



Control Number: 47795



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## OPEN MEETING COVER SHEET

**MEETING DATE:** March 29, 2018

**DATE DELIVERED:** March 28, 2018

**AGENDA ITEM NO.:** 17

**CAPTION:** Docket No. 47795; SOAH No. 473-18-2486.ws  
Application of the City of Hutto to Amend a  
Sewer Certificate of Convenience and  
Necessity in Williamson County

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

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Commissioner



**Greg Abbott**  
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## ***Public Utility Commission of Texas***

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TO: Chairman DeAnn T. Walker  
Commissioner Brandy Marty Marquez  
Commissioner Arthur C. D'Andrea

All Parties of Record

FROM: John Kramer  
Commission Advising

RE: *Application of the City of Hutto to Amend a Sewer Certificate of Convenience and Necessity in Williamson County*, Docket No. 47795, SOAH Docket No. 473-18-2486.WS, Revised Draft Preliminary Order, March 29, 2018 Open Meeting, Item No. 17.

DATE: March 28, 2018

Please find enclosed the revised draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this revised draft preliminary order at the March 29, 2018 open meeting. Parties shall not file responses or comments addressing this revised draft preliminary order.

Any modifications to the revised 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 29, 2018 open meeting.

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

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>HUTTO TO AMEND A SEWER</b>	<b>§</b>	
<b>CERTIFICATE OF CONVEINCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY IN WILLIAMSON</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	

**REVISED DRAFT PRELIMINARY ORDER**

The City of Hutto filed an application for an amended sewer certificate of convenience and necessity (CCN) in Williamson County. This preliminary order identifies the issues that must be addressed in this docket.

The applicant requests an amended sewer CCN and states that granting the amended CCN “is in the public interest because it allows several large developments to be appropriately served by a municipality with sufficient flow and treatment capabilities.”<sup>1</sup> The total service area being requested includes approximately 15,648 acres and has no current customers.<sup>2</sup> The requested area consists of 12 non-contiguous tracts for which the applicant seeks single certification. The applicant did not include in its application information regarding specific plans for development, including the nature of the prospective development in the requested area, as well as timetables for beginning and completion of any such development. The applicant did not include in its application a specific, detailed statement describing why its application for single certification in the areas requested would meet a current, demonstrable need for such certification, but did state that no portion of the proposed service area is inside another utility’s current CCN area.<sup>3</sup>

The following landowners filed requests to opt out of the requested service area: Juneva Randig, Cynthia Cervenka, Isaac Normal, Emzy Boehm, Wynette Lessner, Christy Noren, Helmer Dahl, and Morgan and Teresa Wendland. The following landowners requested to intervene in this docket: Animal Wellness Hospital, Troy Boehm, Raymond and Diane Naivar, and Terry Dolan.

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<sup>1</sup> Application at 4.

<sup>2</sup> *Id.* at 13.

<sup>3</sup> *Id.* at 4.

The applicant was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in this docket and also to identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by March 8, 2018. Commission Staff filed a list of issues on March 7, and the applicant filed a list of issues on March 8.

### **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 State Office of Administrative Hearings (SOAH).<sup>4</sup> 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 Texas Water Code (TWC) § 13.246<sup>5</sup> and 16 Texas Administrative Code (TAC) § 24.106?
2. 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?
3. 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)?
4. 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).
5. 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).

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<sup>4</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

<sup>5</sup> Tex. Water Code. Ann. § 13.246 (West 2008 and Supp. 2016)

6. Does the applicant have access to sewer treatment or capacity, or both, or a long-term contract for purchased sewer treatment or capacity, or both, 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).
7. 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).
8. 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).
9. 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).
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 sewer service is provided?
11. 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)

12. For each of the 12 parcels of land that are the subject of this application, please answer the following:
- a. Has the parcel been platted?
  - b. Has a development agreement been reached regarding the development of the parcel?
  - c. Are there any current timetables for when development of the parcel will actually begin? If not, when does the applicant contemplate development occurring?
  - d. Is the parcel within the municipal limits or the extraterritorial jurisdiction of the applicant?
  - e. If at all, does the applicant contemplate beginning annexation proceedings regarding the parcel?
  - f. Does the applicant have a master plan for any or all of the parcels?
13. Who will construct any sewer infrastructure necessary to serve the land parcels that are the subject of this application? How will that construction be financed? Has the applicant made any budget projections for the construction of any necessary sewer infrastructure?
14. Has an engineering plan been completed for any sewer infrastructure necessary to serve the land parcels that are the subject of this application? If so, what are the parameters of that plan? If not, when will an engineering firm be engaged to develop such a plan?
15. If the Commission grants an amendment to the applicant's CCN, should it limit the area added to include only entire parcels?
16. Should the authority that may be granted to the applicant to amend its sewer CCN and expand its singly certificated area be conditioned on facilities necessary to provide continuous and adequate service being installed within a set period of time? If so, what is the appropriate period of time?

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 \_\_\_\_\_ 2018.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**

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

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