



Control Number: 53335



Item Number: 15

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 §

2023 JAN 26 PM 1:26  
 PUBLIC UTILITY COMMISSION  
 PUBLIC UTILITY COMMISSION  
 FILING CLERK  
 OF TEXAS

### ORDER

This Order addresses the application of the city of Bangs to partially decertify its water certificate of convenience and necessity (CCN) and obtain dual certification with the Brookesmith Special Utility District. On October 12, 2022, Commission Staff filed a motion to dismiss the proceeding. In a proposal for decision, the administrative law judge (ALJ) recommended that the Commission dismiss the application without prejudice 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 Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.

The Commission makes the following changes to the proposal for decision. The Commission modifies findings of fact 7 and 8 for accuracy. The Commission modifies finding of fact 11 to frame it as a proper finding of fact.

Lastly, the Commission makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

#### I. Findings of Fact

The Commission adopts 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 Special Utility District.

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 the second Order No. 2 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 the second Order No. 2.
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 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 made no filings 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 Commission adopts 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), a proceeding may be dismissed without a hearing if the facts necessary to support the dismissal are uncontested or 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).

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 proposal for decision.
6. Bangs's 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 proposal for decision was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

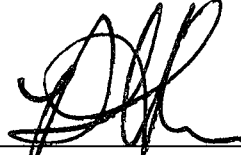
### **III. Ordering Paragraphs**

In light of the findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission dismisses Bangs's application, without prejudice, due to Bangs's 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 special relief that have not been expressly granted.

Signed at Austin, Texas the 26<sup>th</sup> day of January 2023.

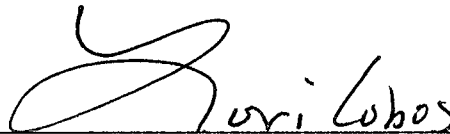
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