



Control Number: 45489



Item Number: 56

Addendum StartPage: 0

DOCKET NO. 45489

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

§
§
§
§
§

RECEIVED
PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S SECOND MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Second Motion to Dismiss in response to Order No. 14 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 April 13, 2017, Staff filed a motion to dismiss the application under 16 Texas Administrative Code (TAC) § 22.181(d)(6)¹ for failure to prosecute.² Staff filed this motion primarily due to Gregory's failure to address landowner opt-out requests under Texas Water Code (TWC) § 13.246(h), and also due to a history of application and mapping deficiencies throughout the course of the docket.³

After several subsequent rounds of filings in which Gregory filed mapping information that did not adequately address the opt-out requests and Staff twice reiterated its motion to dismiss,⁴ Gregory adequately addressed the opt-out requests in mapping information filed on August 1, 2017. On September 6, 2017, Staff filed a recommendation that Gregory had adequately addressed the landowner opt-out requests. Staff also withdrew its motion to dismiss the application

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.

² See Commission Staff's Motion to Dismiss (Apr. 13, 2017).

³ See Commission Staff's Motion to Dismiss, attached memorandum (Apr. 13, 2017).

⁴ See Letter from the City of Gregory (Apr. 19, 2017); Letter from the City of Gregory (Apr. 20, 2017); Commission Staff's Response to City of Gregory (May 10, 2017); Letter from the City of Gregory (May 12, 2017); and Commission Staff's Recommendation on Maps (Jun. 12, 2017).

and, as directed by Order No. 13, provided a list of information needed to address remaining deficiencies in the application.

On September 12, 2017, Order No. 14 was issued, requiring Gregory to file the information listed in Staff's September 6, 2017 memorandum by October 6, 2017, and establishing a deadline of November 6, 2017, for Staff to file a supplemental recommendation. This pleading is therefore timely filed.

II. MOTION TO DISMISS

Staff recommends that Gregory's application be dismissed without prejudice for failure to prosecute under 16 TAC § 22.181(d)(6). Order No. 13 required Staff to file a list of any remaining deficiencies in Gregory's application. Staff timely complied with this requirement in its September 6, 2017 recommendation, clearly stating that the information listed was necessary in order for Staff to prepare a final recommendation on the application.⁵ Order No. 14 established a deadline of October 6, 2017, for Gregory to provide the information set out in Staff's recommendation. Gregory did not respond to Order No. 14 until October 23, 2017, more than two weeks after the deadline. Gregory's response consisted of a series of short statements in response to questions posed in Staff's September 6 recommendation, but contained no details and none of the supporting documentation that was also requested in Staff's September 6 recommendation. The lack of detail and supporting documentation means that Gregory's response at best is incomplete and at worst arguably does not provide the information that Order No. 14 directed Gregory to provide, as Staff is unable prepare a final recommendation on Gregory's application based on the statements provided without the detail and supporting documentation that Gregory failed to provide.

Gregory has had more than adequate time to gather the information and supporting documentation that Order No. 14 directed it to provide. Order No. 14 established a deadline of October 6, 2017, for Gregory's response. This deadline allowed Gregory 30 days from the date of Staff's September 6 recommendation to gather and provide the requested information. However, Gregory effectively had more than the 30 days allotted to begin gathering the requested information, as most of the information listed in Staff's September 6 recommendation had already

⁵ See Commission Staff's Recommendation on Maps and Withdrawal of Motion to Dismiss at 2 (Sept. 6, 2017).

been requested from Gregory in Staff's August 18, 2017 Second Request for Information (RFI) to Gregory.⁶ To date, Gregory's October 23 filing is the only thing that even approximates a response to those RFIs, and still fails to provide the necessary information and supporting documentation. In other words, at the time of Gregory's October 23 filing more than two months had elapsed from the filing of Staff's August 18 RFIs and more than a month had elapsed from the filing of Staff's September 6 recommendation. Despite this, Gregory's late-filed response still does not provide the information needed for Staff to prepare a final recommendation on Gregory's application, even though Order No. 14 explicitly directed Gregory to provide the necessary information.

Staff's September 6 filing clearly stated that the information requested was necessary for Staff to prepare a recommendation on Gregory's application.⁷ Staff contends that Gregory's failure to provide this information, combined with Gregory's late filing and the pattern of deficiencies⁸ that originally led Staff to move for dismissal of this proceeding, constitutes a failure to prosecute the application. Staff therefore moves that the application be dismissed under 16 TAC § 22.181(d)(6) for failure to prosecute. Staff further requests that such dismissal be without prejudice to the filing of a new, complete application.

III. CONCLUSION

For the reasons detailed above, Staff respectfully moves that Gregory's application be dismissed without prejudice for failure to prosecute under 16 TAC § 22.181(d)(6).

⁶ Compare Commission Staff's Second Request for Information to the City of Gregory Question Nos. Staff 2-1 through Staff 2-4 (Aug. 18, 2017), with Commission Staff's Recommendation on Maps and Withdrawal of Motion to Dismiss, attached memorandum (Sept. 6, 2017); see also Commission Staff's Recommendation on Maps and Withdrawal of Motion to Dismiss at 2 (Sept. 6, 2017).

⁷ Commission Staff's Recommendation on Maps and Withdrawal of Motion to Dismiss at 2 (Sept. 6, 2017).

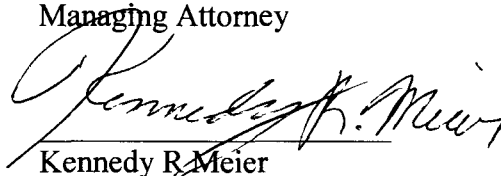
⁸ Which stretches back over the nearly two years that this application has been pending before the Commission.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

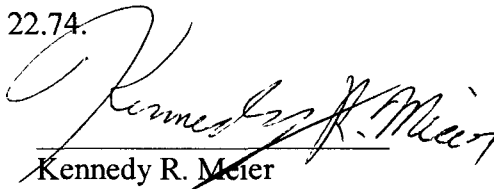
A handwritten signature in cursive script, reading "Kennedy R. Meier", written over a horizontal line.

Kennedy R. Meier
State Bar No. 24092819
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7265
(512) 936-7268 (facsimile)
Kennedy.Meier@puc.texas.gov

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 6th of November, 2017 in accordance with 16 TAC § 22.74.

A handwritten signature in cursive script, reading "Kennedy R. Meier", written over a horizontal line.