



Control Number: 48328



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DOCKET NO. 48328

APPLICATION OF EL PASO WATER §
UTILITIES PUBLIC SERVICE BOARD §
TO DECERTIFY A PORTION OF ITS §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY IN EL PASO COUNTY §

2018 OCT 15 PM 1:38
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**JOINT MOTION TO ADMIT EVIDENCE
AND PROPOSED NOTICE OF APPROVAL**

COMES NOW applicant El Paso Water Utilities Public Service Board (EPWU) and Commission Staff (collectively, the parties) to jointly file this Motion to Admit Evidence and Proposed Notice of Approval. The parties respectfully request that the specified evidence be admitted and that the attached Proposed Notice of Approval be adopted. In support thereof, the parties show the following:

I. BACKGROUND

On May 1, 2018, EPWU filed an application with the Commission to amend its water certificate of convenience and necessity (CCN) No. 10211 and sewer CCN No. 21008 to decertify a portion of its service areas in El Paso County, Texas. EPWU seeks to relinquish approximately 487 acres from its sewer CCN and 342 acres from its water CCN. EPWU is not currently providing water or sewer service within the subject areas.¹

On October 3, 2018, Staff filed its Recommendation on Final Disposition recommending that EPWU's application be approved. On July 30, 2018, Order No. 3 was issued establishing October 12, 2018 as the deadline by which the parties are to file joint proposed findings of fact, conclusions of law, and ordering paragraphs.

¹ Application at 29 (May 1, 2018).

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II. MOTION TO ADMIT EVIDENCE

The parties jointly request that the following evidence be admitted into the record of this proceeding:

1. EPWU's Application, filed on May 1, 2018 (AIS Item No. 1);
2. EPWU's Proof of Notice, filed on July 2, 2018 (AIS Item No. 8);
3. EPWU's Executed Consent Form, filed on September 25, 2018 (AIS Item No. 11); and
4. Commission Staff's Recommendation on Final Disposition, including the attached memorandum, maps, and amended certificates, filed on October 3, 2018 (AIS Item No. 12).

III. MOTION TO ADOPT PROPOSED NOTICE OF APPROVAL

The attached Proposed Notice of Approval would grant the application of EPWU to decertify portions of its water and sewer service areas for water CCN No. 10211 and sewer CCN No. 21008 in El Paso County. Commission Staff and EPWU have reviewed and agree to the attached Proposed Notice of Approval.²

This docket was processed in accordance with applicable statutes and Commission rules. Notice of the application was issued pursuant to applicable Commission rules. EPWU and Commission Staff are the only parties to this proceeding. The parties jointly request that the attached Proposed Notice of Approval be adopted.

IV. CONCLUSION

Commission Staff has reviewed the application and recommends that it be approved. The parties respectfully request that the Commission grant the admittance of the specified evidence,

² The parties based the Proposed Notice of Approval on the Notice of Approval issued in Docket No. 47464. *See Application of Dripping Springs Water Supply Corporation to Amend a Water Certificate of Convenience and Necessity in Hays County*, Docket No. 47464, Notice of Approval (Aug. 1, 2018).

approve the application, and adopt the attached Proposed Notice of Approval.

Dated: October 15, 2018

Respectfully Submitted,

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By: Emily W. Rogers
Emily W. Rogers

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on October 15, 2018, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.

Emily W. Rogers
Emily W. Rogers

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| APPLICATION OF EL PASO WATER | § | |
| UTILITIES PUBLIC SERVICE BOARD | § | PUBLIC UTILITY COMMISSION |
| TO DECERTIFY A PORTION OF ITS | § | |
| CERTIFICATES OF CONVENIENCE | § | OF TEXAS |
| AND NECESSITY IN EL PASO COUNTY | § | |

JOINT PROPOSED NOTICE OF APPROVAL

This Notice addresses the application of the El Paso Water Utilities Public Service Board (EPWU) to decertify a portion of its water and sewer certificates of convenience and necessity (CCN) in El Paso County, Texas. Commission Staff recommends approval of this application. The application is approved.

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

I. FINDINGS OF FACT

Applicant Information

1. El Paso Water Utilities Public Service Board operates, maintains, and controls facilities for providing sewer service and potable water service for compensation to areas in El Paso County, Texas under sewer CCN No. 21008 and water CCN No. 10211.

The Application

2. EPWU seeks to amend CCN Nos. 21008 and 10211 in El Paso County to decertify certain portions of each service area.
3. The requested areas for decertification include 342 acres from EPWU's water service area and 487 acres from its sewer service area. There are no current customers in either of those portions of EPWU's service areas.
4. The requested areas for decertification are located approximately 2.5 miles north of downtown Horizon City, Texas, and are generally bounded on the north by Pellicano Road, on the east by La Joya Road, on the south by Paseo del Este Drive, and on the west by Berryville Street.

5. Under Texas Water Code¹ (TWC) §§ 13.246(c)(1) and (2), the adequacy of, and need for, service are not relevant factors because EPWU does not currently provide water or sewer service to the identified portions of service area.
6. Under TWC § 13.246(c)(3), granting the decertification will amend EPWU's water and sewer CCNs to remove the identified portions of service area and allow Horizon Regional Municipal Utility District to apply to serve the released areas.
7. Under TWC §§ 13.246(c)(4) and (5), the ability of EPWU to provide adequate service and the feasibility of obtaining service from an adjacent retail public utility were not relevant because the identified portions of service area are being decertified rather than expanded.
8. Under TWC § 13.246(c)(6) and using the criteria established in 16 Texas Administrative Code (TAC) § 24.11, EPWU has demonstrated the financial ability to pay for facilities necessary to provide continuous and adequate service.
9. Under TWC § 13.246(c)(7), granting the decertification will not affect environmental integrity in the identified portions of service area because EPWU has never provided service in those areas and therefore will not need to remove or adjust any facilities there.
10. Under TWC § 13.246(c)(8), the probable improvement of service or lowering of cost to consumers in those areas are not relevant factors because EPWU does not currently provide water or sewer service to the requested areas and those areas are being decertified.
11. Under TWC § 13.246(c)(9), granting the decertification will not affect the land in the identified portions of service area because EPWU has never provided service in those areas and therefore will not need to remove or adjust any facilities there.

Notice

12. On June 6, 2018, EPWU mailed notice of the application to neighboring systems, landowners, cities, and to affected parties.
13. El Paso County notice was provided by publication in the *El Paso Times* on June 9, 2018 and June 16, 2018.
14. On July 2, 2018, EPWU filed an affidavit attesting to mailed notice, including copies of individual notices, and publisher's affidavits.

Informal Disposition

15. More than 15 days have passed since the completion of the notice provided in this docket.

¹ TEX. WATER CODE ANN. §§ 1.001-65.731 (West 2008 & Supp. 2017).

16. EPWU and Commission Staff are the only parties to this proceeding.
17. No protests, motions to intervene, or requests for hearing were filed in this docket, and no issues of fact or law remain disputed by any party; therefore, no hearing is necessary.

Procedural History

18. On May 1, 2018, EPWU filed with the Commission an application to decertify a portion of its CCNs in El Paso County. EPWU seeks to amend its water and sewer CCNs for service areas containing approximately 342 acres and 487 acres, respectively, and serving no current customers.
19. On May 3, 2018, Order No. 1 was issued, requiring comments on administrative completeness and notice, requesting a procedural schedule, and addressing other procedural matters.
20. On May 23, 2018, Commission Staff filed its Administrative Completeness Recommendation recommending that EPWU's application be deemed sufficient.
21. On May 29, 2018, Order No. 2 was issued, deeming the application administratively complete, addressing notice, and establishing a procedural schedule.
22. On July 26, 2018 Commission Staff filed a recommendation that EPWU's notice be deemed sufficient.
23. On July 30, 2018, Order No. 3 was issued, deeming notice sufficient and establishing a procedural schedule.
24. On September 25, 2018, EPWU filed a form consenting to the CCN service area maps and certificates transmitted by Commission Staff.
25. On October 3, 2018, Commission Staff filed its Recommendation on Final Disposition, recommending that the application be approved.
26. On October 12, 2018, EPWU and Commission Staff filed a joint motion to admit evidence and a proposed notice of approval.
27. On _____, 2018, Order No. __ was issued admitting evidence into the record.
28. The Commission has attached the final maps and certificates referenced in Finding of Fact No. 24 to this Notice.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this application pursuant to TWC §§ 13.041, 13.241, 13.244, and 13.246.
2. EPWU is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59).
3. Notice of the application was provided in compliance with TWC § 13.246 and 16 TAC § 24.106.
4. The Commission processed the application as required by the Administrative Procedure Act,² the TWC, and Commission rules.
5. After considering the factors in TWC § 13.246(c), EPWU is entitled to approval of the application to decertify the identified portions of water and sewer service areas.
6. EPWU has demonstrated that 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 § 24.102(c).
7. Pursuant to TWC §§ 13.257(r) and 16 TAC § 24.106(e), EPWU is required to record a certified copy of the approved CCNs and maps, along with a boundary description of the service areas, in the real property records of each county in which the service areas or a portion of the service areas are located, and submit to the Commission evidence of the recording.
8. 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 orders:

1. EPWU's application is approved.
2. EPWU's water CCN No. 10211 and sewer CCN No. 21008 are hereby amended, consistent with this Notice.
3. EPWU shall comply with the recording requirements in TWC §§ 13.257(r) and (s) for the areas in El Paso County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice.

² Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2016 & Supp. 2017).

4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the ____ day of _____, 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

**MAYSON PEARSON
ADMINISTRATIVE LAW JUDGE**