



Control Number: 45489



Item Number: 40

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RECEIVED

APPLICATION OF CITY OF
GREGORY TO OBTAIN
CERTIFICATES OF CONVENIENCE
AND NECESSITY IN SAN PATRICIO
COUNTY

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PUBLIC UTILITY COMMISSION

OF TEXAS

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PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Motion to Dismiss and would show the following:

I. BACKGROUND

On December 31, 2015, the City of Gregory (Gregory) filed an application with the Public Utility Commission of Texas (Commission) to obtain new water and sewer certificates of convenience and necessity (CCN) in San Patricio County, Texas. Gregory seeks to acquire CCNs for the area within its extraterritorial jurisdiction (ETJ). On November 10, 2016, Gregory filed proof of notice. On January 25, 2017, Gregory filed a supplement to its proof of notice.

On February 1, 2017, Order No. 9 was issued establishing a deadline of April 17, 2017 for Staff to provide final maps and certificates to Gregory for review and consent and a deadline of May 8, 2017 for Staff to file a final recommendation on Gregory's application.

II. MOTION TO DISMISS

Staff recommends that Gregory's application be dismissed without prejudice for failure to prosecute under 16 Texas Administrative Code (TAC) § 22.181(d)(6).¹ Under Texas Water Code (TWC) § 13.246(h), if a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within a proposed CCN service area provides written notice to the Commission before the 30th day after the landowner receives notice of the application for the CCN, the application shall be modified so that the landowner's property is not included in the proposed

¹ The Commission has amended 16 TAC § 22.181 effective January 5, 2017. A provision analogous to the one cited is located in § 22.181(a)(1)(F) of the version of § 22.181 that was in effect when Gregory originally filed its application on December 31, 2015.

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service area.² TWC § 13.246(h) provides that the landowner's decision to opt out of the proposed area is effective without further hearing or other process by the Commission.

As detailed in the attached memorandum from Sean Scaff and Gary Horton in the Commission's Water Utility Regulation Division, opt-out requests for parcels of land that meet the size and location requirements of TWC § 13.246(h) have been filed on six separate dates, beginning September 9, 2016. Due to deficiencies in Gregory's initial notice, notice was not completed until January 17, 2017.³ The opt-out requests were filed on September 9, 2016; October 31, 2016; January 25, January 26, and January 30, 2017; and February 6, 2017.⁴ Thirty days from January 17, 2017 is February 16, 2017. The opt-out requests were therefore timely filed.

As noted in the attached memorandum, the maps Gregory filed on March 2 do not remove the opt-outs, despite conversations with Staff regarding the opt-outs and despite the fact that the first opt-out was filed over four months before the March 2 filing. Staff contends that Gregory's failure to address the opt-outs received as required by TWC § 13.246(h) despite having months in which to do so constitutes a failure to prosecute the application, and Staff therefore moves that the application be dismissed without prejudice under 16 TAC § 22.181(d)(6) for failure to prosecute.

III. PROCEDURAL SCHEDULE

Staff requests that the procedural schedule established in Order No. 9 be suspended pending a response to and a ruling on this motion. The current procedural schedule calls for Staff to send final maps to Gregory for review and consent by April 17, 2017. Staff cannot prepare final maps to send to Gregory because Gregory has not filed maps addressing the opt-out requests.

² TWC § 13.246(i) provides an exception that can apply in cases involving an applicant that is a municipality with a population of more than 500,000. That exception does not apply in this case because Gregory does not have a population greater than 500,000.

³ See Letter from the City of Gregory regarding proof of notice (Jan. 25, 2017); *see also* Order No. 8 (Dec. 13, 2017) (requiring Gregory to provide additional notice).

⁴ See Letter from the Port of Corpus Christi Authority requesting to opt out (Sep. 9, 2016); Letter from Jeff McKamey requesting to opt out (Oct. 31, 2016); Letter from Lynn McKamey requesting to opt out (Jan. 25, 2017); Letter from Kenneth McKamey requesting to opt out (Jan. 25, 2017); Letter from Martha McKamey DeCou requesting to opt out (Jan. 26, 2017); Letter from Kara McKamey requesting to opt out (Jan. 30, 2017); and Letter from Corinne McKamey requesting to opt out (Feb. 6, 2017).

IV. CONCLUSION

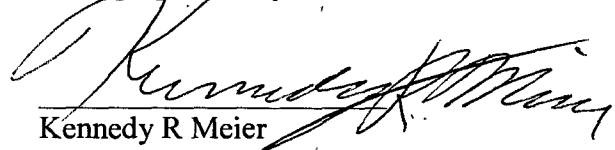
For the reasons detailed above, Staff respectfully moves that Gregory's application be dismissed for failure to prosecute under 16 TAC § 22.181(d)(6).

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

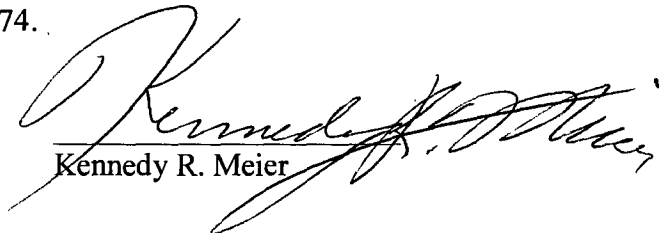


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DOCKET NO. 45489

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 13th of April, 2017 in accordance with 16 TAC § 22.74.



Kennedy R. Meier

Public Utility Commission of Texas

Memorandum

TO: Kennedy Meier, Attorney
Legal Division

FROM: Sean Scaff, Engineering Specialist
Gary Horton, GIS Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Water Utilities Division

DATE: April 11, 2017

RE: **Docket No. 45489;** *Application of the City of Gregory to obtain Certificates of Convenience and Necessity in San Patricio County, Texas*

On December 31, 2015, the City of Gregory (City or Applicant) filed an application with the Public Utility Commission of Texas (Commission) to obtain water and sewer Certificates of Convenience and Necessity (CCN) in San Patricio County, Texas. This application is being reviewed pursuant to Texas Water Code (TWC) §§ 13.241-250 and 16 Tex. Admin. Code (TAC) §§ 24.101-24.107.

The Applicant received written opt-out request on six separate occasions (September 9, 2016; October 31, 2016; January 25, 26, and 30, 2017; and February 6, 2017). Each of the submitted opt-out requests covers properties of at least 25 acres or more, which are located partially within the City's proposed service area. The Applicant has been informed by Commission Staff via phone and email correspondence on multiple occasions that following the notice period, should any landowner opt-out requests be filed, the Applicant must submit amended mapping materials which demonstrate that the requests have been addressed. To date, the Applicant has not taken the appropriate actions to resolve these deficiencies.

On March 2, 2017, the City of Gregory filed updated mapping information. The new mapping information did not remove the opt-outs as required pursuant to TWC § 13.246(h).

As such, the City still has not provided the following information demonstrating that the opt-out requests have been addressed:

- A general location map identifying the requested area in reference to the nearest county boundary, city, or town;
- A detailed map identifying the requested area in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads; and
- Digital mapping data for the requested area, as a single polygon record, in shapefile (SHP) format, georeferenced in either NAD83 Texas Statewide Mapping System (Meters) or NAD83 Texas State Plane Coordinate System (US Feet); **OR** metes and bounds survey sealed or embossed by either a licensed state surveyor or a registered professional land surveyor.

Due to a history of application and mapping deficiencies throughout the Docket, and the fact that the first opt-out was received over six months ago with no correcting action on the part of the City, Staff requests dismissal of the docket.