



Control Number: 55455



Item Number: 43

OPEN MEETING COVER SHEET COMMISSIONER MEMORANDUM

MEETING DATE: April 24, 2025

DATE DELIVERED: April 23, 2025

AGENDA ITEM NO.: 7

CAPTION: Docket No. 55455 – Application of City of Fort Worth to Amend Its Certificate of Convenience and Necessity and to Decertify a Portion of Benbrook Water Authority’s Certificates of Convenience and Necessity in Tarrant County

DESCRIPTION: Chairman Thomas Gleeson Memorandum

Public Utility Commission of Texas

Commissioner Memorandum

TO: Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

FROM: Chairman Thomas J. Gleeson *TJG*

DATE: April 23, 2025

RE: April 24, 2025 Open Meeting – Item No. 07
Docket No. 55455 – Application of City of Fort Worth to Amend Its Certificate of Convenience and Necessity and to Decertify a Portion of Benbrook Water Authority's Certificates of Convenience and Necessity in Tarrant County

Before the Commission is a proposed order that would grant the City of Fort Worth's application to amend its water certificate of convenience and necessity (CCN) number 12311 and decertify portions of Benbrook Water Authority's water and sewer CCN numbers 11260 and 20505.

I agree with the outcome but would rely on Texas Water Code (TWC) § 13.248 to approve the transfer of a portion of Benbrook Water Authority's water CCN to Fort Worth's water CCN.

Analysis

The proposed order would add 16.7 acres to Fort Worth's water CCN and decertify the same acreage from Benbrook Water Authority's water and sewer CCNs under TWC §§ 13.241 and 13.246. Under TWC § 13.244(d)(3), applications to amend a CCN must contain "a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area." However, it does not appear Fort Worth provided a capital improvements plan that incorporates capital improvements to be made by developer Willmax Capital.

Nevertheless, I would still approve the requested transfer from Benbrook Water Authority's water CCN to Fort Worth's water CCN under TWC § 13.248. Under TWC § 13.248, the Commission is authorized, after public notice and hearing, to approve contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities. Fort Worth and Benbrook Water Authority both qualify as retail public utilities¹ and have filed a written agreement that even references TWC § 13.248.² I would further find the notice provided in this proceeding complies with the requirements of TWC § 13.248 and that 16 Texas

¹ 16 Tex. Admin. Code § 24.3(31); Application at 3 (Sept. 12, 2023); Applicant's Response to Order No. 3 at 5 (Nov. 13, 2023).

² City of Fort Worth's Response to Order No. 8, City of Fort Worth and Benbrook Water Authority Agreement to Decertify a Portion of Benbrook Water Authority's CCN and Amend Fort Worth's CCN (June 27, 2024).

Administrative Code (TAC) § 24.253(c) does not specify the notice required based on the facts of this proceeding. Accordingly, I would approve the transfer of service area under TWC § 13.248.

Recommended Changes to Proposed Order

I would make the following changes to the proposed order.

Proposed findings of fact 20 through 52 should be deleted. In their place, the following findings of fact should be added:

- XX. Effective June 14, 2024, Fort Worth and Benbrook Water entered into an agreement designating areas and customers to be provided water service.
- XX. On June 27, 2024, Fort Worth filed a copy of the service-area agreement executed by Fort Worth and Benbrook Water.
- XX. Under the service-area agreement, 16.7 acres of certificated service area will be transferred from Benbrook Water under CCN number 11260 to Fort Worth under CCN number 12311.
- XX. No customers, assets, or facilities will be transferred as a result of the service-area agreement.

Proposed findings of fact 53, 54, 56, 57, 61, and 62 should be amended to remove references to water utility service.

- 53. Benbrook Water has never provided retail ~~water or~~ sewer service to any customers in the areas Fort Worth seeks to decertify from Benbrook Water's CCN numbers ~~11260 and~~ 20505.
- 54. Benbrook Water has not received any requests for ~~water or~~ sewer service in the requested areas.
- 56. Benbrook Water has no ~~water or~~ sewer customers in the requested areas to be decertified.
- 57. Benbrook Water has no ~~water or~~ sewer facilities in the requested areas.
- 61. Benbrook Water's remaining customers are served by separate ~~water and~~ sewer systems outside of the decertification areas.
- 62. Decertification of the requested areas will not impact Benbrook Water's ability to serve its customers in its remaining certificated areas under CCN numbers ~~11260 and~~ 20505.

Proposed conclusion of law 1 should be amended to remove references to inapplicable statutes and include applicable statutes.

1. The Commission has authority over this application under Texas Water Code (TWC) §§ 13.041, ~~13.241~~, 13.242, ~~13.244~~, ~~13.246~~, 13.248, 13.250, and 13.254.

The following new conclusion of law should be added after proposed conclusion of law 2:

- X. Benbrook Water is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).

Proposed conclusion of law 4 should be amended to remove references to inapplicable Commission rules and include applicable Commission rules.

4. Fort Worth provided notice of the application that complies with TWC §§ 13.248 and 13.254 ~~13.246~~ and 16 TAC §§ ~~24.235~~ and 24.245(d).

The following new conclusion of law should be added after proposed conclusion of law 4:

- X. 16 TAC § 24.253(c) does not specify the notice required in this proceeding.

Proposed conclusions of law 6 through 11 should be deleted.

- ~~6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(e) and 16 TAC § 24.227(a) and (e), Fort Worth demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested areas and its current service areas, as required by TWC § 13.241 and 16 TAC § 24.227.~~
- ~~7. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.~~
- ~~8. Good cause exists under 16 TAC § 24.2(b) to grant an exception to the requirements in 16 TAC § 24.11(e)(5)(B) that Fort Worth submit loan approval documents or a firm capital commitment.~~
- ~~9. It is not necessary for Fort Worth to provide bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).~~
- ~~10. Fort Worth demonstrated financial capability and stability under 16 TAC § 24.11(e)(4)(B) and (C).~~
- ~~11. Fort Worth demonstrated that the amendment to its CCN number 12311 to include the requested areas is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC § 13.246(b) and 16 TAC § 24.227(d).~~

Proposed ordering paragraph 5 should be deleted.

- ~~5. The Commission grants a good cause exception to the requirements of 16 TAC § 24.11(e)(5)(B).~~

Finally, the Commission should delegate to the Office of Policy and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.