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APPLICATION OF THE CITY OF FORT WORTH FOR A SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY IN TARRANT, DENTON, WISE AND PARKER COUNTIES

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BEFORE THE PUBLIC UTILITY COMMISSION
FILED OF EPK

PUBLIC UTILITY COMMISSION
OF TEXAS

CITY OF FORT WORTH’S NOTICE OF INTENT TO RESPOND TO COMMISSION STAFF’S FINAL RECOMMENDATION

COMES NOW, the City of Fort Worth (the “City”), by and through its undersigned attorneys of record, and files this Notice of Intent to Respond to Commission Staff’s Final Recommendation (“Notice”). In support thereof, the City would respectfully show as follows:

I. Background

On March 1, 2019, the City filed an application with the Public Utility Commission of Texas (the “Commission”) to obtain a sewer Certificate of Convenience and Necessity (“CCN”) in Tarrant, Denton, Wise, and Parker Counties, Texas (the “Application”). The City amended the Application on October 16, 2019, significantly reducing the acreage of service area requested (the “Amended Application”). On December 20, 2019, the Administrative Law Judge (“ALJ”) issued Order No. 9 in this Docket, finding the Amended Application administratively incomplete, and ordering that it be supplemented in accordance with a December 18, 2019 “PUC Interoffice Memorandum,” which informally requested the following additional information and documentation:

- “proof that a wastewater permit [application] was submitted to [the Texas Commission on Environmental Quality];”
- “a copy of any developer agreements or requests for service within the requested area;”

- “a capital improvement plan, including a budget, estimated timeline and the sources of funding for the construction of all facilities necessary to provide service to the requested area;”
- “[g]eneral location maps identifying each polygon of the requested areas in reference to the nearest county boundary, city, or town;”
- “[d]etailed maps identifying each polygon of the requested area in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads;”
- “[d]igital data for each polygon of the requested area;”
- “the approximate total acreage for the revised requested area;” and
- “a notice description for the location of each polygon making up the entire requested area.”

In response, the City timely supplemented the Amended Application on February 20, 2020. On March 24, 2020, in accordance with the recommendation of Commission Staff, the ALJ issued Order No. 11, again finding the Amended Application administratively incomplete. Order No. 11 also required the City to provide further additional documentation identified in a second “PUC Interoffice Memorandum,” dated March 16, 2020, which informally requested:

- “revised general location maps identifying only the requested area, in reference to the nearest county boundary, city, or town;” and
- “revised detailed maps identifying only the requested area, in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads.”

The City timely responded to Order No. 11 on May 19, 2020, filing its Second Supplement to Amended Application. On July 30, 2020, the ALJ issued Order No. 14, finding the Amended Application administratively complete. On August 31, 2020, the City of

Weatherford (“Weatherford”) filed a request to intervene in this proceeding, indicating that the service area sought under the Amended Application (the “Requested Area”) extended into Weatherford’s extraterritorial jurisdiction (“ETJ”). On September 4, 2020, Robert and Betty Browder filed a letter requesting that their property be excluded from the Requested Area (the “Opt-Out Request”). On September 25, 2020, Commission Staff filed its First Request for Information (“RFI”), requesting that the City provide:

- “updated requested acreage and current customer connection count for the [Requested Area];”
- “a map that shows the location of the customers receiving service identified by parcel in the [Requested Area];”
- “parcel acreage held by the current customer connections in the [Requested Area],” including the total acreages inside the City’s corporate limits, inside the City’s ETJ, and outside the City limits and ETJ;
- “parcel acreage held by landowners requesting service in the [Requested Area],” including the total acreages inside the City’s corporate limits, inside the City’s ETJ, and outside the City limits and ETJ;
- “parcel acreage where there are no requests for service and no current customers,” including the total acreages inside the City’s corporate limits, inside the City’s ETJ, and outside the City limits and ETJ;
- “a map showing the facility lines within the [Requested Area] and along with the [Requested Area], the current city limit and ETJ boundaries that includes the locations of current customer connections and requests for service in the [Requested Area];” and

- “a map showing the boundaries of the [Requested Area], and the current city limit and ETJ boundaries. Also provide the connection count and acreage (by parcel) for [inside the City’s corporate limits, inside the City’s ETJ, and outside the City limits and ETJ].”

Shortly thereafter, on September 29, 2020, the ALJ issued Order No. 17, ordering the City to file revised mapping documentation to cure certain deficiencies identified in a third “PUC Interoffice Memorandum,” dated September 28, 2020, which requested that the City address the Opt-Out Request and, if possible, the concerns raised by Weatherford.

The City timely responded to Commission Staff’s First RFI and Order No. 17, filing its Third Supplement to Amended Application on November 12, 2020, and its Response to Commission Staff’s First RFI on November 16, 2020. On December 8, 2020, the ALJ issued Order No. 20, granting Weatherford’s Motion to Withdraw its request to intervene in this proceeding. On December 9, 2020, Commission Staff filed its Recommendation on Sufficiency of Revised Mapping, recommending that the revised mapping and digital data filed by City be found sufficient. In other words, after many months of hard work by both the City and Commission Staff, the Amended Application was administratively complete and there were no third parties intervening in this matter.

However, surprisingly, on January 8, 2021, Commission Staff filed its Final Recommendation (the “Recommendation”), recommending that the Amended Application not be granted as the City “has not provided sufficient information related to the need for service in the [Requested Area].”

Accordingly, the City now submits this Notice, requesting that the ALJ withhold from ruling on the Recommendation until after the City has filed a response thereto (“Response”).

II. Notice of Intent to Respond to Commission Staff's Final Recommendation

The City disagrees with the Final Recommendation filed by Commission Staff and hereby provides this Notice of its intent to promptly file its Response thereto, which the City expects and desires to submit as soon as possible, but will do no later than Friday, January 15, 2021, in accordance with 16 Texas Administrative Code § 22.78. This Commission rule provides that “a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made.” Accordingly, the City requests in good faith that the ALJ withhold from issuing an order concerning Commission Staff's Recommendation until the City has the opportunity to timely file its Response.

The need for the ALJ to withhold from ruling on the Recommendation is not caused by the City's neglect, indifference, or lack of diligence. On the contrary, and as described above, the City has diligently prosecuted the Amended Application for almost two years. It has timely and completely responded to both formal and informal requests for information, supplementing the Amended Application on numerous occasions and consistently cooperating with the requests and recommendations of Commission Staff.

III. Conclusion and Prayer

Based on the foregoing, the City of Fort Worth respectfully notifies all parties and the Administrative Law Judge that it intends to respond to Commission Staff's Final Recommendation; and requests that the Administrative Law Judge withhold from ruling on Commission Staff's Final Recommendation until after the City has filed its Response thereto or the City's January 15, 2021 deadline to do so has passed, and grant all other relief as is necessary and proper to effectuate the requests contained herein.

Respectfully submitted,

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**ATTORNEYS FOR THE CITY OF FORT
WORTH**

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 11, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



David J. Klein