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Executive Director

Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: John Kelly
Commission Advising

RE: *Application of Chester Maples DBA Old Highway 90 Water Service to Amend a Certificate of Convenience and Necessity in Medina and Frio Counties*, Docket No. 51488, Draft Preliminary Order, September 23, 2021 Open Meeting, Item No. 25.

DATE: September 16, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 23, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 23, 2021 open meeting.

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DOCKET NO. 51488

APPLICATION OF CHESTER MAPLES	§	PUBLIC UTILITY COMMISSION
DBA OLD HIGHWAY 90 WATER	§	
SERVICE TO AMEND A	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN MEDINA AND	§	
FRIO COUNTIES	§	

DRAFT PRELIMINARY ORDER

Chester Maples, operating under the name Old Highway 90 Water Service, filed an application to amend its water certificate of convenience and necessity (CCN) in Medina and Frio Counties. This preliminary Order identifies the issues that must be addressed in this docket.

I. Overview

Chester Maples, operating under the name Old Highway 90 Water Service, requests to amend to his existing water CCN number 12975 to add approximately 600 acres the service area. Chester Maples, operating under the name Old Highway 90 Water Service, currently serves 383 water connections and stated that there are no existing customers in the requested area.¹ The applicant stated that there are no existing customers in the requested area because the applicant states that the requested area is the location of the future Sand Hurst subdivision, near the border of Medina and Frio counties and along interstate 35 between the cities of Devine and Moore. The Sand Hurst subdivision is currently under development in its first phase which includes 75 lots.² The subdivision will eventually have more phases to include a total of approximately 252 lots.³ Chester Maples, operating under the name Old Highway 90 Water Service, stated that to provide water service he will need to install a stand-alone water system and install lines to the subdivision.⁴

¹ Application at 7.

² Application at 4.

³ *Id.*

⁴ Application at 6; and Chester Maples', operating under the name Old Highway 90 Water Service, Response to Commission Staff's Third Request for Information (Aug. 10, 2021).

II. Two Separate Requests for Relief

The total service area the applicant seeks to add to his existing water CCN is approximately 600 acres.⁵ This includes 589 acres that are not certificated and 11 acres to be decertified from Benton City Water Supply Corporation's water CCN number 12587. Therefore, Chester Maples, operating under the name Old Highway 90 Water Service, effectively filed two separate applications in this docket and seeks two separate requests for relief in this single proceeding.

One request for relief is the decertification of approximately 11 acres from Benton City WSC's water CCN number 12587.⁶ This request would result in decertification of the 11 acres as well as an amendment to Benton City WSC's water CCN to reflect the decertification and resulting change in service area. The applicant filed a letter from Mr. Daniel Rangel, general manager of Benton City WSC, agreeing to the decertification to allow Chester Maples, operating under the name Old Highway 90 Water Service, to serve the decertified area.⁷

The other request for relief is to amend the CCN for Chester Maples, operating under the name Old Highway 90 Water Service, which is CCN number 12975. The existing CCN would be amended to add the 11 acres to be decertified from Benton City WSC as well as the 589 acres that are not certificated, for a total of 600 acres.

III. Procedural Background

The application was filed on November 5, 2020. There have been many filings in this docket, to date, including supplements to the application, supplemental mapping documents, and requests for information from Commission Staff. In Corrected Order No. 9, the Commission administrative law judge (ALJ) granted intervention in this proceeding to Yancey Water Supply Corporation. Chester Maples, operating under the name Old Highway 90 Water Service, objected to Yancey WSC's motion to intervene. The Commission ALJ overruled the objection. On August 12, 2021, Yancey WSC requested a hearing on the merits so that it may be given sufficient time to conduct discovery and because of concerns regarding the applicant's financial, managerial,

⁵ *Id.* at 11; Revised Supplemental Mapping Documentation to Show Requested Area to Amend to CCN 12975 at 1 (Apr. 14, 2021).

⁶ Decertification agreement from Benton City WSC at 2 (Mar. 16, 2021); and Revised Supplemental Mapping Documentation to Show Requested Area to Amend to CCN 12975 at 1 (Apr. 14, 2021).

⁷ *Id.*

and technical capabilities to provide continuous and adequate service in the requested area.⁸ Yancey further stated that the service area the applicant seeks to add to its water CCN is two miles from Yancey WSC's existing CCN number 11463 and five miles from its nearest facilities and that it is willing and able to provide water service to the Sand Hurst subdivision.⁹

Chester Maples, operating under the name Old Highway 90 Water Service, was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in this proceeding and also to identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by September 15, 2021. Chester Maples, operating under the name Old Highway 90 Water Service, Commission Staff, and Yancey WSC each timely filed a list of issues on September 15, 2021.

IV. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹⁰ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket to amend to the water CCN number 12975 of Chester Maples, operating under the name Old Highway 90 Water Service.

A. Issues to be Addressed for Amendment of the Applicant's Water CCN

Applicant

1. Does the utility possess the financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by Texas Water Code (TWC) § 13.241 and 16 Texas Administrative Code (TAC) § 24.227(a)?
2. Does the utility possess a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC in accordance with 16 TAC § 24.227(a)(1)(A)?

⁸ Yancey WSC's Request for Hearing on the Merits at 6 (Aug. 13, 2021).

⁹ Yancey WSC's Request for Hearing on the Merits at 2; and Written Service Request to Yancey WSC and Yancey WSC's Response (Dec. 9, 2021).

¹⁰ Tex. Gov't Code § 2003.049(e).

3. Does the utility have access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirements 16 TAC §24.227(a)(1)(A) in accordance with 16 TAC § 25.227(a)(2)(B)?

Notice

4. Has the utility given notice as required by TWC § 13.246(a) and (a-1) and 16 TAC § 24.235(a) through (d)?

Application

5. Does the utility's application contain all relevant information required by TWC § 13.244(c) and (d) and 16 TAC §§ 24.233(a) and 24.257?
6. What modification to the application or mapping documents, if any, must be made to reflect the removal of opt-out properties from the requested area under TWC §§ 13.2541(b) and 13.246(h) and 16 TAC § 24.227(i)?

Requested Area

7. What is the total number of acres to be added to the utility's existing CCN?
8. Does the requested service area require construction of a physically separate water system? If so, has the utility proven that regionalization or consolidation with a retail public utility for public water service is not economically feasible as required by TWC § 13.241(d) and 16 TAC § 24.227(b).
9. Does the utility's requested area overlap with the certificated service area of a district, municipality, or other public authority under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
 - a. What specific areas, if any, will overlap?
 - b. Has the utility received the appropriate consent, franchise, permit, or license to provide water service within each affected entity's boundaries?
10. Does the utility's requested area overlap with the extraterritorial jurisdiction of any other municipality under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
 - a. What specific areas, if any, will overlap?

- b. Does any municipality whose extraterritorial jurisdiction overlaps with the requested area have a population of 500,000 or more? If so, does the municipality consent to the Commission's granting of a CCN for those areas under TWC § 13.245 and 16 TAC § 24.233(c)?

Effect of Granting the CCN Amendment

- 11. Is the utility's proposal to amend its water CCN to include the requested area necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d)?
- 12. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(e) weigh in favor of granting the utility a CCN amendment to include the requested area? In answering this issue, please address the following sub-issues:
 - a. Is the requested area currently receiving adequate water service in accordance with TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?
 - b. Does the requested area need water service or additional water service in accordance with but not limited to the following considerations under TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2)?
 - i. Have any landowners, prospective landowners, tenants, or residents in the requested area requested water service?
 - (1) If so, where are they, or where will they be located?
 - (2) If so, were the requests for water service for the entire requested area?
 - ii. Are there economic needs for additional water service in the requested area?
 - iii. Are there environmental needs for additional water service in the requested area?
 - iv. Are there written applications or requests for water service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the requested area?
 - vi. Have any development agreements been reached between the utility and another entity or person regarding the development of any portion of the requested area? Please answer the following sub-issues separately for each development agreement.

- (1) What portion of the requested area is covered by the development agreement?
 - (2) Who are the parties to the development agreement?
 - (3) Are there any current timetables for when development under the agreement will begin and be completed? If not, when does the utility contemplate development under the agreement will begin?
- c. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3), what are the effects—including but not limited to regionalization, compliance, and economic effects—of granting the utility a CCN amendment to include the requested area on the following:
- i. the utility;
 - ii. landowners in the requested area; and
 - iii. any retail public utility that provides water service and that is already serving any area within two miles of the boundary of the requested area?
- d. Taking into consideration the current and projected density and land use of the area, does the utility have the ability to provide adequate service, including meeting the standards of the TCEQ and the Commission, in accordance with TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4)?
- e. What is the feasibility of obtaining water service in the requested area from an adjacent retail public utility in accordance with TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5)?
- f. Is the utility financially capable of paying for the facilities necessary to provide continuous and adequate water service in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)?
- i. Does the utility have existing facilities adequate to provide continuous and adequate water service to the requested area? If not, are additional facilities needed to ensure that the utility can provide continuous and adequate service to the requested area?
 - ii. Is the utility planning to build facilities for the requested area? If so, please address the following sub-issues:
 - (1) What facilities is the utility planning to build, and where will the utility construct the facilities?

- (2) Has the utility entered into any agreements regarding the construction of the facilities?
 - (3) Does the utility have a timetable or plan for when construction of the facilities will actually begin? When does the utility contemplate construction will begin and conclude?
 - (4) Who will construct any water infrastructure necessary to serve the requested area? How will the utility finance that construction? Has the utility created budget projections for the construction of any necessary water infrastructure?
 - (5) Has the utility completed an engineering plan for any water infrastructure necessary to serve the requested area? If so, what are the parameters of that plan? If not, when will the utility engage an engineering firm to develop such a plan?
 - (6) How will the addition of new facilities affect the bills of the utility's existing customers?
- iii. What is the amount of credit available to the utility?
 - iv. Should the utility be required to provide an irrevocable stand-by letter of credit under 16 TAC § 24.11(d)?
 - v. Does the utility possess the ability to finance facilities or upgrades to existing facilities through its retained earnings? How will the utility finance new facilities or upgrades to existing facilities?
- g. Is the utility financially stable in accordance with TWC § 13.246(c)(6) and 16 TAC §§ 24.11(e) and 24.227(e)(6)? If applicable, is the utility's debt-to-equity ratio adequate?
 - h. How, if at all, would environmental integrity be affected by granting the utility a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
 - i. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from granting the utility the CCN amendment in accordance with TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?

- j. How, if at all, would the land in the requested area be affected by granting the utility a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?
13. Should the Commission require the utility, in accordance with TWC § 13.246(d) and 16 TAC § 24.227(f), to provide a bond or other financial assurance to ensure that it provides continuous and adequate service?
14. If applicable, what were the utility's efforts to:
- a. extend water service to any economically distressed area, within the meaning of TWC § 15.001(11), located within the utility's certificated service area, as required by TWC § 13.246(e)(1) and 16 TAC § 24.227(g); and
 - b. enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply as required by TWC § 13.246(e)(2)?
15. Does the utility provide water service to the requested area or plan to provide water service to the requested area in the future? If not, and if the Commission grants the utility a CCN amendment for all or part of the requested area, what effect will the amendment have on future access to water service for landowners in the requested area?
16. If the Commission grants the utility a water CCN amendment, should the area added to the utility's service area include only the area in which the utility currently has facilities and is providing water service?
17. Alternatively, if the Commission grants the utility a water CCN amendment, should the area added to the utility's service area include only the area in which it currently has facilities and is providing water service and areas where it has a definite plan to construct facilities to provide water service?
18. If the Commission grants the utility a water CCN amendment, will the utility plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer users in accordance with 16 TAC § 24.205?

B. Issues to be Addressed for Decertification and Amendment of Benton City WSC's Water CCN

1. Under which provision or provisions of TWC § 13.254(a) and 16 TAC § 24.245(d)(1) should the Commission decertify and amend a portion of Benton WSC's CCN?
 - a. Has Benton City WSC never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area?
 - b. Is Benton City WSC in an affected county as defined in TWC §16.341, and is the cost of providing service by Benton City WSC so prohibitively expensive as to constitute denial of service?
 - c. Has Benton City WSC agreed in writing to allow the utility to provide service within its service area, except for an interim period, without amending its CCN?
 - d. Has Benton City WSC failed to apply for a cease-and-desist order under TWC § 13.252 and § 24.255 (relating to content of request for cease and desist order by the Commission under TWC § 13.252) within 180 days of the date that Benton City WSC became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless Benton City WSC proves that good cause exists for its failure to timely apply for a cease-and-desist order?
 - e. Has Benton City WSC consented in writing to the revocation or amendment?

These lists of issues are not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

V. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order

may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER