Elm and The Colony, and questions about the effect on this application of the agreement

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Hackberry entered with Little Elm. Order No. 6, issued on November 16, 2015 found that the application continues to be deficient and established deadlines to cure and for a supplemental recommendation.

6. On February 12, 2016, Hackberry explained that the overlaps with Little Elm should be eliminated when Little Elm's application in Docket No. 43452 is approved, submitted Little Elm's consent to decertification of the portion of Little Elm's CCN No. 20931 that lies within Hackberry's ETJ as requested in this application, and Little Elm's consent to Hackberry being granted a sewer CCN where the proposed service area overlaps the corporate limits of Little Elm, as depicted in an attachment to the filing.
7. On February 19, 2016, Hackberry amended the application a second time providing more mapping information and providing another copy of Little Elm's consents.
8. On March 31, 2016, Commission Staff recommended the application be deemed sufficient; but stated that Hackberry must show that the North Texas Municipal Water District (NTMWD) consents to Hackberry serving within its boundary and acknowledged that small slivers of the requested service still overlap with the service area requested by Little Elm in Docket No. 43452.¹ Commission Staff also proposed procedural schedule.
9. On April 1, 2016, Order No. 10 was issued, deeming the application, as amended, administratively complete, addressing notice, and establishing a procedural schedule for continued processing.
10. On May 3, 2016, a letter from NTMWD was filed, which stated that NTMWD does not provide retail sewer service to individual customers, instead providing wholesale sewer treatment service to its member and customer cities; therefore NTMWD does not object and consents to Hackberry being granted a sewer CCN within Hackberry's corporate limits and ETJ.
11. On June 15, 2016, Commission Staff recommended that Hackberry's notice be found sufficient and proposed a deadline for filing a final recommendation, request for hearing, or an additional procedural schedule.

¹ *Application of the Town of Little Elm to Amend its Certificate of Convenience and Necessity and to Decertify Portions of Certificates held by Mustang Special Utility District and Terra Southwest, Inc. in Denton County (37896-C, 37897-C), Docket No. 43452 (Apr. 24, 2014).*

12. On June 16, 2016, Order No. 11 was issued, finding Hackberry's notice sufficient and establishing an extended deadline for Commission Staff to file a final recommendation, request for hearing, or propose a procedural schedule for continued processing.
13. On July 28, 2016, Commission Staff filed its first request for information (RFI) to Hackberry regarding whether previous Texas Commission on Environmental Quality (TCEQ) violations had been resolved.
14. On September 15, 2016, Hackberry responded to Commission Staff's first RFI. On September 22, 2016, Hackberry filed a supplemental response to Commission Staff's first RFI.
15. On September 27, 2016, Commission Staff recommended that Hackberry be provided additional time to submit documentation that its violation with TCEQ had been cured and that Commission Staff be allowed additional time to provide a final recommendation regarding Hackberry's application.
16. On September 28, 2016, Order No. 14 was issued, granting additional time for Hackberry to submit additional documentation and for Commission Staff to file a final recommendation.
17. On September 30, 2016, Hackberry filed an amendment to the application.
18. On October 13, 2016, Hackberry filed a second supplemental response to Commission Staff's first RFI.
19. On November 3, 2016, Hackberry filed a consent form evidencing its consent to Commission Staff's proposed map and certificates.
20. On November 10, 2016, Commission Staff recommended approval of Hackberry's application, as amended.
21. On February 16, 2017, Little Elm filed a consent form evidencing consent to the proposed map and certificates prepared by Commission Staff.
22. On February 27, 2017, Commission Staff filed a supplemental final recommendation, recommending decertification of the portion of Little Elm's sewer CCN that lies within the extraterritorial jurisdiction of Hackberry.

23. On February 28, 2017, Commission Staff filed a joint motion to admit evidence and a joint proposed notice of approval. Commission Staff provided copies of the revised maps and certificates.
24. The revised map and certificates discussed in Findings of Fact No. 19, 21, and 23 are attached to this Notice.
25. On April 17, 2017, Order No. 20 was issued, admitting evidence into the record in this proceeding.

Notice

26. The Commission caused notice of this proceeding to be published in the *Texas Register* on June 26, 2015.
27. Hackberry provided notice by publication in the *Denton Record-Chronicle* on April 22 and 29, 2016. A publisher's affidavit signed by Chris Brumfield, an authorized representative of the *Denton Record-Chronicle*, attested to the notice.
28. Hackberry mailed notice of the application to neighboring systems, cities, utilities, and affected parties on April 22, 2016. Hackberry filed proof of such notice on May 3, 2016.
29. Hackberry mailed notice of the application to landowners on April 27, 2016. Hackberry filed proof of such notice on May 3, 2016.

Informal Disposition

1. More than 15 days have passed since the completion of all notice requirements.
2. Hackberry, Little Elm, and Commission Staff are the only parties to this proceeding.
3. There were no protests or hearing requests filed in response to the public notices; therefore, no hearing was necessary.

II. Conclusions of Law

1. The Commission has jurisdiction and authority over this matter pursuant to Texas Water Code §§ 13.241, 13.242, 13.244, 13.245, 13.246, and 13.254 (TWC).
2. Hackberry is a municipality and a retail public utility as defined in TWC § 13.002(19) and 16 Texas Administrative Code § 24.3(59) (TAC).

3. Hackberry provided public notice of this proceeding in compliance with TWC § 13.246 and 16 TAC § 24.106.
4. After considering the factors in TWC § 13.246(c), Hackberry has demonstrated adequate financial, managerial and technical capability for providing continuous and adequate service to the requested area, as required by TWC § 13.241.
5. Hackberry has demonstrated that the application meets the requirements set forth in TWC §§ 13.242-.250 and 16 TAC §§ 24.101-.102 and 24.104-24.106 to be granted a sewer CCN.
6. Hackberry has demonstrated that granting the requested sewer CCN is necessary for the service, accommodation, convenience, or safety of the public, as required under TWC § 13.246(b) and 16 TAC § 24.102(c).
7. Little Elm consented to decertification of the portion of its sewer CCN No. 20931 that overlaps with the service area requested by Hackberry in this application, as required by TWC § 13.254(a) and 16 TAC § 24.113(a).
8. Under TWC § 13.257(r) and 16 TAC § 24.106(f), Hackberry is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
9. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Hackberry's application, as amended, is approved.
2. Hackberry is assigned sewer CCN No. 21097 consistent with this Notice.
3. Hackberry shall serve every customer and applicant for service within the approved area that requests service and meets the terms of Hackberry's regulations to receive sewer service under CCN No. 21097, and such service shall be continuous and adequate.

4. Hackberry shall comply with the recording requirements in TWC § 13.257(r) for the area in Denton County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice.
5. Little Elm's sewer CCN No. 20931 is partially revoked, consistent with this Notice.
6. Little Elm shall serve every customer and applicant for service within the approved area that requests service and meets the terms of Little Elm's regulations to receive sewer service under CCN No. 20931, and such service shall be continuous and adequate.
7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

Signed at Austin, Texas the 12th day of April 2017.

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE

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Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Hackberry

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, the City of Hackberry is entitled to this

Certificate of Convenience and Necessity No. 21097

to provide continuous and adequate sewer utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44820 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Hackberry, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 29th day of April 2017.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Town of Little Elm

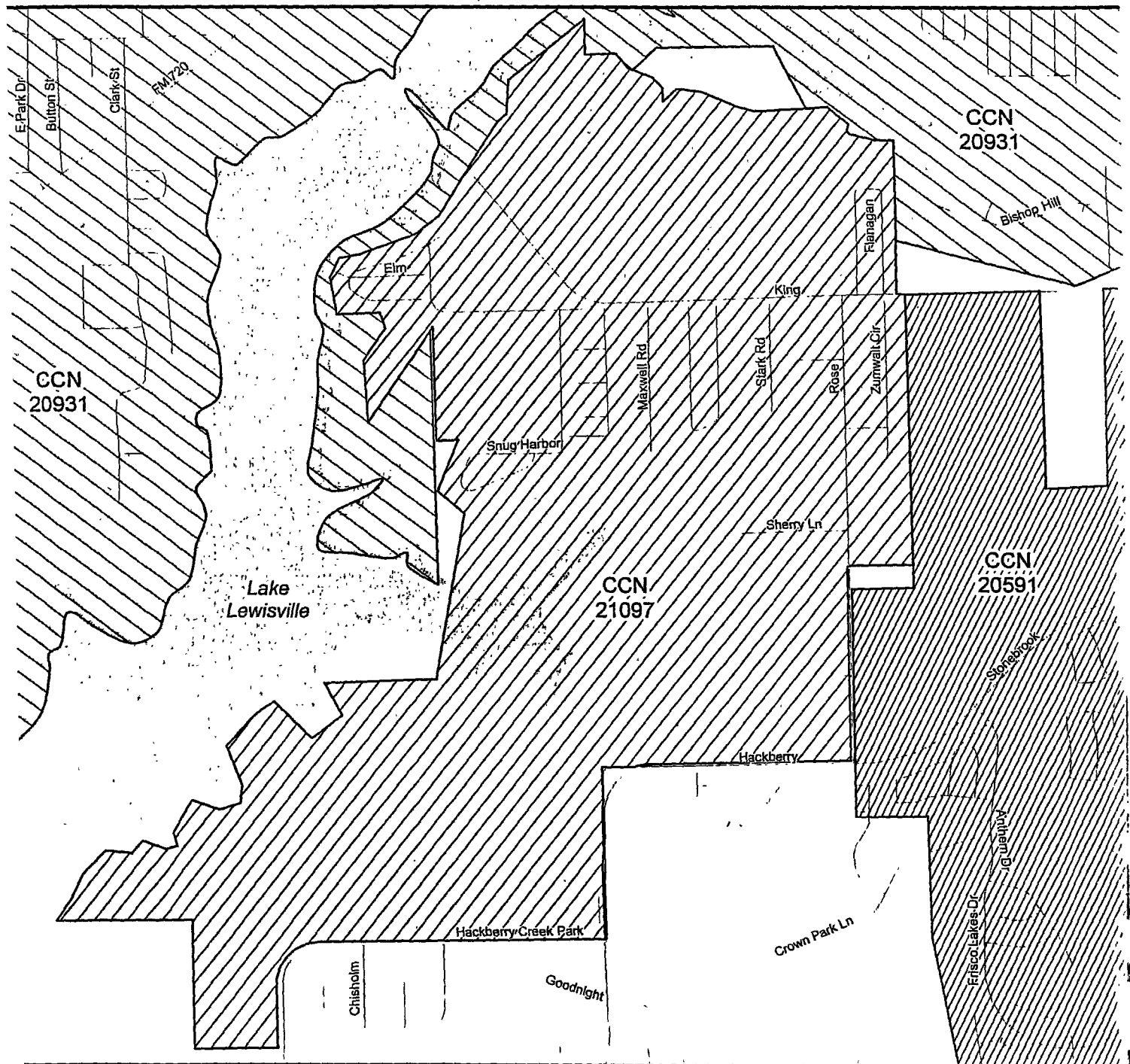
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Town of Little Elm, is entitled to this

Certificate of Convenience and Necessity No. 20931

to provide continuous and adequate sewer utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44820 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Town of Little Elm, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.




Issued at Austin, Texas, this 17th day of April 2017

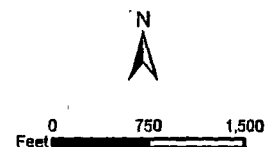
City of Hackberry
Sewer Service Area
CCN No. 21097
PUC Docket No. 44820
Obtained CCN and Decertified a Portion of
Town of Little Elm, CCN No. 20931 in Denton County



Public Utility Commission of Texas
N. Congress Ave
Austin, TX 78701

Sewer CCN Service Areas

-  21097 - City of Hackberry
-  20931 - Town of Little Elm
-  20591 - City of Frisco



Map by: Kristy Nguyen
Date created: October 25, 2016
Project Path: \\Final Map\\44820.mxd