



Control Number: 45489



Item Number: 80

Addendum StartPage: 0

RECEIVED

2018 AUG -2 PM 4:31

# OPEN MEETING COVER SHEET

PUBLIC INFORMATION COMMISSION  
LEGAL CLERK

**MEETING DATE:** August 9, 2018

**DATE DELIVERED:** August 2, 2018

**AGENDA ITEM NO.:** 1

**CAPTION:** Docket No. 45489; SOAH Docket No. 473-18-4178.WS -  
*Application of City of Gregory to Obtain  
Certificates of Convenience and Necessity in  
San Patricio County*

**ACTION REQUESTED:** Discussion and possible action with respect  
to Draft Preliminary Order

Distribution List:  
Commissioners' Office (6)  
Urban, John Paul  
Whittington, Pam  
Central Records  
Pemberton, Margaret (5)  
Journeay, Stephen  
Burch, Chris  
Hrcir, David

80

**DeAnn T. Walker**

Chairman

**Arthur C. D'Andrea**

Commissioner

**Shelly Botkin**

Commissioner

**John Paul Urban**

Executive Director




**Greg Abbott**

Governor

## *Public Utility Commission of Texas*

---

TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

FROM: All Parties of Record  
David Hrnair   
Commission Advising

RE: *Application of City of Gregory to Obtain Certificates of Convenience and Necessity in San Patricio County*, Docket No. 45489, SOAH Docket No. 473-18-3178.WS, Draft Preliminary Order, August 9, 2018 Open Meeting, Item No. 1.

DATE: August 2, 2018

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the August 9, 2018 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the August 9, 2018 open meeting.

W2013

q:\cadm\orders\prelim\45000\45489 dpo memo.docx



Printed on recycled paper

An Equal Opportunity Employer

**PUC DOCKET NO. 45489**  
**SOAH DOCKET NO. 473-18-3178.WS**

<b>APPLICATION OF CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GREGORY TO OBTAIN</b>	<b>§</b>	
<b>CERTIFICATES OF CONVENIENCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY IN SAN PATRICIO</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

The City of Gregory filed an application to obtain new water and sewer certificates of convenience and necessity (CCN) in San Patricio County, Texas. Gregory, which currently has 696 water customers and the same number of sewer customers, is requesting that the CCNs cover the area within its municipal boundaries and a large part of the area within the boundaries of its extraterritorial jurisdiction (ETJ). The total acreage of the area included in Gregory's requested service areas is not clear from the application. This preliminary order identifies the issues that must be addressed in this docket.

Gregory originally filed its application on December 31, 2015. Over the following couple of years, Commission Staff and Gregory engaged in discovery, Gregory amended and supplemented its application several times, the docket was abated while the cities of Gregory and Portland resolved conflicts between their respective proposed CCN areas, and Commission Staff filed multiple motions to dismiss for failure to prosecute. On February 15, 2018, Commission Staff filed its third motion to dismiss the application for failure to prosecute mainly because Gregory had not provided the information and documentation necessary for Commission Staff to review the application. Gregory filed supplemental information and documentation on February 21, March 6, and April 24, 2018. On May 18, 2018, Commission Staff recommended that Gregory had not yet demonstrated a need for service in much of the requested area, and on May 22, 2018, Gregory filed additional information.

On June 5, 2018, Commission Staff advised that Gregory had still not demonstrated need for much of the requested area, and Commission Staff requested that this docket be referred to the State Office of Administrative Hearings (SOAH). On June 12, 2018, the Commission referred the

docket to SOAH. The only person or entity that has been granted intervention in this docket is Randy Wright, the city manager of Portland, Texas.

Gregory was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by June 21, 2018. At Gregory's request, on June 29, 2018, the Commission extended the time to file lists of issues indefinitely, and on July 17, 2018, the Commission reset the filing deadline for June 25, 2018. Gregory has not filed a list of issues. Commission Staff timely filed a list of issues on June 20, 2018.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or questions to be addressed in the docket. In addition to the issues and questions submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Gregory given notice in accordance with Texas Water Code (TWC) § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?

#### ***Water service***

2. Does Gregory's requested water service area overlap with the certificated service areas of other entities? If so, what specific areas overlap? Has Gregory received appropriate consent to provide water service within the entities' certificated service areas?
3. What modifications, if any, must be made to Gregory's requested water service area to reflect land removed because of a qualified landowner's election to exclude some or all of the landowner's property under TWC §§ 13.2451(b) and 13.246(h) and 16 TAC § 24.102(h)?
4. Does Gregory possess the financial, managerial, and technical capability to provide continuous and adequate water service to the entire requested water service area or only a portion of the area? TWC § 13.241(a) and 16 TAC § 24.102(a).

---

<sup>1</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

5. Does Gregory possess a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code chapter 341, TCEQ rules, and the Texas Water Code? TWC § 13.241(b)(1) and 16 TAC § 24.102(a)(1)(A).
6. Does Gregory have access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirements of 16 TAC § 24.102(a)(1)(A)? 16 TAC § 24.102(a)(1)(B).
7. Would the requested water service area require construction of a physically separate water system? If so, has Gregory proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
8. Is the requested water CCN necessary for the service, accommodation, convenience, or safety of the public in the entire requested water service area or only a portion of the area? TWC § 13.246(b) and 16 TAC § 24.102(c).
9. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested water CCN? In answering this issue, please address the following sub-issues:
  - a. What portions, if any, of the requested water service area are currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
  - b. Does the entire requested water service area, or only a portion of the area, currently need water service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
    - i. Have any landowners, prospective landowners, tenants, or residents requested water service in the requested water service area? Have there been any written applications or requests for service?
      - (1) If so, who has requested service? Please identify their property and whether they are requesting residential or commercial service.
    - ii. Are there economic needs for additional water service in the entire requested water service area or any portion of the area?

- iii. Are there environmental needs for additional water service in the entire requested water service area or any portion of the area?
- iv. Are there reports or market studies demonstrating existing or anticipated growth in the requested water service area?
- v. Does Gregory anticipate development in any portion of the requested water service area that is not currently developed? If so, with regard to each portion, please answer the following:
  - (1) Has any of it been platted?
  - (2) Has a development agreement been reached regarding the development?
  - (3) Are there any current timetables for when development will begin? If not, when
  - (4) Is financing in place for the development?
  - (5) Is it within Gregory's municipal limits or ETJ?
- vi. Does Gregory have a master plan for any portion of the requested water service area?
- vii. Does Gregory contemplate beginning annexation proceedings for any portion of the requested water service area?
- c. What is the effect under TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) of granting the requested water CCN on the following:
  - i. Gregory (including the effect on its financial condition resulting from the obligation to provide service throughout its service area);
  - ii. Landowners in the requested water service area, and
  - iii. Any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested water service area?
- d. Taking into consideration the current and projected density and land use of Gregory's requested water service area, does Gregory have the ability to provide adequate water service to the entire requested water service area, including meeting the standards of the

- TCEQ and the Commission, or only a portion of the area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).
- e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
  - f. Is Gregory financially able to pay for the facilities necessary to provide continuous and adequate water service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
  - g. Is Gregory financially stable? If applicable, is Gregory's debt-to-equity ratio adequate? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
  - h. How, if at all, would environmental integrity be affected by granting the requested water CCN? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
  - i. Is it probable that water service would be improved or that costs to consumers would be lowered by granting Gregory a CCN for the entirety, or any portion, of the requested water service area? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
  - j. How, if at all, would the land in the requested water service area be affected by granting Gregory a CCN for the entirety, or any portion, of the requested water service area? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
10. Should the Commission require Gregory, in accordance with TWC § 13.246(d) and 16 TAC § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate water service is provided?
11. If applicable, what were Gregory's efforts to enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).
12. Who will construct any water infrastructure necessary to serve the requested water service area? How will that construction be financed? Has Gregory made any budget projections for the construction of any necessary water infrastructure?
13. Has an engineering plan been completed for any water infrastructure necessary to serve the requested water service area? If so, what are the parameters of that plan? If not, when will an engineering firm be engaged to develop such a plan?



14. If the Commission grants a sewer CCN to Gregory, should it limit the certificated area to only certain portions of the requested water service area?
15. Should the authority that may be granted to Gregory for a water CCN be conditioned on facilities necessary to provide continuous and adequate service being installed within a set time period? If so, what is the appropriate time period?

***Sewer service***

16. Does Gregory's requested sewer service area overlap with the certificated service areas of other entities? If so, what specific areas overlap? Has Gregory received appropriate consent to provide sewer service within the entities' certificated service areas?
17. What modifications, if any, must be made to Gregory's requested sewer service area to reflect land removed because of a qualified landowner's election to exclude some or all of the
18. Does Gregory possess the financial, managerial, and technical capability to provide continuous and adequate sewer service to the entire requested sewer service area or only a portion of the area? TWC § 13.241(a) and 16 TAC § 24.102(a).
19. Does Gregory possess a TCEQ-approved system that is capable of meeting TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the Texas Water Code? 16 TAC § 24.102(a)(2)(A).
20. Does Gregory have access to sewer treatment or a long-term contract for purchased sewer treatment with an entity whose system meets the requirements of 16 TAC § 24.102(a)(2)(A)? 16 TAC § 24.102(a)(2)(B).
21. Would the requested sewer service area require construction of a physically separate sewer system? If so, has Gregory proven that regionalization or consolidation with a retail public utility for sewer service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
22. Is the requested sewer CCN necessary for the service, accommodation, convenience, or safety of the public in the entire requested sewer service area or only a portion of the area? TWC § 13.246(b) and 16 TAC § 24.102(c).

23. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested sewer CCN? In answering this issue, please address the following sub-issues:

- a. What portions, if any, of the requested sewer service area are currently receiving adequate sewer service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
- b. Does the entire requested sewer service area, or only a portion of the area, currently need sewer service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
  - i. Have any landowners, prospective landowners, tenants, or residents requested sewer service in the requested sewer service area? Have there been any written applications or requests for service?
    - (1) If so, who has requested service? Please identify their property and whether they are requesting residential or commercial service.
  - ii. Are there economic needs for additional sewer service in the entire requested sewer service area or any portion of the area?
  - iii. Are there environmental needs for additional sewer service in the entire requested sewer service area or any portion of the area?
  - iv. Are there reports or market studies demonstrating existing or anticipated growth in the requested sewer service area?
  - v. Does Gregory anticipate development in any portion of the requested sewer service area that is not currently developed? If so, with regard to each portion, please answer the following:
    - (1) Has any of it been platted?
    - (2) Has a development agreement been reached regarding the development?
    - (3) Are there any current timetables for when development will begin? If not, when does Gregory anticipate that development will occur?
    - (4) Is financing in place for the development?
    - (5) Is it within Gregory's municipal limits or ETJ?

- vi. Does Gregory have a master plan for any portion of the requested sewer service area?
- vii. Does Gregory contemplate beginning annexation proceedings for any portion of the requested sewer service area?
- c. What is the effect under TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) of granting the requested sewer CCN on the following:
  - i. Gregory (including the effect on its financial condition resulting from the obligation to provide service throughout its service area);
  - ii. Landowners in the requested sewer service area, and
  - iii. Any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested sewer service area?

requested sewer service area, does Gregory have the ability to provide adequate sewer service to the entire requested sewer service area, including meeting the standards of the TCEQ and the Commission, or only a portion of the area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).

- e. What is the feasibility of obtaining sewer service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
- f. Is Gregory financially able to pay for the facilities necessary to provide continuous and adequate sewer service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- g. Is Gregory financially stable? If applicable, is Gregory's debt-to-equity ratio adequate? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- h. How, if at all, would environmental integrity be affected by granting the requested sewer CCN? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
- i. Is it probable that sewer service would be improved or that costs to consumers would be lowered by granting Gregory a CCN for the entirety, or any portion, of the requested sewer service area? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).

- j. How, if at all, would the land in the requested sewer service area be affected by granting Gregory a CCN for the entirety, or any portion of the, requested sewer service area? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
24. Should the Commission require Gregory, in accordance with TWC § 13.246(d) and 16 TAC § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate sewer service is provided?
25. If applicable, what were Gregory's efforts to enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary sewer supply? TWC § 13.246(e).
26. Who will construct any sewer infrastructure necessary to serve the requested sewer service area? How will that construction be financed? Has Gregory made any budget projections for the construction of any necessary sewer infrastructure?
27. Has an engineering plan been completed for any sewer infrastructure necessary to serve the requested sewer service area? If so, what are the parameters of that plan? If not, when will an engineering firm be engaged to develop such a plan?
28. If the Commission grants a sewer CCN to Gregory, should it limit the certificated area to only certain portions of the requested sewer service area?
29. Should the authority that may be granted to Gregory for a sewer CCN be conditioned on facilities necessary to provide continuous and adequate service being installed within a set time period? If so, what is the appropriate time period?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code Annotated § 2003.049(e).

## **II. Effect of Preliminary Order**

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her

own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

**Signed at Austin, Texas the \_\_\_\_\_ day of August 2018.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

---

**ARTHUR C. D'ANDREA, COMMISSIONER**

---

**SHELLY BOTKIN, COMMISSIONER**