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DOCKET NO. 49262

APPLICATION OF THE CITY OF
FLORESVILLE TO AMEND A SEWER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN WILSON
COUNTY

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2019 DEC -2 PM 2: 57

PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON NOTICE DEFICIENCY

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Staff's Recommendation on Notice Deficiency. In support thereof, Staff shows the following:

I. BACKGROUND

On February 26, 2019, the City of Floresville (Floresville) filed an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20279, in Wilson County, Texas. The requested area includes approximately 4,201 acres and 171 connections.

On May 31, 2019, the Commission Administrative Law Judge (ALJ) issued Order No. 3, requiring Staff to file a recommendation on sufficiency of notice within 10 days of Floresville filing proof of completed notice. Floresville filed proof of notice on August 26, 2019.

On September 5, 2019, Staff recommended the proof of notice be found deficient. Specifically, Floresville's *Publisher's Affidavit* filed on August 26, 2019 included a notarized affidavit attesting that notice was published on July 24, 2019; July 31, 2019; August 7, 2019; and August 14, 2019 in a newspaper of general circulation in Wilson County. Though the affidavit referenced that a copy of the notice was attached, no attachment was filed with the affidavit. Thus, the filing did not fulfill the CCN notice requirements of 16 TAC § 24.235.

Further, Floresville had not filed the *Affidavit of Notice to Current Customers, Landowners, Neighboring Utilities and Affected Parties*, a copy of the notice as published by the newspaper, or an accurate map delineating the requested service area, as recommended by Staff in its Supplemental Recommendation on May 29, 2019.

On September 6, 2019, the ALJ issued Order No. 5, finding notice deficient and directing Floresville to cure the deficiencies on or before October 7, 2019, and requiring Staff to file a recommendation on sufficiency of notice on or before November 5, 2019. On November 8, 2019,

the ALJ issued Order No. 7, granting an extension request and requiring Floresville to file any additional affidavit of notice and proof of notice not previously filed on or before November 14, 2019, and requiring Staff to file a recommendation on sufficiency of notice on or before December 2, 2019. Therefore, this pleading is timely filed.

II. NOTICE DEFICIENCY

Staff recommends that the ALJ find Floresville's notice deficient. After a review of two different supplemental filings regarding notice, one filed on October 15, 2019 and the other filed on November 12, 2019, Staff determined that Floresville either used the incorrect form for notice or Floresville's notice was incomplete.

Staff has reviewed Floresville's *Publisher's Affidavit*, filed on October 15, 2019, and Floresville's *Affidavit of Notice to Current Customers, Landowners, Neighboring Utilities and Affected Parties*, filed on November 12, 2019. The October 15, 2019 filing included a notarized affidavit attesting that notice was published on October 2, 2019 and October 9, 2019, in a newspaper of general circulation in Wilson County, and attesting that the City of Floresville's sewer customers received notice. Staff recommends that the ALJ find this affidavit insufficient because Floresville failed to use the appropriate affidavits required to attest to the provision of notice for specific parties.

Additionally, the Publishers' Affidavits are incorrect. Erica Soto, the Classified Ad Manager of the Wilson County News, filed on the form required for attesting to provision of notice to customers, landowners, neighboring utilities, and affected parties. However, Ms. Soto cannot attest to the notice sent to Floresville's sewer customers, to which she is attesting by signing that particular affidavit. Staff also recommends that the affidavit filed on behalf of Kristen Weaver should be found insufficient for the same reasons, because it is not on the correct form, and, as the Director of Operations for WCN, Inc., Ms. Weaver presumably will not be able to attest to whether Floresville provided notice to its customers. Finally, Ms. Weaver's affidavit references a water CCN, rather than a sewer CCN.

Aside from the deficiencies of the affidavits filed, notice to neighboring systems, landowners, customers, and cities is insufficient because Floresville did not send the correct notice

to those parties—Notice to Neighboring Systems, Landowners, Customers and Cities—but instead sent the Notice for Publication.

Public notice as published is sufficient.

The November 12, 2019 filing included two identical notarized Affidavit of Notices to Current Customers, Landowners, Neighboring Utilities and Affected Parties, but the affidavits lacked the names of entities who were provided notice. Staff recommends that the ALJ find Floresville's November 12, 2019 filing insufficient because the affidavit was not complete, and because a copy of the notice as provided to those entities, and an accurate map delineating the requested service area, was not filed with the affidavit. The filing did not fulfill the CCN notice requirements of 16 TAC § 24.235.

III. PROCEDURAL SCHEDULE

Staff recommends that Floresville's notice be found deficient. Therefore, Staff recommends that a deadline of January 2, 2020 be established for Floresville to supplement its notice. Additionally, Staff recommends that a deadline of February 3, 2020 be established for Staff to review Floresville's supplemental information and make a supplemental recommendation on the sufficiency of notice.

IV. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that Floresville's notice be found deficient and that the procedural schedule proposed above be adopted for further processing of this docket.

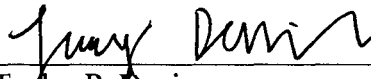
Dated: December 2, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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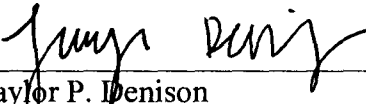


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 2, 2019, in accordance with 16 TAC § 22.74.


Taylor P. Denison