



Control Number: 46336



Item Number: 24

Addendum StartPage: 0

OPEN MEETING COVER SHEET

RECEIVED
2017 MAR -2 PM 12:16
PUBLIC UTILITY COMMISSION
FILING CLERK

MEETING DATE: March 9, 2017
DATE DELIVERED: March 2, 2017
AGENDA ITEM NO.: 5
CAPTION: Docket No. 46336; SOAH Docket No. 473-17-2560.WS - Application of City of Tomball to Obtain Water and Sewer Certificates of Convenience and Necessity in Harris and Montgomery Counties
ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

Distribution List:
Commissioners' Office (9)
Lloyd, Brian
Whittington, Pam
Gleeson, Thomas
Phillips, Michael
Central Records
Rogas, Keith (2)
Pemberton, Margaret (5)
Journey, Stephen
Burch, Chris
Tietjen, Darryl (2)
Long, Mick (2)
Smyth, Scott (2)
Benter, Tammy (4)
Gonzales, Adriana (if rulemaking)

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

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

All Parties of Record

FROM: Lisa Carter, Commission Advising *LJC*

RE: March 9, 2017 Open Meeting Agenda Item No. 5
Draft Preliminary Order, Docket No. 46336, SOAH Docket No. 473-17-
2560.WS – *Application of City of Tomball to Obtain Water and Sewer
Certificates of Convenience and Necessity in Harris and Montgomery Counties.*

DATE: March 2, 2017

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 March 9, 2017 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 March 9, 2017 open meeting.

RECEIVED
2017 MAR -2 PM 12:16
PUBLIC UTILITY COMMISSION
FILING CLERK

Q:\CADM\ORDERS\PRELIM\46000\46336 dpo memo.docx



Printed on recycled paper

An Equal Opportunity Employer

**PUC DOCKET NO. 46336
SOAH DOCKET NO. 473-17-2560.WS**

APPLICATION OF CITY OF	§	
TOMBALL TO OBTAIN WATER AND	§	PUBLIC UTILITY COMMISSION
SEWER CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
HARRIS AND MONTGOMERY	§	
COUNTIES	§	

DRAFT PRELIMINARY ORDER

The city of Tomball filed an application to obtain a water certificate of convenience and necessity in Harris and Montgomery Counties. This preliminary order identifies the issues that must be addressed in this proceeding.

The applicant requests a water and a sewer certificate of convenience and necessity for its existing water and sewer system, which is serving existing residents in the requested service area. The total area being requested includes approximately 11,830 acres for water and 12,320 acres for sewer, and serves about 12,000 current customers.¹

After the application was received by the Commission on September 1, 2016, the application was found deficient because of failure to provide adequate notice and deficiencies in mapping data. Commission Staff recommended that Tomball be provided the opportunity to cure the defects.² After Tomball submitted further information, the application was deemed administratively complete by the Commission administrative law judge on November 17, 2016.

Quadvest L.P. and Undine Texas LLC each filed motions to intervene, and requests for a public hearing. Quadvest states that it operates one or more water systems in the immediate vicinity of the requested area.³ Undine Texas states that it anticipates operating and owning one or more systems in the vicinity of the requested area.⁴ Quadvest L.P. and Undine Texas, LLC were granted intervention by the Commission administrative law judge on January 17, 2017. The DeNina Family Partnership, Ltd. filed a request to opt out of the requested service area on

¹ Application at Appendix B.

² Staff's Recommendation of Administrative Completeness (Oct. 3, 2016).

³ Quadvest L.P.'s Motion to Intervene and Request for a Hearing (Jan. 6, 2017).

⁴ Undine Texas, LLC's Motion to Intervene and Request for a Hearing (Jan. 6, 2017).

February 1. The docket was referred to the State Office of Administrative Hearings (SOAH) on February 6, 2017.

The applicant 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 February 17, 2017. Commission Staff, Quadvest L.P., and Undine Texas, LLC each timely filed a list of issues. The city of Tomball did not file list of issues.

I. Issues to be Addressed

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

1. Has the applicant given notice consistent with TWC § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?

Water service

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

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

6. Does the applicant 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)? TWC § 13.241(b)(2) and 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 the applicant 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 certificate necessary for the service, accommodation, convenience, or safety of the public? 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 certificate? In answering this issue, please address the following sub-issues:
 - a. Is the requested water service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
 - b. Does the requested water service area need additional 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?
 - ii. Are there economic needs for additional water service?
 - iii. Are there environmental needs for additional water service?
 - iv. Are there written applications or requests for water 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 water certificate on
 - i. the applicant,
 - ii. landowners in the requested service areas, 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 area?

- d. Does the applicant have the ability to provide adequate water service, including meeting the standards of the TCEQ and the Commission, taking into consideration the current and projected density and land use of the requested 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 the applicant 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 the applicant 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 water certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
 - i. Is it probable that water service would be improved or costs to consumers in that area would be lowered by granting the requested certificate? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
 - j. How would the land in the requested service area be affected, if at all, by granting the requested area? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
10. Should the Commission require the applicant, 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 water service is provided?
11. If applicable, what were the applicant's efforts to:
- a. extend water service to any economically distressed area, within the meaning of TWC § 15.001, located within the applicant's certificated service area; and
 - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

Sewer service

12. Does the applicant's requested sewer service area overlap with the certificated service area of other entities? If so, what specific areas will overlap? Has the applicant received appropriate consent to provide sewer service within the entities' service boundaries?

13. What modifications, if any, must be made to the applicant's requested sewer service area to reflect land removed from the requested service area because of a qualified landowner's election to exclude some or all of the landowner's property pursuant to TWC §§ 13.2451(b) and 13.246(h) and 16 TAC § 24.102(h)?
14. Does the applicant possess the financial, managerial, and technical capability to provide continuous and adequate sewer service? TWC § 13.241(a) and 16 TAC § 24.102(a).
15. Does the applicant 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? TWC § 13.241(c) and 16 TAC § 24.102(a)(2)(A).
16. Does the applicant have access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of 16 TAC § 24.102(a)(2)(A)? TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(2)(B).
17. Would the requested sewer service area require construction of a physically separate sewer system? If so, has the applicant 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).
18. Is the requested sewer certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).
19. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested sewer certificate? In answering this issue, please address the following sub-issues:
 - a. Is the requested sewer service area currently receiving adequate sewer service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
 - b. Does the requested sewer service area need additional 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?
 - ii. Are there economic needs for additional sewer service?
 - iii. Are there environmental needs for additional sewer service?

- iv. Are there written applications or requests for sewer 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 sewer certificate on
 - i. the applicant,
 - ii. landowners in the requested service areas, 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 area?
- d. Does the applicant have the ability to provide adequate sewer service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the requested 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 the applicant 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 the applicant 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 sewer certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
- i. Is it probable that sewer service would be improved or costs to consumers in that area would be lowered by granting the requested certificate? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
- j. How would the land in the requested area be affected, if at all, by granting the requested certificate? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).

20. Should the Commission require the applicant, 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 sewer service is provided?

21. If applicable, what were the applicant's efforts to:

- a. extend sewer service to any economically distressed area, within the meaning of TWC § 15.001, located within the applicant's certificated service area; 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 may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 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 March 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

W2013

q:\cadm\orders\prelim\46000\46336 dpo.docx