

Control Number: 49838



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DOCKET NO. 49838

**APPLICATION OF EL OSO WATER
SUPPLY CORPORATION AND THE
CITY OF KENEDY FOR APPROVAL
OF AN AGREEMENT UNDER TEXAS
WATER CODE § 13.248 IN KARNES
COUNTY**

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PUBLIC UTILITY COMMISSION

OF TEXAS

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COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Commission Staff's Response to Order No. 1 and would show the following:

I. BACKGROUND

On August 9, 2019, El Oso Water Supply Corporation (El Oso) and the City of Kenedy, Texas (City) (collectively, Applicants), upon receipt of prior approval by the Rural Development Office of the United States Department of Agriculture, filed a Joint Petition for Approval and Enforcement of a Certificate of Convenience and Necessity (CCN) Transfer Agreement Designating Service Areas pursuant to Texas Water Code (TWC) § 13.248, and 16 Texas Administrative Code (TAC) § 24.253 (Application).

On August 13, 2019, the administrative law judge (ALJ) issued Order No. 1, requiring the Applicants and Staff to file a proposed procedural schedule and for Staff to file comments on the administrative completeness of the Application and proposed notice on or before September 9, 2019. Therefore, this pleading is timely filed.

II. COMMENTS ON SUFFICIENCY AND NOTICE

Staff has reviewed the Application and mapping filed by the Applicants, and as is outlined by the attached memorandum from Elisabeth English, Engineering Specialist, Infrastructure Division, Staff recommends that the Application be found deficient. In addition to the mapping deficiencies outlined in Ms. English's memorandum, while Staff finds the form of the Applicants' proposed notice sufficient, the Application did not include the affidavit required by 16 TAC § 24.253(c)(3), attesting to the date that the notice was provided. However, Staff has already discussed the deficiencies with the Applicants, who are working to resolve those

deficiencies. Therefore, Staff recommends that the Applicants be given until September 30, 2019 to file the affidavit related to notice and address the mapping deficiencies.

III. PROPOSED PROCEDURAL SCHEDULE

Staff and the Applicants propose the following agreed procedural schedule:

| Event | Deadline |
|---|--------------------|
| Deadline for Applicant to address deficiencies in the Application and notice. | September 30, 2019 |
| Deadline for Staff to file a supplemental sufficiency recommendation. | October 25, 2019 |
| Deadline for Staff to provide final maps and certificates to the Applicants for review and consent | November 22, 2019 |
| Deadline for Applicants to file signed consent forms with the Commission | December 3, 2019 |
| Intervention deadline | December 9, 2019 |
| If no hearing is requested, deadline for Staff to file a final recommendation on the Application | December 10, 2019 |
| If no hearing is requested, deadline for parties to file joint proposed findings of fact and conclusions of law | December 17, 2019 |

IV. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the above recommendation.

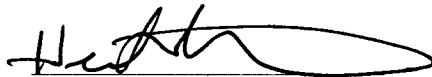
Dated: September 9, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Rachelle Nicolette Robles
Managing Attorney

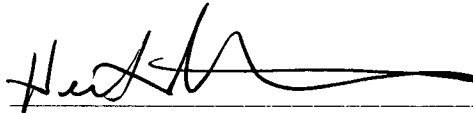


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 9, 2019, in accordance with 16 TAC § 22.74.



Heath D. Armstrong

PUC Interoffice Memorandum

To: Heath Armstrong, Attorney
Legal Division

Thru: Heidi Graham, Manager
Infrastructure Division

From: Elisabeth English, Engineering Specialist
Infrastructure Division

Date: September 9, 2019

Subject: **Docket No. 49838:** *Application of El Oso Water Supply Corporation and City of Kenedy for the Approval of a Service Area Contract under Texas Water Code § 13.248 and to Amend Certificates of Convenience and Necessity in Karnes County*

On August 9, 2019 El Oso Water Supply Corporation (El Oso) and City of Kenedy (Kenedy) (collectively, Applicants) filed a petition for approval of a contract designating Certificate Convenience and Necessity (CCN) service areas under Texas Water Code § 13.248 in Karnes County, Texas. The Applicants' service area contract is being reviewed in accordance with 16 Texas Administrative Code (TAC) § 24.253.

The Applicants seek to amend El Oso's water CCN No. 10570 and Kenedy's water CCN No. 10725 as a result of the *CCN Transfer Agreement* (Agreement)¹ entered into on March 12, 2019. The requested area's to be exchanged are based on the existing service areas of the Applicants that are currently within both CCNs. The amendments will allow for the Applicants to efficiently serve the respective areas. There are no customers being provided service within the requested areas to be transferred.

Staff recommends that the application be deemed administratively incomplete due to the mapping and notice deficiencies outlined below.

Notice

The affidavit required by 16 TAC § 24.253(c)(3) was not provided. The decision to enter into the Agreement was discussed at the respective open meetings of the Applicants as evidenced by the meeting agenda and minutes included in the application.² Under 16 TAC § 24.253(c)(2), this constitutes sufficient notice as there are no affected customers. However, an affidavit from both parties attesting to the date that notice was provided was not filed.

Staff requests that the Applicants supplement their application with an affidavit attesting to the date that notice was provided via the discussions at the city council meeting.

¹ **Docket No. 49789:** *Application of El Oso Water Supply Corporation and City of Kenedy for the Approval of a Service Area Contract Under Texas Water Code § 13.248 and to Amend Certificates of Convenience and Necessity in Karnes County (Application)*, PUC Docket No. 49789, Exhibit 1 (August 9, 2019).

² *Application, PUC Docket No. 49789, Exhibit 4,5,6,7, (August 9, 2019)*

Mapping

The general location and detailed maps do not clearly identify the requested areas in reference to verifiable man-made and natural landmarks, such as highways, roads, and rivers. Additionally, the Applicants did not file digital mapping data for each requested area to be transferred.

Applicants must submit the following items to resolve the mapping deficiencies:

- A general location map identifying the requested areas to be transferred, in reference to the nearest county boundary, city, or town. On this map, clearly mark and label major roads and highways.
- A detailed map identifying the requested areas to be transferred, in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. On this map, clearly mark and label streets, roads and highways.
- Digital data for each requested area to be transferred, provided as a single polygon record, in a shapefile (SHP) format, georeferenced in NAD83 Texas Statewide Mapping System (Meters). Label each polygon record (requested area) with the corresponding utility name and number as shown on maps.
- Provide the approximate total acreage for each of the following. The acreage should correspond to the digital data provided for each of the following requested areas:
 - Requested areas to be transferred to El Oso CCN No. 10570; and
 - Requested areas to be transferred to Kenedy's CCN No. 10725.

Staff recommends the Applicant obtain additional mapping guidance from the PUC's mapping staff, Ms. Tracy Montes at (512)936-7187 or tracy.montes@puc.texas.gov to resolve the mapping deficiencies.