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DOCKET NO. 51998

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
BURLESON TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN	§	
JOHNSON COUNTY	§	

**JOINT MOTION TO ADMIT EVIDENCE AND
JOINT PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COME the City of Burleson (“Burleson” or “the City”) and the Staff (“Staff”) of the Public Utility Commission of Texas (the “Commission”), the only two remaining Parties to this proceeding (collectively, “the Parties”), timely file this Joint Motion to Admit Evidence and Joint Proposed Order in response to Order #20. In support thereof, the Parties show the following:

I. BACKGROUND

On April 8, 2021, the City filed an application with the Commission to amend its sewer Certificate of Convenience and Necessity (“CCN”) number 20358 in Johnson County, Texas (the “Application”). In the Application, as supplemented, the City sought to decertify 7,664 acres from its certificated sewer service area, which contained no current customers.

On December 7, 2021, an Order was issued requesting a list of issues.

On December 17, 2021, Staff filed its List of Issues.

On April 4, 2022, the Commission issued its Preliminary Order, identifying the issues that must be addressed and an issue that need not be addressed.

On July 12, 2022, Staff filed its Final Recommendations, recommending the Application be approved.

On July 19, 2022, Order No. 11 was issued requiring the City to address outstanding issues regarding notice, specifically addressing Issues #3, #4, #5, and #6 in the preceding Preliminary Order.

On August 11, 2022, the City filed its Response to Order No. 11.

On September 6, 2022, Staff filed its Supplemental Recommendation on Sufficiency of Notice.

On September 7, 2022, Order No. 12 was issued requiring clarifications regarding notice.

On September 20, 2022, Order No. 13 was issued granting an extension to both Parties, with revised deadlines for providing responses to Order No. 12.

On October 12 and October 21, 2022, the City and Staff, filed their respective Responses to Order No. 12.

On October 24, 2022, Order No. 14 was issued requiring the City and Staff to “. . . file a joint motion to admit evidence, along with proposed findings of fact and conclusions of law. . . “on or before November 14, 2022.

The City and Staff submitted a Joint Motion to Admit Evidence, with a Joint Proposed Order with proposed Findings of Fact and Conclusions of Law as required by Order #14 on November 10, 2022.

On November 14, 2022, Order No. 15 was issued admitting evidence and requiring the City and Staff to provide clarification on certain issues. The following evidence was admitted:

1. On April 8, 2021, the City filed its Application to amend the CCN.
2. On May 10, 2021, Staff recommended that the maps provided with the Application were deficient.

3. On June 2, 2021, the City filed supplemental information to the docket, including revised maps seeking to decertify 7,664 acres, rather than 7,667 acres.
4. On July 14, 2021, City sent the Form Notice by first-class certified mail to each name and address on the Mail List of forty-six (46) different landowners and entities that should receive the Notice.
5. On July 16 and 23, 2021, Notice was published in the *Fort Worth Star-Telegram*, a newspaper of general circulation in Tarrant and Johnson Counties.
6. On August 2, 2021, the City filed a proof of completed notice, including the publisher's affidavit.

On November 15, 2022, Order No. 16 was issued rescinding Order No. 14 and requiring the City to file supplemental proof of notice.

On December 20, 2022, City and Staff submitted a joint clarification in response to Order No. 15.

On January 23, 2023, City filed proof of notice in response to Order No. 16.

On February 6, 2023, Staff filed its recommendation of sufficiency of the supplemental notice.

On February 7, 2023, Order No. 20 was issued requiring the City and Staff to file "a joint motion to admit evidence, along with proposed findings of fact and conclusions of law" on or before March 3, 2023.

The City and Staff hereby submit their Joint Motion to Admit Evidence, with the attached Exhibit "A" setting forth the Joint Proposed Order with proposed Findings of Fact and Conclusions of Law as required by Order #20. This pleading is timely filed.

II. MOTION TO ADMIT EVIDENCE

The City and Staff move to admit the following into the record evidence in this proceeding:

1. Staff's recommendation on administrative completeness and proposed procedural schedule entered on July 6, 2021.
2. City's consent to the proposed map and certificate filed on October 18, 2021.
3. City's response to Order No. 11 filed on August 11, 2022.
4. City's response to Order No. 12 filed on October 12, 2022.
5. Staff's response to Order No. 12 filed on October 21, 2022.
6. City's proof of completed supplemental notice January 23, 2023.
7. Staff's recommendation of sufficiency of the supplemental notice filed on February 6, 2023.
8. Order No. 20, filed on February 7, 2023, finding the notice, as supplemented, sufficient.

III. CONCLUSION AND PRAYER

The Parties respectfully request that the Commission grant their Joint Motion to Admit Evidence and adopt the attached Exhibit "A" Joint Proposed Order containing proposed Findings of Fact and Conclusions of Law.

The City and Staff further respectfully request that the Commission approves the City of Burleson's Application to Amend its Certificate of Convenience and Necessity in Johnson County, Texas.

Respectfully submitted,

/s/ James Donovan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on all parties through the PUC Interchange Filer System on this 17th day of March, 2023.

/s/ James Donovan

JAMES DONOVAN

EXHIBIT “A”

DOCKET NO. 51998

APPLICATION OF THE CITY OF BURLESON TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN JOHNSON COUNTY	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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JOINT PROPOSED ORDER

I. FINDINGS OF FACT

1. On April 8, 2021, the City of Burleson (“Burleson” or “the City”) filed an application with the Public Utility Commission of Texas (the “Commission”) to amend its sewer Certificate of Convenience and Necessity (“CCN”) number 20358 in Johnson County, Texas (the “Application”).
2. On May 10, 2021, the Staff of the Commission (“Staff”) recommended that the maps provided with the Application were deficient.
3. In Order No. 2 filed on May 10, 2021, the Commission Administrative Law Judge (“ALJ”) ordered the City to cure the deficiency and not issue notice until the application was deemed administratively complete.
4. On June 2, 2021, the City filed supplemental information to the docket, including revised maps seeking to decertify 7,664 acres rather than 7,667 acres.
5. In Order No. 3 filed on July 6, 2021, the Commission ALJ found the Application as supplemented administratively complete.
6. On July 7, 2021, Staff recommended that the City be ordered to provide notice to, *inter alia*, each landowner of a tract of land that is at least twenty-five (25) acres and is wholly or partly located in the area requested to be decertified.

7. The Commission ALJ ordered the City to provided notice as requested by Staff.
8. On July 14, 2021, the City sent the Form Notice by first-class certified mail to each name and address on the Mail List of forty-six (46) different landowners and entities that should receive the Notice.
9. On July 16 and 23, 2021, the City issued Notice in the *Fort Worth Star-Telegram*, a newspaper of general circulation in Tarrant and Johnson Counties.
10. On August 2, 2021, the City filed a proof of completed notice, including the publisher's affidavit.
11. On August 9, 2021, Robert Sherrod, Jr. filed a motion to intervene.
12. On August 17, 2021, Commission ALJ granted Mr. Sherrod's motion to intervene.
13. On August 30, 2021, Staff recommended that the notice provided by the City be found to be sufficient.
14. In Order No. 5 filed on August 31, 2021, the Commission ALJ found that notice was sufficient.
15. On October 7, 2021, in its response to Staff's first request for information, the City stated that it never provided water or wastewater service to Mr. Sherrod's address.
16. On October 25, 2021, Mr. Sherrod requested a hearing.
17. By December 17, 2021, the City was required and Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. The City and Staff each timely filed a list of issues.
18. On January 24, 2022, the proceeding was referred to the State Office of Administrative Hearings (SOAH).

19. The SOAH ALJ set a prehearing conference for February 16, 2022, but Mr. Sherrod did not appear and the SOAH ALJ referred the matter to mediation and abated the proceeding.
20. Mr. Sherrod subsequently withdrew his protest and his request for a hearing.
21. On March 10, 2022, pursuant to Order No. 3, the State Office of Administrative Hearings dismissed Robert Sherrod, Jr., as a party.
22. On July 12, 2022, Staff filed a final recommendation recommending approval of the City's Application.
23. In Order No. 11 filed on July 19, 2022, the Commission ALJ rescinded Order No. 5 that notice was sufficient and ordered the City to address the outstanding issues regarding notice.
24. On August 11, 2022, the City filed its response to Order No. 11 addressing outstanding issues regarding notice.
25. In Order No. 12 filed on September 7, 2022, the Commission ALJ ordered the City to provide further clarification regarding notice.
26. On October 12, 2022, the City filed its response to Order No. 12 providing further clarification regarding notice.
27. On October 21, 2022, Staff responded to Order No. 12 and recommended that the notice requirements had been met.
28. In Order No. 14 filed on October 24, 2022, the Commission ALJ found that notice was sufficient.
29. On November 10, 2022, the City and Staff filed a Joint Motion to Admit Evidence, and Joint Proposed Order.

30. In Order No. 15 filed on November 14, 2022, the Commission ALJ ordered the evidence from the Joint Motion admitted, and then ordered further clarification regarding evidence admission.
31. In Order No. 16 filed on November 15, 2022, the Commission ALJ ordered the City to provide supplemental notice.
32. On January 23, 2023, the City filed proof of the supplemental notice required by Order No. 16.
33. On February 6, 2023, Staff recommended that the notice as supplemented by the City be found to be sufficient.
34. In Order No. 20 filed on February 7, 2023, the Commission ALJ found that notice, as supplemented, was sufficient.
35. At various times through the course of this proceeding, several individuals submitted filings in regards to the City's applications. These individuals include Rodney and Peggy Rosenauer; Dana Kendrick; Clark E. Phelps; Jesus Escamilla; Jim Renteria; Glen and Karen McGuire; Timothy Roach; and Jared and Autumn Wilson. None of these filings took the form of motions to intervene. None of the individuals responded further to the City's, Staff's, and/or the ALJ's request for further clarification regarding their interests in this proceeding. Time has expired for these individuals to further participate in this proceeding. None of these individuals were added as parties to this proceeding. None of these individuals requested a hearing in this proceeding.
36. Applicant and Staff are the only parties in this proceeding.
37. No issues of law or fact remain disputed by any party.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these matters pursuant to Tex. Water Code §13.241.

2. The City of Burleson is a municipality providing utilities as defined in TWC §13.002(19) and 16 Texas Administrative Code §24.3(59).
3. The City's Application to amend its CCN complies with 16 TAC §24.249(a).
4. The City's request to amend its CCN by decertifying a portion of the service area complies with the requirements of 16 TAC §24.245 (d)(2).
5. The City's request includes mapping information as required by 16 TAC §24.257.
6. The City's notice complied with 16 TAC §24.249(b).
7. The City mailed notice to the persons and entities to which the notice of decertification must be sent under 16 TAC §24.249(c) and TWC §13.246(a-1).
8. The City gave notice as required by 16 TAC §§24.245(d)(2)(A), TWC §24.249, and TWC §13.246(a-1).
9. The City published notice in adherence to the requirements of 16 TAC §24.249(d).
10. The City, at the time of filing of the Application, did not have customers or facilities for providing service to customers in the area sought to be decertified, such that no present or future convenience and necessity will be affected under TWC §13.250(b) and 16 TAC §24.245(d)(2)(E).
11. The City never provided continuous and adequate service in all or part of the certificated service area under TWC §13.254(a)(1) and 16 TAC §24.245(d)(1)(A).
12. The requirements for the amendment of its CCN have been met by the City.

III. ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Application and Amended Application are approved.

2. The City of Burleson's sewer CCN No. 20358, in Johnson County, Texas is hereby amended consistent with this Order.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____, 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE