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Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Hunter Burkhalter *HB*
Administrative Law Judge

RE: Docket No. 48109 – *Application of R.F. Group San Antonio LLC to Obtain Certificate of Convenience and Necessity in Bexar County*

DATE: January 15, 2019

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

ta

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DOCKET NO. 48109

APPLICATION OF R.F. GROUP SAN	§	PUBLIC UTILITY COMMISSION
ANTONIO LLC TO OBTAIN	§	
CERTIFICATES OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN BEXAR COUNTY	§	

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Public Utility Commission dismiss the application of R.F. Group San Antonio LLC for water and sewer certificates of convenience and necessity (CCNs) due to the applicant's failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient under 16 Texas Administrative Code (TAC) § 22.181(d)(6) and (d)(7), respectively. The administrative law judge (ALJ) recommends that the dismissal be without prejudice.

I. BACKGROUND

On February 26, 2018, R.F. Group San Antonio filed an application to obtain water and sewer CCNs in Bexar County. As detailed in the proposed findings of fact and conclusions of law, since filing the application, R.F. Group San Antonio has been informed on multiple occasions that its application is deficient and instructed to correct the deficiencies. R.F. Group San Antonio has filed nothing in this proceeding since its original application in February 2018 and has not responded to the orders from the ALJ. For these reasons, the ALJ concludes that, under 16 TAC § 22.181(d)(6) and (d)(7), the application of R.F. Group San Antonio should be dismissed.¹

In support of this recommendation, the ALJ proposes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. On February 26, 2018, R.F. Group San Antonio filed an application to obtain water and sewer CCNs in Bexar County.
2. On March 28, 2018, Commission Staff recommended that the application be found administratively incomplete.

¹ No hearing was held in this matter, and none is necessary, because the facts are established as a matter of law by the administrative record, of which the ALJ takes official notice. 16 TAC § 22.181(c).

3. In Order No. 2, issued on April 2, 2018, the found the application to be administratively incomplete and ordered R.F. Group San Antonio to, by no later than April 27, 2018, file the additional information needed to cure the deficiencies in the application.
4. R.F. Group San Antonio filed nothing in response to Order No. 2.
5. On May 25, 2018, Commission Staff recommended that the application continue to be found administratively incomplete.
6. In Order No. 3, issued on May 29, 2018, the ALJ found the application to be administratively incomplete and ordered R.F. Group San Antonio to, by no later than June 15, 2018, file the additional information needed to cure the deficiencies in the application.
7. R.F. Group San Antonio filed nothing in response to Order No. 3.
8. On July, 10, 2018, Commission Staff moved to have this case dismissed, without prejudice, due to the applicant's failure to prosecute and failure to amend its application such that it is sufficient after repeated determinations that the application is insufficient under 16 TAC § 22.181(d)(6) and (7), respectively.
9. R.F. Group San Antonio filed nothing in response to Commission Staff's motion to dismiss.
10. In Order No. 4, issued on August 21, 2018, the ALJ neither granted nor denied Commission Staff's motion to dismiss. Rather, the ALJ directed R.F. Group San Antonio to, by no later than September 4, 2018, either respond to the motion to dismiss or request withdrawal of the application. The ALJ admonished R.F. Group San Antonio that, "[f]ailure to respond to this Order may result in dismissal of the application."
11. R.F. Group San Antonio filed nothing in response to Order No. 4.
12. On October, 5, 2018, Commission Staff, re-urged its motion to dismiss.
13. R.F. Group San Antonio has filed nothing since the initial application in February 2018.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TWC §§ 13.041 and 13.241.


2. The Commission may dismiss a proceeding with or without prejudice for, among other reasons:
 - “failure to prosecute” (16 TAC § 22.181(d)(6)); and
 - “failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient” (16 TAC § 22.181(d)(7)).
3. When the ALJ recommends dismissal of a case, he or she must prepare a PFD. The Commission must then consider the PFD as soon as is practicable. 16 TAC § 22.181(f)(2).
4. Under 16 TAC § 22.181(d)(6) and (d)(7), the applicant has failed to prosecute and failed to amend an application such that it is sufficient after repeated determinations that the application is insufficient, thereby warranting dismissal of this proceeding, without prejudice

IV. PROPOSED ORDERING PROVISIONS

1. Docket No. 48109 is dismissed, without prejudice, due to the applicant’s failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 15th day of January 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE