



Control Number: 48714



Item Number: 22

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Hunter Burkhalter *LB*
Administrative Law Judge

RE: Docket No. 48714 – *Application of the City Edinburg to Amend a Certificate of Convenience and Necessity Under Texas Water Code § 13.255 and Decertify a Portion of North Alamo Water Supply Corporation's Service Area in Hidalgo County*

DATE: August 2, 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 deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

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DOCKET NO. 48714

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
EDINBURG TO AMEND A	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY UNDER TEXAS	§	
WATER CODE § 13.255 AND	§	
DECERTIFY A PORTION OF NORTH	§	
ALAMO WATER SUPPLY	§	
CORPORATION’S SERVICE AREA IN	§	
HIDALGO COUNTY	§	

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Commission dismiss the application of the City of Edinburg for a water certificate of convenience and necessity (CCN) amendment and to decertify a portion of North Alamo Water Supply Corporation’s water CCN in Hidalgo County 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 September 26, 2018, the City of Edinburg filed its application to amend its water CCN and to decertify a portion of North Alamo’s water CCN in Hidalgo County. As detailed in the proposed findings of fact and conclusions of law, since filing the application, the City of Edinburg has been informed on multiple occasions that its application is deficient and has been instructed to correct the deficiencies. The City of Edinburg has been given multiple extensions to submit the information required to cure the deficiencies of the application, but has repeatedly failed to do so. For these reasons, the ALJ concludes that, under 16 TAC § 22.181(d)(6) and (d)(7), the application of the City of Edinburg should be dismissed.¹

The ALJ recommends the following findings of fact, conclusions of law, and ordering paragraphs.

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).

II. FINDINGS OF FACT

1. The City of Edinburg owns and operates a municipal utility providing potable water service under CCN number 12106 in Hidalgo County.
2. North Alamo is a domestic non-profit corporation registered with the Texas secretary of state under file number 22548901.
3. North Alamo is authorized to provide potable water service in Hidalgo County, among others, under CCN number 10553.
4. On September 26, 2018, the City of Edinburg filed an application to amend its water CCN number 12106 and to decertify a portion of North Alamo's water CCN number 10553 in Hidalgo County.
5. In Order No. 3 issued on November 6, 2018, the ALJ found the application to be administratively incomplete and ordered the City of Edinburg to, by no later than December 13, 2018, file the additional information needed to cure the deficiencies in the application.
6. The City of Edinburg did not file any response to Order No. 3.
7. In Order No. 4 issued on January 15, 2019, the ALJ again found the application incomplete and deficient, established an opportunity to cure, and warned the City of Edinburg that a failure to cure may lead to dismissal of the application for want of prosecution. The Order established a deadline of February 11, 2019 to supplement the application.
8. On February 11, 2019, the City of Edinburg filed a motion for extension of time to file a response to Order No. 4.
9. In Order No. 5 issued on February 13, 2019, the ALJ granted the motion for extension of time, and directed the City of Edinburg to cure the deficiencies in its application by March 13, 2019.
10. On March 14, 2019, a day after the deadline specified in Order No. 5, the City of Edinburg filed another motion for extension of time.

11. In Order No. 6 issued on March 18, 2019, the ALJ granted the motion for extension and directed the City of Edinburg to cure the deficiencies by March 27, 2019.
12. On March 26, 2019, North Alamo filed a buyout and transfer of service area agreement, but did not otherwise attempt to cure the deficiencies in its application.
13. In Order No. 7 issued on April 29, 2019, the ALJ again found the application to be administratively incomplete and ordered the City of Edinburg to cure the deficiencies by May 28, 2019.
14. The City of Edinburg did not file any response to Order No. 7.
15. On June 27, 2019, Commission Staff recommended: (a) that the application remained deficient; (b) that the City of Edinburg be given until July 26, 2019, to cure the deficiencies; and (c) that the case be dismissed, under 16 TAC § 22.181(d)(6) and (d)(7), if the City of Edinburg did not timely respond.
16. In Order No. 8 issued on July 2, 2019, the ALJ again found the application to be administratively incomplete and ordered the City of Edinburg to cure the deficiencies by July 26, 2019.
17. Order No. 8 concluded with the following admonition: “Barring unforeseen developments, the ALJ will grant Commission Staff’s motion to dismiss if Edinburg does not cure the deficiencies by July 26, 2019.”
18. The City of Edinburg did not file anything in response to Order No. 8 by July 26, 2019.
19. On July 29, 2019, the City of Edinburg filed a motion for extension of time.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under Texas Water Code (TWC) §§ 13.041 and 13.255.
2. The City of Edinburg and North Alamo are retail public utilities as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. 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)).
4. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than 16 TAC § 22.181(g)(1) or (2) requires preparation of a proposal for decision.
 5. Because the applicant has failed to prosecute and failed to amend its application such that it is sufficient after repeated determinations that the application is insufficient, dismissal of this proceeding, without prejudice, is warranted under 16 TAC § 22.181(d)(6) and (d)(7).

IV. ORDERING PARAGRAPHS

1. Docket No. 48714 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 2nd day of August 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE