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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Katie Moore Marx *KMM*
Administrative Law Judge

RE: **Docket No. 53335** – *Application of the City of Bangs to Amend its Certificate of Convenience and Necessity and for Dual Certification with Brookesmith Special Utility District in Brown County*

DATE: November 16, 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. 53335

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
BANGS TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY AND FOR DUAL	§	
CERTIFICATION WITH	§	
BROOKESMITH SPECIAL UTILITY	§	
DISTRICT IN BROWN COUNTY	§	

PROPOSAL FOR DECISION

In this proceeding, the City of Bangs applied for partial decertification of its certificate of convenience and necessity (CCN) number 11093 and for dual certification with Brookesmith Special Utility District, CCN number 10435, in Brown County. On October 12, 2022, Commission Staff filed a motion to dismiss the proceeding. In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission dismiss the application of the Bangs under 16 Texas Administrative Code (TAC) § 22.181(d)(7), for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient. The ALJ recommends that the dismissal be without prejudice.

The undersigned ALJ was assigned this docket on September 21, 2022.

I. Findings of Fact

The ALJ makes the following findings of fact.

1. Bangs is a municipality in Brown County.
2. Bangs holds CCN number 11093 which obligates it to provide retail water service in its certificated service area in Brown County.
3. On March 11, 2022, Bangs filed the application at issue in this proceeding.
4. In the application, Bangs seeks approval to decertificate a portion of its CCN and for dual certification of a portion of its CCN with Brookesmith SUD.
5. In Order No. 2 filed on April 13, 2022, the ALJ found the application deficient and directed Bangs to cure the deficiencies by May 11, 2022.
6. Bangs did not respond to Order No. 2.

7. In Order No. 3¹ filed on June 10, 2022, the ALJ again found the application deficient and directed Bangs to cure the deficiencies by July 11, 2022.
8. Bangs did not respond to Order No. 3.
9. In Order No. 4 filed on August 12, 2022, the ALJ again found the application deficient and directed Bangs to cure the deficiencies by September 12, 2022. The ALJ also stated that a motion to dismiss would be entertained if Bangs failed to timely cure the deficiencies.
10. Bangs did not respond to Order No. 4.
11. On October 12, 2022, Commission Staff filed a motion to dismiss the application under 16 TAC § 22.181(d)(7) for failure to amend the 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 November 1, 2022.
13. Bangs did not file a response to Commission Staff's motion to dismiss.
14. Bangs has not filed anything in this docket since filing the application on March 11, 2022.
15. No hearing was held on the motion to dismiss, and none is necessary, because the facts relevant to Bang's failure to prosecute the application are undisputed.

II. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code §§ 13.241, 13.242, 13.244, and 13.246.
2. Under 16 TAC § 22.181(c), dismissal of this case does not require a hearing because the facts necessary to support the dismissal are established as a matter of law.
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)(1), dismissal of a proceeding may be made upon the motion of any party and the motion must specify at least one of the grounds for dismissal identified in 16 TAC § 22.181(d).

¹ This Order is mistakenly titled Order No. 2 when it should be titled Order No. 3. The ALJ refers to it as Order No. 3 in this PFD to avoid confusion.

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. Bangs' failure to amend its application such that it is sufficient after repeated determinations that the application is insufficient warrants dismissal of this proceeding, without prejudice, under 16 TAC § 22.181(d)(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 above findings of fact and conclusions of law, the ALJ recommends the following ordering paragraphs.

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

Signed at Austin, Texas the 16th day of November 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



KATIE MOORE MARX
ADMINISTRATIVE LAW JUDGE