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DOCKET NO. 53262

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PUBLIC UTILITY COMMISSION
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PETITION OF BLACKLAND WATER §
SUPPLY CORPORATION AND THE §
CITY OF ROCKWALL FOR §
APPROVAL TO AMEND §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY UNDER TEXAS §
WATER CODE § 13.255(a) IN §
ROCKWALL COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER ON APPEAL OF ORDER NO. 6

This Order addresses the petition of Blackland Water Supply Corporation (Blackland WSC) and the City of Rockwall for approval to amend a certificate of convenience and necessity under Texas Water Code (TWC) § 13.255(a) in Rockwall County. Rockwall and Blackland WSC jointly petitioned the Commission for approval of their agreements allowing Rockwall to provide water service in areas it has annexed in Blackland WSC’s certificated service area, with the exception of Blackland WSC’s customer Big Tex Trailer World. In Order No. 6, the Docket Management administrative law judge (ALJ) found the petition incomplete for the lack of an application by Rockwall to obtain a certificate of convenience and necessity (CCN) authorizing it to provide service to all areas covered by the agreements at issue in this proceeding and its special treatment of Big Tex Trailer World. The City of Rockwall and Blackland WSC appealed the ALJ’s finding that the petition was administratively incomplete. For the reasons discussed in this Order, the Commission grants the appeal to the extent provided by this Order and remands this proceeding to Docket Management for further processing.

I. Background

Blackland WSC and the City seek to decertificate various portions of Blackland WSC’s certificated service area according to agreements between Blackland WSC and developers under TWC § 13.254(a)¹, and to allow the City to serve in the decertificated portions of Blackland WSC’s certificated service area previously annexed by the City, under the provisions of TWC

¹ *Petition of Blackland Water Supply Corporation and the City of Rockwall to Decertificate Portions of a Certificate of Convenience and Necessity under Texas Water Code § 13.254(a) in Rockwall County*, Docket No. 52551 (Sep. 10, 2021).

§ 13.255(a). On August 5, 2022, the ALJ filed Order No. 6 withdrawing his previous finding of administrative completeness and finding that the petition in this proceeding is administratively incomplete. In Order No. 6, the ALJ concluded that the petition does not meet the requirements under TWC § 13.255(a) because the petition did not include the City's application to obtain a CCN to serve in the agreed portions of Blackland WSC's certificated area.

Additionally, the ALJ found that the request for the exclusion of Blackland WSC's customer Big Tex Trailer World from the agreed area to be served by Rockwall is not permissible under TWC § 13.255(a). On September 12, 2022, the City of Rockwall and Blackland WSC filed an affidavit stating that the portion of Big Tex's property for which special treatment was requested is not within the designated service area under the service agreements at issue in this proceeding. Therefore, if the petition is granted, Blackland WSC's service to Big Tex would remain unaffected.

At the September 15, 2022 open meeting, the Commission considered the appeal filed in this proceeding.

A. The Statutory Regime

The Texas Water Code has an overarching mandate that a retail public utility may not render retail water or sewer service to the certificated service area of another retail public utility without first having obtained a CCN that includes the area in which the consuming facility is located.²

However, TWC § 13.247 provides that TWC § 13.255 is an exception to this statutory mandate. Section 13.247 provides that, except as provided by TWC § 13.255, a municipally owned or operated utility may not provide retail water utility service within the area certificated to another retail public utility without first having obtained from the utility commission a CCN that includes the areas to be served.³

Under TWC § 13.255(a), when a municipality annexes an area that is part of the certificated service area of another retail public utility, the municipality and the retail public utility may agree in writing that all or part of the area annexed may be served by the municipally owned utility or by the retail public utility. The written agreement may provide for single or dual

² TWC § 13.242(a).

³ TWC § 13.247(a).

certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. The executed agreement shall be filed with the Commission, and the Commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.⁴

However, under TWC § 13.255(b), when the parties cannot reach an agreement within 180 days after the municipality notifies the retail public utility of its intent to provide service to the annexed areas, the municipality can act unilaterally to provide service to the annexed areas. Part of the process under TWC § 13.255(b) is that the municipality applies for single certification. The process through which the municipality obtains a CCN is explained in TWC §§ 13.255(c) through (m).

The City and Blackland WSC submitted their petition and service agreements under TWC § 13.255(a). The service agreements provided that Blackland WSC would no longer be responsible for providing water service in the designated areas, and that the City would instead be responsible for providing water service in the designated areas, and ownership and operation of the associated water distribution facilities. Blackland WSC accepted adequate and just compensation under each service agreement. The City did not provide notice to Blackland WSC, nor did the City submit an application to obtain a CCN because under TWC § 13.255(a), neither notice nor a CCN is required.

B. The ALJ's Ruling

The ALJ found that TWC § 13.255 requires a municipality to obtain a CCN whether it files a petition under TWC § 13.255(a) or under TWC § 13.255(b). The ALJ first observed that the title of the statute, “Single Certification in Incorporated or Annexed Areas” and the text of TWC § 13.255(a) provide only that the annexed areas will either be (1) singly-certificated to the municipality, (2) singly-certificated to the retail public utility, or (3) dually-certificated to both the municipality and the retail public utility. The ALJ asserts that the statute does not provide for the parties to agree that the annexed areas will be uncertificated. The ALJ then interpreted the remaining

⁴ TWC § 13.255(a)

text in TWC § 13.255(a) as requiring to Commission to incorporate the terms of the agreements into the CCNs of both parties, thereby necessitating a CCN application for a municipality.

The ALJ recognized that TWC § 13.255 creates two methods by which a municipality may provide service within its annexes areas though they are also within a retail public utility's certificated service area. However, the ALJ interpreted the CCN requirement in TWC §§ 13.255(b) and (c) as applicable to a proceeding under TWC § 13.255(a) as well. In other words, regardless of the path a municipality takes under this statute, a CCN is required. The ALJ relied on TWC § 13.242(a), the statutory mandate for a CCN, in support of his interpretation of section 13.255. The ALJ did not discuss the statutory exception to section 13.242 provided under TWC § 13.247(a).

II. Discussion

The issue here is whether the section 13.255(b) requirement of notice and for an application to grant the City certification to the area it seeks to serve applies also to petitions filed under TWC § 13.255(a). Under TWC § 13.255, two paths are available for a municipality that annexes areas that are part of a retail public utility's certificated service area. Although the ALJ relied on language under TWC § 13.242(a) as support for the proposition that a municipality must obtain a CCN, TWC § 13.242(a) also contains the phrase "except as otherwise provided by this subchapter."

One exception contained within the same subchapter as TWC § 13.242(a) is TWC § 13.247(a), which states that TWC § 13.255 is an exception to the statutory mandate of a CCN for a municipality. Accordingly, when the Texas Water Code subchapter is considered in its entirety, it favors interpretation of TWC § 13.255(a) as not requiring a municipality to obtain a CCN. Furthermore, interpreting TWC § 13.255(a) as requiring a municipality to obtain a CCN would render this section superfluous, a disfavored interpretation.⁵ Lastly, while TWC § 13.255 is entitled *Single Certification in Incorporated or Annexed Areas*, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.⁶ Thus,

⁵ See *Tex. Tel. Ass'n v. Pub Util. Comm'n of Tex.*, No. 03-21-00294-CV, 2022 WL 2374875, at 8 (Tex. App.—Austin June 30, 2022, no pet. h.), stating "We further construe statutes and rules as a whole, rather than as isolated provisions . . . We construe the statute or rule to avoid rendering any word or provision meaningless."

⁶ See *Tex. Gov't Code* § 311.024.

interpreting the title of TWC § 13.255 and to require that a municipality obtain a CCN limits the meaning of both.

For these reasons, the Commission disagrees with the ALJ's interpretation of TWC § 13.255(a) that the City must obtain a CCN. The Commission concludes that the City is not required to apply for a CCN in a petition under Texas Water Code § 13.255(a) nor is written notice of the City's intent to serve in the annexed areas of Blackland WSC certificated service area required. The Commission also concludes that its decision on the appeal regarding the exclusion of Blackland WSC's customer Big Tex is not needed because the Big Tex consuming facility is outside the designated service areas covered by the service agreement.

For the reasons discussed in this Order, the Commission grants the appeal of Order No. 6 to the extent provided by this Order and remands this proceeding to Docket Management for further processing.

Signed at Austin, Texas the 20th day of October 2022.

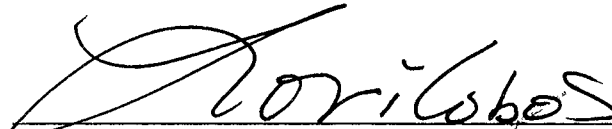
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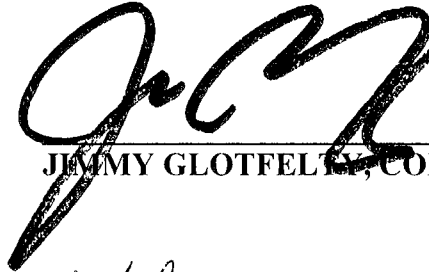
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