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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Christina Denmark
Administrative Law Judge

RE: **Docket No. 50563** – *Application of the City of Alton to Amend its Sewer Certificate of Convenience and Necessity in Hidalgo County*

DATE: November 7, 2022

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. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 50563

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
ALTON TO AMEND ITS SEWER	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN HIDALGO	§	
COUNTY	§	

PROPOSAL FOR DECISION

In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission dismiss the application of the City of Alton to amend its sewer certificate of convenience and necessity (CCN) number 20809 in Hidalgo County due to Alton's failure to prosecute, under 16 Texas Administrative Code (TAC) § 22.181(d)(6), and for Alton's failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, under 16 TAC § 22.181(7). The ALJ recommends that the dismissal be without prejudice.

I. Findings of Fact

The ALJ makes the following findings of fact.

1. Alton is a municipality located in Hidalgo County.
2. Alton provides retail sewer service to customers in Hidalgo County under CCN number 20809.
3. On February 18, 2020, Alton filed the application at issue in this proceeding seeking to amend its sewer CCN.
4. On April 28, June 8 and June 16, 2020, March 31 and October 20, 2021, and January 20, 2022, Alton supplemented its application, including providing new mapping data.
5. In Order No. 18 filed on February 18, 2022, the ALJ fully adopted Commission Staff's recommendations regarding the additional mapping data submitted, and found Alton's mapping deficient, and ordered Alton to make the mapping changes recommended by Commission Staff by March 18, 2022.
6. Alton did not attempt to cure the deficiencies or otherwise respond to Order No. 18.

7. In Order No. 19 filed on March 28, 2022, the ALJ again ordered Alton to make the mapping changes recommended by Commission Staff by April 11, 2022.
8. Alton did not attempt to cure the deficiencies or otherwise respond to Order No. 19.
9. In Order No. 21 filed on July 12, 2022, the ALJ refined his rulings from Order Nos. 18 and 19 regarding removal of certain portions of the requested area; however, the ALJ found that the digital mapping provided by Alton remained deficient, and ordered Alton to cure the deficiencies by August 8, 2022.
10. Alton did not attempt to cure the deficiencies or otherwise respond to Order No. 21.
11. In Order No. 22 filed on September 29, 2022, the ALJ moved to dismiss the application due to Alton's failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.
12. The deadline to respond to the motion to dismiss was October 19, 2022.
13. Alton did not respond to the motion to dismiss.
14. No hearing was held on the motion to dismiss.
15. Alton has filed nothing in this docket since January 20, 2022.

II. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code §§ 13.041, 13.241, 13.242, 13.244, and 13.246.
2. Under 16 TAC § 22.181(d)(6), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to prosecute.
3. Under 16 TAC § 22.181(d)(7), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.
4. Under 16 TAC § 22.181(e)(2), dismissal of a proceeding may be made upon the motion of the ALJ, and an ALJ's motion must be provided by written order or stated on the record.

5. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than those specified in 16 TAC § 22.181(g)(1) or (2) requires preparation of a PFD.
6. Alton has failed to prosecute its application and failed to amend its application such that it is sufficient after repeated determinations that the application is insufficient, thereby warranting dismissal of this proceeding, without prejudice, under 16 TAC § 22.181(d)(6) and (7).
7. This PFD was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

III. Ordering Paragraphs

In light of the findings of fact and conclusions of law, the ALJ recommends the following ordering provisions.

1. The ALJ's motion to dismiss is granted.
2. The Commission dismisses Alton's application, without prejudice, due to Alton's failure to prosecute its application and for failure to amend its application such that it is sufficient after repeated determinations that the application is insufficient.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 7th day of November 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE