



Control Number: 45781



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# OPEN MEETING COVER SHEET

**MEETING DATE:** August 18, 2016

**DATE DELIVERED:** August 11, 2016

**AGENDA ITEM NO.:** 40

**CAPTION:** Docket No. 45781; SOAH Docket No. 473-16-5010.WS -  
Application of City of Portland to Amend its  
Certificate of Convenience and Necessity in San  
Patricio County

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

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## ***Public Utility Commission of Texas***

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Carlos Carrasco, Commission Advising CC

RE: August 18, 2016 Open Meeting Agenda Item No. 40  
Draft Preliminary Order, P.U.C. Docket No. 45781, SOAH Docket No. 473-16-5010.WS – *Application of City of Portland to Amend its Certificate of Convenience and Necessity in San Patricio County.*

DATE: August 11, 2016

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 18, 2016 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 18, 2016 open meeting.

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**SOAH DOCKET NO. 473-16-5010.WS**  
**PUC DOCKET NO. 45781**

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

**DRAFT PRELIMINARY ORDER**

On March 29, 2016, the city of Portland filed an application with the Commission to amend water certificate of convenience and necessity (CCN) number 10541 and sewer CCN number 20216 in San Patricio County, Texas. Portland seeks to add 5,700 acres to its certificated area to include recently-annexed areas inside its city limits that are not within its existing CCN.<sup>1</sup> In addition, Portland seeks to expand its service area to areas where utility services will be needed in the future.<sup>2</sup>

On June 15, 2016, Rincon Water Supply Corporation protested the application and requested a public hearing. Rincon asserts that a portion of Portland's requested service area overlaps a segment of Rincon's current service area.<sup>3</sup> In addition, the city of Gregory claims that a portion of Portland's requested area overlaps a portion of Gregory's extra territorial jurisdiction for which it has a pending CCN application in Docket No. 45489.<sup>4</sup>

On July 7, 2016, the Commission issued an order referring this proceeding to the State Office of Administrative Hearings (SOAH) to conduct a hearing. Commission Staff and Rincon each filed a list of issues.

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<sup>1</sup> Application of the City of Portland to Amend its Certificates of Convenience and Necessity in San Patricio County at 13 (Mar. 29, 2016).

<sup>2</sup> *Id.* at 19, Attachment 1 at 1.

<sup>3</sup> Rincon Water Supply Corporation Request for a Hearing at 1 (Jun. 15, 2016).

<sup>4</sup> City of Gregory's Request to Intervene (Jun. 20, 2016).

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

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the SOAH.<sup>5</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Portland given notice consistent with Texas Water Code (TWC) § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?
2. Does Portland's proposed service area overlap with Gregory's requested service area in its pending CCN proceeding, Docket No. 45489? If so, how should this issue be resolved?
3. What modifications, if any, must be made to Portland's proposed service area to reflect land removed from the proposed service area because of a qualified landowner's election to exclude some or all of the landowner's property pursuant to TWC § 13.246(h) and 16 TAC § 24.102(h)?
4. Does Portland possess the financial, managerial, and technical capability to provide continuous and adequate service? TWC § 13.241(a) and 16 TAC § 24.102(a).
5. Does Portland possess a TCEQ-approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341 and TCEQ rules? 16 TAC § 24.102(a)(1).
6. Does Portland have access to an adequate supply of water to serve the certificated area? TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(1).
7. Would the proposed service area require construction of a physically separate water system? If so, has Portland proven that regionalization or consolidation with another retail public utility is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
8. Is the requested certificate amendment necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).

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<sup>5</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2016).

9. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested certificate amendment? In answering this issue, please address the following sub-issues:
- a. Is the proposed service area currently receiving adequate service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
    - i. Is the proposed service area currently receiving lawful service? TWC § 13.242(a).
  - b. Does the proposed service area need additional service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
    - i. Have any landowners, prospective landowners, tenants, or residents requested service?
    - ii. Are there economic needs for additional service?
    - iii. Are there environmental needs for additional service?
    - iv. Are there written applications or requests for service?
    - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
  - c. What is the effect, under TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) of granting the requested certificate amendment on
    - i. Portland,
    - ii. landowners in the proposed service area, and
    - iii. any retail public utility of the same kind as Portland that is already serving the area proximate to the proposed service area?
  - d. Does Portland have the ability to provide adequate service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the proposed service area? 16 TAC § 24.102(d)(4)..
  - e. What is the feasibility of obtaining service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
  - f. Is Portland financially able to pay for the facilities necessary to provide continuous and adequate service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).

- g. Is Portland financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
  - h. How would environmental integrity be affected, if at all, by granting the requested certificate amendment? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
  - i. Is it probable that service would be improved or costs to consumers in that service area would be lowered by granting the requested certificate amendment? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
  - j. How would the land in the proposed service area be affected, if at all, by granting the requested certificate amendment? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
- 10. Should the Commission require Portland, pursuant to TWC § 13.246(d) and 16 TAC § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided?
- 11. If applicable, what were Portland's efforts to:
  - a. extend service to any economically distressed area, within the meaning of TWC § 15.001, located within Portland's certificated service area(s); and
  - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e)?

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 reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 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 2016.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**