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SOAH DOCKET NO. 473-18-2486.WS
PUC DOCKET NO. 47795

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PUBLIC UTILITY COMMISSION
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APPLICATION OF THE CITY
OF HUTTO TO AMEND A
SEWER CERTIFICATE OF
CONVENIENCE AND
NECESSITY IN WILLIAMSON
COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL

NOW COMES the Staff of the Public Utility Commission of Texas (“Staff”) and the City of Hutto, Texas (“Hutto”) (collectively, “Parties”), to jointly file this Motion to Admit Evidence and Proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs. In support thereof, the Parties show the following:

I. BACKGROUND

Hutto filed an application with the Public Utility Commission of Texas (“Commission”) on November 21, 2017, to amend its sewer certificate of convenience and necessity number 20122, in Williamson County, Texas (“Application”). On February 27, 2018, the Commission referred the proceedings to the State Office of Administrative Hearings (“SOAH”). On August 23, 2018, the Administrative Law Judge (“ALJ”) referred the proceedings to SOAH’s Alternative Dispute Resolution Team Leader, Judge Howard S. Seitzman. On August 20, 2018, Judge Seitzman held a mediation that concluded with Hutto, Commission Staff, and the Boehm Alliance reaching an agreement in principle. On February 20, 2019, Hutto and the Boehm Alliance executed a Settlement Agreement, which required Hutto to revise its Application to exclude those properties identified in the Settlement Agreement from Hutto’s existing sewer service area. Thereafter, the Boehm Alliance filed a motion, withdrawing its protests to the Application.

Subsequent to the preceding actions, pursuant to 16 TAC § 22.4(b), the Parties filed several unopposed motions for extensions of time, in order to allow Hutto to provide additional information to Staff, and so that Staff could issue its Final Recommendation that Hutto’s revised Application be approved.

January 14, 2020, Staff issued its Final Recommendation that the Commission approve Hutto’s revised Application. On February 5, 2020, the SOAH ALJ remanded this case back to the

Commission. On February 20, 2020, Hutto requested an extension of time, to March 6, 2020, to allow the Parties additional time to prepare a Joint Motion to Admit Evidence and Proposed Notice of Approval.

II. MOTION TO ADMIT EVIDENCE

The Parties jointly request that the ALJ admit the following evidence into the record of this proceeding:

- a. Application of the City of Hutto to Amend a Sewer Certificate of Convenience and Necessity in Williamson County, filed November 21, 2017.
- b. Wholesale Wastewater Service Agreement between the City of Hutto and Kelly Lane Utility Company, filed December 21, 2017.
- c. Revised Map Set for Application of the City of Hutto to Amend a Sewer Certificate, filed February 7, 2018.
- d. City of Hutto's Proof of Notice, filed April 6, 2018.
- e. City of Hutto's Response to Commission Staff's First Request for Information, filed April 16, 2018.
- f. City of Hutto's Amendment to the Application, filed June 15, 2018.
- g. SOAH Mediator's Final Report on Mediation, filed February 6, 2019.
- h. City of Hutto's Amendment to the Application, including, *inter alia*, the Settlement Agreement, filed March 8, 2019.
- i. City of Hutto's Response to Commission Staff's Second Request for Information, Question Nos. 2-1 through 2-12, filed September 27, 2019.
- j. City of Hutto's Response to Commission Staff's Third Request for Information, Question No. 3-1, filed October 10, 2019.
- k. City of Hutto's First Supplemental Response to Commission Staff's Second Request for Information Question Nos. 2-1 through 2-12, filed October 22, 2019.
- l. City of Hutto's Direct Testimony of Samuel Ray, P.E., filed January 23, 2020.
- m. Staff's Final Recommendation, filed January 31, 2020.

III. JOINT PROPOSED NOTICE OF APPROVAL

The attached Proposed Notice of Approval would approve the application to amend Hutto's Sewer CCN No. 20122. The Parties have reviewed and agree to the Proposed Notice of Approval attached hereto.

The Parties processed this docket in accordance with applicable statutes and Commission rules. Hutto provided notice of the application to interested persons. Hutto and Staff are the only remaining parties in this case. No further hearing on the merits is necessary. The Parties respectfully request that the Commission approve the amended application and adopt the attached Proposed Notice of Approval.

IV. CONCLUSION

Staff reviewed the amended application and recommends that the Commission approve it. The Parties respectfully request that the Commission admit the items listed above into the record of this proceeding as evidence; and, the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the attached Joint Proposed Notice of Approval.

Respectfully submitted,

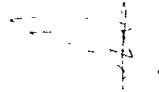
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CERTIFICATE OF SERVICE

I certify that the foregoing document has been mailed, emailed, hand delivered, or sent by facsimile to all parties of record in accordance with the Orders issued in this proceeding on this 6th day of March, 2020.



Zachariah T Evans

**SOAH DOCKET NO. 473-18-2486.WS
PUC DOCKET NO. 47795**

APPLICATION OF THE CITY OF HUTTO TO AMEND A SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY IN WILLIAMSON COUNTY	§ § § § § §	PUBIC UTILITY COMMISSION OF TEXAS
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JOINT PROPOSED NOTICE OF APPROVAL

This Notice addresses the application of the City of Hutto (“Hutto”) for an amendment to its sewer certificate of convenience and necessity in Williamson County. Commission Staff recommends approval of the Application. Consistent with Staff’s recommendation, the Commission approves the Application.

The Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

A. Procedural History

1. On November 21, 2017, Hutto filed the Application with the Public Utility Commission of Texas (“Commission”) to amend Certificate of Convenience and Necessity (“CCN”) No. 20122 in Williamson County.
2. On November 27, 2017, the Commission issued Order No. 1, requiring comments on the administrative completeness and sufficiency of notice; requesting a procedural schedule; and, addressing other procedural matters.
3. On December 20, 2017, Staff issued a recommendation on administrative completeness, finding the Application to be administratively complete.
4. On December 20, 2017, the Commission issued Order No. 2, finding the Application to be administratively complete, requiring notice, and establishing a procedural schedule.
5. On January 12, 2018, John Koster filed comments indicating he did not wish to intervene or request a hearing.
6. On January 19, 2018, Juneva Randig filed comments indicating her intent to opt out of having her property included in the proposed CCN area.
7. On January 26, 2018, Cynthia M. Cervanka filed comments indicating her intent

to out of having her property included in the proposed CCN area.

8. On January 30, 2018, Isaac W. Normal filed comments indicating his intent to opt out of having his property included in the proposed CCN area and requesting to intervene.
9. On January 30, 2018, Dana R. Boehm filed comments indicating her intent to opt out of having her property included in the proposed CCN area and requesting a contested case hearing.
10. On January 30, 2018, Emzy Boehm filed comments indicating his intent to opt out of having his property included in the proposed CCN area and requesting a hearing.
11. On January 30, 2018, Michael Krueger filed comments indicating he did not wish to request a hearing in this matter.
12. On January 30, 2018, Wynette Lessner filed comments indicating her intent to opt out of having her property included in the CCN area.
13. On February 1, 2018, Christy Norten filed separate comments, (i) on her behalf and (ii) that as trustee of a certain estate, indicating her intent to opt out of having her property included in the CCN area.
14. On February 1, 2018, Helmer W. Dahl filed comments indicating his intent to opt out of having his property included in the CCN area.
15. On February 5, 2018, Troy Boehm filed comments indicating his intent to opt out of having his property included in the CCN area and requesting a hearing.
16. On February 5, 2018, Hutto filed a motion for extension of time and adoption of revised procedural schedule.
17. On February 7, 2018, Hutto filed a revised map set for the Application.
18. On February 7, 2018, the Commission issued Order No. 3, granting Hutto's motion for extension of time and adoption of a revised procedural schedule.
19. On February 14, 2018, Morgan and Teresa Wendland filed comments indicating their intent to opt out of having their property included in the CCN area.
20. On February 27, 2018, the Commission issued an order referring this matter to the State Office of Administrative Hearings ("SOAH").

21. On March 5, 2018, the ALJ issued SOAH Order No. 1, providing a filing description, notice of prehearing conference, and procedures for the proceedings.
22. On March 7, 2018, Staff submitted their list of issues for the ALJ to consider during the case hearing.
23. On March 8, 2018, Hutto submitted its list of issues for the ALJ to consider during the case hearing.
24. On March 9, 2018, Hutto submitted a notice of errata, explaining a typographical error in its list of issues to be considered.
25. On March 15, 2018, Raymond and Diane Naivar submitted a request to intervene in the proceedings.
26. On March 20, 2018, Terry Dolan submitted a request to intervene in the proceedings.
27. On March 22, 2018, the Commission, acting as Commission Advising, issued a draft preliminary order, providing a list of issues to be considered.
28. On March 23, 2018, Cynthia Krueger submitted a request to intervene, a restatement of intent to opt out of the proposed CCN area, and indication of her receipt of notice of the hearing.
29. On March 26, 2018, Michael and Patricia Daffin submitted a request to intervene.
30. On March 26, 2018, Robert and Bonnie Kaderka submitted a request to intervene.
31. On March 26, 2018, Hutto submitted a joint motion to reset the procedural schedule.
32. On March 27, 2018, Staff submitted its first request for information (“RFI”) to Hutto.
33. On March 28, 2018, the Commission issued a revised draft preliminary order.
34. On March 29, 2018, the Commission issued the preliminary order.
35. On April 2, 2018, the ALJ issued Order No. 2, amending the notice of prehearing conference.
36. On April 2, 2018, Robert and Donna Rinehart submitted a request to intervene.
37. On April 5, 2018, the Commissioner issued a draft supplemental preliminary order.

38. On April 9, 2018, Charles W. and Patricia A. Gantt submitted notice of their intent to opt out of the proposed CCN area.
39. On April 11, 2018, the Commission issued a supplemental preliminary order.
40. On April 16, 2018, Sam McFarlin submitted notice of his intent to opt out of the proposed CCN area.
41. On April 16, 2018, Hutto submitted its response to Staff's first RFI.
42. On April 20, 2018, Roselind Wieland submitted a request to intervene and request for a hearing.
43. On April 24, 2018, Dana R. Boehm, Emsy Boehm, Synthis D. Krueger, Raymond, Naivar, Diane Naivar, and Terry Nolan submitted (i) motions to intervene; (ii) notices of appearance of counsel; and (iii) requests to opt out of the proposed CCN area.
44. On May 15, 2018, Hutto submitted a response to the aforesaid requests to intervene and opt out.
45. On May 18, 2018, Juneva Randig submitted a request to be interviewed by telephone.
46. On May 21, 2018, Dana R. Boehm, Emsy Boehm, Synthis D. Krueger, Raymond, Naivar, Diane Naivar, and Terry Nolan submitted (i) an amended notice of appearance; and, (ii) an amended motion to intervene.
47. On May 29, 2018, Wynette Lessner submitted a notice of inability to appear in person.
48. On May 29, 2018, Hutto submitted a response to the aforesaid amended motions to intervene.
49. On June 11, 2018, the ALJ issued Order No. 3, providing notice of a second prehearing conference.
50. On June 12, 2018, the ALJ issued Order No. 4, amending the notice of second prehearing conference.
51. On June 15, 2018, Hutto submitted an amendment to its application.
52. On June 19, 2018, Staff submitted its initial brief, recommending that the landowners who were not located within the area proposed to be certificated show

they had a justiciable interest that would be adversely affected.

53. On June 19, 2018, Boehm Alliance, which included the aforesaid protestants Dana R. Boehm, Emsy Boehm, Synthis D. Krueger, Raymond, Naivar, Diane Naivar, Terry Nolan, Wynette Norman Lessner (on behalf of Issac W. Norman), and the Norman Family, entered a second amended notice of appearance.
54. On June 19, 2018, Boehm Alliance submitted a brief in response to SOAH Order No. 4, addressing standing of the submitted protestants requests to intervene.
55. On June 19, 2018, Hutto entered (i) a notice of errata regarding its amendment to the application; and, (ii) a brief on the protestants' standing to intervene.
56. On July 3, 2018, Staff entered a notice to the ALJ, informing the ALJ and all parties that Staff would not be filing a reply brief to the parties' initial briefs.
57. On July 5, 2018, Hutto submitted its reply brief on the protestants' brief on standing to intervene.
58. On July 5, 2018, Boehm Alliance submitted a reply brief in response to SOAH Order No. 4, addressing the standing of the submitted requests to intervene.
59. On August 23, 2018, the ALJ issued SOAH Order No. 5, referring the proceedings to mediation and entering rulings on pending matters, to wit: (i) Hutto having amended its application, all of the identified opt-out requests were for land that was then outside of the Proposed Service Area, and therefore moot; and, (ii) referring the remaining matters to mediation between Staff, Hutto, and Boehm Alliance.
60. On August 24, 2018, the SOAH Mediator issued his initial report on mediation.
61. On September 28, 2018, Hutto submitted an update on the mediation and an unopposed motion to extend the proceedings timeline.
62. On October 3, 2018, the ALJ issued SOAH Order No. 6, extending the time for mediation.
63. On October 26, 2018, Hutto submitted a status report and unopposed motion to extend the proceedings timeline.
64. On December 14, 2018, the ALJ issued SOAH Order No. 7, extending the time for mediation.

65. On January 24, 2019, Hutto submitted a status report and unopposed motion to extend the proceedings timeline.
66. On February 6, 2019, the ALJ Mediator issued his final report on mediation, providing that: (i) the parties reached an agreement in principle during the mediation, but needed additional time to receive necessary approvals and prepare settlement documents; (ii) the mediation remained open during that process; (iii) the settlement documents had been executed and the mediation was concluded; and (iv) the matter return to the Presiding ALJ, Joanne Sunlmerhays, to await the filing of motions.
67. On February 6, 2019, Hutto filed a status report on the mediation.
68. On February 7, 2019, the ALJ issued SOAH Order No. 8 extending the time for the parties to conduct settlement negotiations.
69. On February 25, 2019, Boehm Alliance filed a motion to withdraw its protests.
70. On February 27, 2019, Hutto filed (i) a joint motion for a procedural schedule; and, (ii) a status report on settlement negotiations and mediation.
71. On March 4, 2019, the ALJ issued Order No. 9, adopting a proposed procedural schedule, and granting Boehm Alliance's motion to withdraw protests.
72. On March 8, 2019, Hutto submitted an amendment to the application.
73. On April 12, 2019, Hutto submitted a consent form, concurring with the map and certificate transmitted by electronic mail on April 4, 2019.
74. On April 22, 2019, Staff submitted a request for extension of time.
75. On April 23, 2019, Staff submitted a second RFI to Hutto.
76. On April 30, 2019, Staff submitted a joint proposed procedural schedule.
77. On May 2, 2019, the ALJ issued Order No. 11, extending the deadline for a final recommendation from Staff.
78. On May 13, 2019, Hutto submitted a joint request for extension of time.
79. On July 8, 2019, the ALJ issued Order No. 13, adopting the proposed procedural schedule.
80. On July 26, 2019, Hutto submitted a joint request for extension of time.
81. On August 1, 2019, the ALJ submitted SOAH Order No. 14, adopting the

proposed amended procedural schedule.

82. On September 17, 2019, Hutto submitted a joint request for extension of time.
83. On September 24, 2019, the ALJ issued SOAH Order No. 15, extending the deadline to submit a final recommendation.
84. On September 27, 2019, Hutto filed responses to Staff's second RFI.
85. On October 8, 2019, Staff submitted a request for extension of time.
86. On October 9, 2019, the ALJ issued SOAH Order No. 16, extending the deadline to submit a final recommendation.
87. On October 9, 2019, Staff submitted a third RFI to Hutto.
88. On November 6, 2019, Staff submitted a request for extension of time to submit a final recommendation.
89. On December 6, 2019, the ALJ issued SOAH Order No. 17, adopting a proposed amended procedural schedule.
90. On January 14, 2020, Staff submitted a request for an extension of time to submit a final recommendation.
91. On January 23, 2020, Hutto submitted the direct testimony of Samuel Ray, P.E.
92. On January 24, 2020, the ALJ issued SOAH Order No. 18, adopting a proposed amended procedural schedule.
93. On January 31, 2020, Staff entered a final recommendation, recommending (i) "that the revised application be approved and Hutto's CCN be amended to include 13,427 acres"; (ii) "that the Commission approve the application, issue an order, and provide the attached map and certificate to Hutto"; and (iii) further "recommend[ing] that Hutto file certified copies of the CCN map along with a written description of the CCN service area in the county clerk's office pursuant to Texas Water Code §§ 13.257 (r)-(s)."
94. On February 5, 2020, the ALJ issued SOAH Order No. 19, remanding the case to the Commission and dismissing it from the SOAH docket.
95. On February 20, 2020, Hutto submitted an unopposed request for an extension of time to submit its final recommendation.

B. Notice

96. On November 27, 2017, the Commission issued public notice of the Application to amend the CCN.
97. On January 12, 2018, the Commission issued a second public notice of the Application to amend the CCN.
98. On February 21, 2018, Commission Staff (“Staff”) filed a recommendation on notice, finding that Hutto published a corrected notice of the application in the Texas Register on January 26, 2018, to clarify that Hutto sought to modify a sewer CCN, not a water CCN. Staff further detailed a new notice for Hutto to use based on updated maps filed on February 7, 2018. Staff further recommended that Hutto publish corrected notice once each week for two consecutive weeks in a newspaper of general circulation in Williamson County to certain specified entities, public and private.
99. On April 6, 2018, Hutto submitted a proof of notice “to all entities identified in the Memorandum and Recommendation that were located on the Texas Commission on Environmental Quality's Water District Database.”
100. On April 11, 2018, Staff issued a recommendation on the sufficiency of Hutto’s notice, indicating Staff reviewed the proof of notice filed by Hutto and recommending that it be found sufficient; requesting the entry of an order finding that Hutto completed notice on March 25, 2018; and, establishing April 24, 2018, as the deadline to intervene.

C. Informal Disposition

101. More than 15 days have passed since completion of the notice provided in this docket.
102. Staff and Hutto are the only parties remaining in this proceeding.
103. No requests for a hearing have since been filed and the parties do not dispute any issues of fact or law.

D. The Application

- 104. Hutto has the ability to provide adequate service to the requested area through the capacity of its sewer treatment facilities.
- 105. Granting Hutto' CCN amendment will not adversely affect any landowners in the area nor any retail public utility serving the proximate area.
- 106. It is not feasible for an adjacent utility to provide service to the requested area because Hutto is a municipality that has existing facilities with the ability to serve the requested area.
- 107. Granting Hutto' CCN amendment will not adversely affect the environmental integrity of the requested area, as no additional construction is needed to provide service to the requested area.
- 108. Hutto will continue to serve customers in the requested area using the existing facilities.
- 109. Hutto has demonstrated that it has the financial, managerial, and technical capabilities to operate and manage the utility and the ability to provide continuous and adequate service to the area.

E. Conclusions of Law

- 110. Hutto is a retail public utility as defined in Texas Water Code ("TWC") § 13.002(19) and 16 Texas Administrative Code ("TAC") § 24.3(59).
- 111. The Commission has jurisdiction over Hutto's application pursuant to TWC §§ 13.041, 13.241, 13.244, and 13.246 and 16 TAC §§ 24.227, 24.235, and 24.237.
- 112. Notice of the application was provided in compliance with TWC § 13.246 and 16 TAC § 24.235.
- 113. The Commission processed the application as required by the TWC, the Administrative Procedure Act, and Commission rules.
- 114. After considering the factors in TWC § 13.246(c), Hutto is entitled to approval of

its agreement to amend its sewer CCN.

115. Hutto has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and its current service area as required by TWC § 13.241(a) and 16 TAC§ 24.227.
116. Approval of the application is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227.
117. The application meets the requirements for informal disposition in 16 TAC § 22.35.

III. ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

- A. The Commission approves the application, as amended.
- B. The Commission approves the certificate and map attached to this Notice.
- C. The Commission amends Hutto's sewer CCN No. 20122.
- D. Hutto shall serve every customer and applicant for service within the areas certified under its CCN, and such service shall be continuous and adequate.
- E. All other motions and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed in Austin, Texas the ____ day of March, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS
