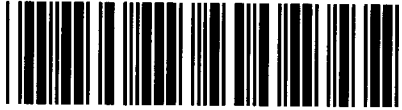




Control Number: 42946



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Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.



RAPIER, WILSON & WENDLAND, P.C. Attorneys at Law

John Rapier
rapier@rapierwilson.com

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PUBLIC UTILITY COMMISSION
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July 18, 2011

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WATER SUPPLY DIVISION

RECEIVED

Via Facsimile and Regular Mail

Texas Commission on Environmental Quality
Water Supply Division
Utilities and District Section, MC-153
P.O. BOX 13087
Austin, Texas 78711-3087

Re: Application Nos. 36966-W and 36967-S; *Application by Providence Village Water Control & Improvement District and Mustang Special Utility District for Sale, Transfer, Merger Approval (the "STM Application")*

Dear Executive Director:

On behalf of the Mustang Special Utility District ("Mustang"), I am writing in response to the correspondence dated July 1, 2011 filed by the Town of Providence Village ("Protestant"). This letter supplements Mustang's response dated May 11, 2011.

Protestant's new correspondence encloses a copy of a petition seeking to void the service territory agreement previously entered into between Mustang and Providence Village Water Control and Improvement District of Denton County, Texas ("WCID"). Protestant alleges that the petition should influence the Executive Director's decision as to whether to conduct a hearing. Protestant's arguments fail, both as to the validity of the contract and as to whether the Executive Director should hold a public hearing.

1. Protestant alleges that Mustang relies on the service territory agreement between it and the WCID. To the contrary, Mustang asserts that a public hearing should not be held because the purpose of such hearing is to determine whether Mustang has the financial, technical and managerial capacity to provide continuous and adequate water and sewer service. *An affirmative determination concerning these criteria was previously made by the Commission when it issued Mustang water CCN No. 11856 and sewer CCN 20930. Mustang already holds CCNs for the territory in question.* The public interest is not served by conducting a hearing to consider matters which have already been ruled upon by the Commission.

2. Neither Mustang nor the WCID are required to possess a CCN. The Commission's approval of the transfer facilities or the customers of the WCID is not required pursuant to Section 13.301 of the Water Code. The sole purpose of the STM Application is to cancel the WCID's CCNs. It does not serve the public interest for the Commission to conduct a public hearing for a transaction that does not require Commission approval, and that the parties may consummate regardless of the outcome of any such hearing.

3. Protestant apparently claims that a service territory agreement is void because it "ties the hands" of future elected bodies as to controlling water and sewer services. The allegation fails for numerous reasons:

a. Texas law authorizes service territory agreements, and they are commonly executed and approved by TCEQ. Section 13.248 of the Water Code specifically provides that such agreements are valid and enforceable. Protestant's argument is directly contrary to Texas law.

b. Protestant does not own or operate the water or sewer system. Nor does it provide retail water or sewer service. Mustang and the WCID currently hold water and sewer CCNs for the territory within the Town. Therefore, it is difficult to understand how the service territory contract "ties the hands" of Protestant as to water or sewer service. It never had, does not currently have and is not currently seeking the authority to provide service.

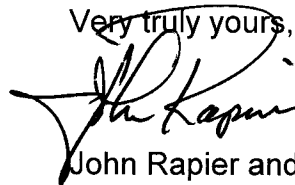
c. Protestant may file applications with the Commission for dual certification to provide retail water or sewer service, and/or may seek to decertify Mustang or the WCID. Protestant has not undertaken any such actions. Protestant's right to seek authorization to provide retail service will continue even after the transfer process is completed.

d. Protestant is not a party to the contract between Mustang and the WCID. In other words, it complains of a contract to which it is not a party.

4. The Commission has exclusive jurisdiction over the issuance, transfer and cancellation of a CCN. Moreover, a district court outside of Travis County has no jurisdiction to enjoin a state agency from exercising its statutory duties and obligations. Therefore, Protestant's initiation of an action in a state district court in Denton County does not create a compelling reason for the STM Application to be referred to SOAH.

For these reasons and the reasons set forth in Mustang's initial response to the protest, Mustang respectfully requests that the Executive Director not refer the STM Application to SOAH for a contested hearing.

Very truly yours,



John Rapier and
Anthony S. Corbett
Freeman & Corbett, L.L.P.
Austin, Texas
Attorneys for Mustang
Special Utility District

c: Brian Dickey, TCEQ
Erin Selvera, Esq.