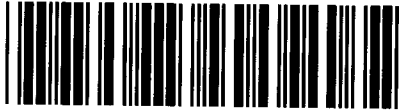




Control Number: 42946



Item Number: 26

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.

422946

Filed
11 September 23 P4:27
Amalia Rodriguez-Mendo
District Clerk
Travis District
D-1-GN-11-002972

Cause No. _____

TOWN OF PROVIDENCE VILLAGE
Plaintiff,

v.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY and
MARK R. VICKERY, Executive Director
Defendant.

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§
§

FILED IN THE

_____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PUBLIC UTILITY COMMISSION
HEARING CLERK

2014 OCT 16 PM 2:25

RECEIVED

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Town of Providence Village ("The Town"), complaining of Defendant, the Texas Commission on Environmental Quality ("TCEQ") and its Executive Director. By this Petition, The Town seeks review of a decision by the Executive Director on behalf of the TCEQ refusing to hold a hearing on an application for the sale, transfer, or merger of a retail public utility and therefore deciding to approve the application administratively. As a result, the Town is being denied an opportunity to present evidence to show that the application should not be approved. The water and sewer systems proposed to be transferred serve only the citizens of The Town and The Town itself and thus the Town's interests, and the public interest of the Town's citizens, will be adversely affected by the proposed transfer.

I.
PARTIES

1. The Town of Providence Village is a Texas Type A, general law municipality. Its address is P.O. Box 838, Aubrey, Texas 76227.
2. Defendant, TCEQ, is an administrative agency of the State of Texas. Service of process may be accomplished by personal delivery of citation to the Executive Director of the TCEQ, Mr. Mark R. Vickery, P.G., located as 12100 Park 35 Circle, Building F, Austin, Travis County, Texas 78753.

26

3. Defendant, Mark R. Vickery, Executive Director, is the Executive Director of the TCEQ. Service of process may be accomplished by personal delivery of citation to the Executive Director of the TCEQ, Mr. Mark R. Vickery, P.G., located as 12100 Park 35 Circle, Building F, Austin, Travis County, Texas 78753.
4. Other related entities are the Providence Village Water Control & Improvement District of Denton County ("Providence WCID") and Mustang Special Utility District ("Mustang SUD").
5. Providence WCID, a political subdivision of the State, is the applicant/transferor in an Application for Sale, Transfer, or Merger of a Retail Public Utility (STM Application).
6. Mustang SUD, a political subdivision of the State, is the transferee of the water and sewer facility assets to be transferred in the STM Application.

II.
DISCOVERY CONTROL PLAN

7. This is a suit for judicial review of an agency decision. No discovery is anticipated at this time.

III.
JURISDICTION AND VENUE

8. This is a suit for judicial review of the Executive Director's decision issued on August 24, 2011 (the "Ruling"). A copy of the Ruling is attached hereto as Exhibit "A."
9. This action is brought pursuant to § 5.351 of the Texas Water Code, which authorizes a "person affected" by a ruling or order of the TCEQ to file a petition to review, set aside, modify or suspend the TCEQ's act.
10. The Town is a "person affected" under § 5.351 because it sought to obtain a hearing on Providence WCID's request that the TCEQ transfer the water and sewer systems from

Providence WCID to Mustang SUD, and the hearing request was denied. The Town is also a person affected for the additional reasons stated herein.

11. This action is timely filed under the provisions of § 5.351. Section 5.351 provides that the person affected by a ruling must file his petition within 30 days of the effective date of the ruling, order, or decision. The effective date of the Ruling is August 24, 2011, so this petition is timely under § 5.351.
12. Venue is proper in Travis County District Court pursuant to § 5.354 of the Texas Water Code, which provides that a suit brought under section 55.351 must be brought in a district court in Travis County.

IV.
FACTS AND GROUNDS FOR APPEAL

13. The Town incorporated as a municipal corporation on May 8, 2010.
14. The city limits of The Town are covered by dual water and sewer CCNs held by Mustang SUD and Providence WCID.
15. The developer of the area that is now The Town created Providence WCID and controlled the appointment process of its board.
16. Mustang SUD and Providence WCID – while the board was controlled by the developer – entered into a series of contracts for water and sewer service.
17. Mustang SUD had originally been created as a rural water supply cooperation to serve farms and ranches. In order to allow for construction of a large, high-density residential community that now comprises The Town, Mustang SUD consented to Providence WCID's dual certification and allowed all the new homes to be retail water and sewer utility customers of Providence WCID, in part because Mustang SUD was unable to construct the infrastructure or provide retail water or sewer service to the new high-density development.

18. In 2003, Providence WCID issued its first series of \$31 million in bond issues that paid for the construction of the water and sewer infrastructure to serve the developer's property.
19. Under various contracts entered into from 2000 to 2007, the District pays Mustang SUD a 15% fee for Mustang SUD to perform utility billing and collection services and for maintenance of Providence WCID's infrastructure.
20. The application seeks to cancel Providence WCID's CCN and *gift* the District's entire water and sewer infrastructure to Mustang SUD. Mustang SUD lacks adequate resources to operate the water system that provides services to The Town and its citizens. Mustang SUD has insufficient capacity in its sewer system. Further, Mustang SUD's audited financial statements for 2009 and 2010 show losses. These facts show that Mustang SUD will be unable to adequately serve the retail water and sewer customers in the Town.
21. In 2008, Mustang SUD asked the Attorney General to approve the issuance of \$2.7 million dollars in bond indebtedness. The Attorney General refused unless Mustang SUD paid off \$833,000.00 of debt it incurred in 2006.
22. Mustang SUD has not demonstrated that it can even adequately bill customers. It has created problems that were not rectified until The Town reported them.
23. Mustang SUD excludes residents of the Town and Providence WCID from serving on the board. Mustang SUD has already started the process of eliminating at-large elections and divided the Board into single-member districts to preserve the power of rural customers.
24. Providence WCID's rates were traditionally lower than Mustang SUD's rates. Providence WCID recently raised its rates only because it was required by its contracts with Mustang SUD to do so, before transferring the assets to Mustang SUD.

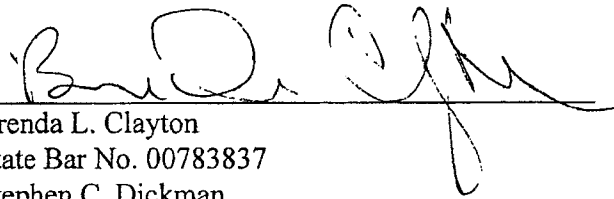
25. Providence WCID currently funds contracts to pay neighboring local entities for fire and sheriff services from utility system revenue, from which The Town benefits. If the water and sewer facilities are transferred to Mustang SUD, Providence WCID will no longer have the utility revenues it currently uses to pay for basic public safety services. Mustang SUD does not currently pay for public safety services and does not intend to pay for public safety services after the transfer.
26. The above recitations show that the Executive Director, under the factors of 30 Tex. Admin. Code § 291.109(e), abused its discretion by not requesting a hearing on the transfer.
27. Section 5.122(a)(3)(A) only allows the TCEQ to delegate decision making authority to the Executive Director in a case which is “uncontested and does not require an evidentiary hearing.” In this case, the Executive Director’s decision to deny The Town’s hearing request and grant the application is clearly contested by The Town. Moreover, this case does require an evidentiary hearing to address the various grounds raised by The Town which show that the statutory criteria for approval of the application have not been satisfied. Accordingly, the Executive Director is not statutorily authorized to make the decision on this contested matter.
28. For all of the reasons previously stated in this Petition, the Ruling is invalid, arbitrary, and unreasonable pursuant to Texas Water Code and should be overturned.
29. The Town is significantly and adversely affected by the application. Under Texas law, The Town should be afforded an opportunity to present evidence concerning such adverse impacts and to demonstrate that the statutory criteria for TCEQ approval of the STM application have not been met.

PRAYER

WHEREFORE, The Town prays that the Court determine that Ruling is invalid, arbitrary, or unreasonable and therefore must be overturned, and that the cause be remanded to the TCEQ for a hearing on the public interest of the proposed transfer. The Town additionally prays for any further relief to which it shows itself entitled, in law or in equity.

Respectfully submitted,

KELLY HART & HALLMAN LLP

A handwritten signature in black ink, appearing to read "Brenda L. Clayton", is written over a horizontal line.

Brenda L. Clayton
State Bar No. 00783837
Stephen C. Dickman
State Bar No. 05836500
301 Congress Ave., Ste. 2000
Austin, TX 78701
Telephone: 512-495-6400
Facsimile: 512-495-6401

EXHIBIT A

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 24, 2011

Ms. Julie Y. Fort,
McKamie Krueger, LLP
2007 N. Collins Blvd., Suite #501
Richardson, Texas 75080

Re: Application from Mustang Special Utility District (SUD), Certificate of Convenience and Necessity (CCN) No. 11856, to Transfer Facilities and to Transfer and Cancel CCN No. 13020 from Denton County Fresh Water Supply District (FWSD) 9, in Denton County; Application No. 36966-S

Application from Mustang SUD, CCN No. 20930, to Transfer Facilities and to Transfer and Cancel CCN No. 20922 from Denton County FWSD 9, in Denton County; Application No. 36967-S

CN: 601363534; RN: 101222669 (water) 102946019 (sewer) (Mustang SUD)
CN: 600739387; RN: 101410140 (water & sewer) (Denton FWSD 9)

Dear Ms. Fort:

The Texas Commission on Environmental Quality (TCEQ) received your letter on April 22, 2011, requesting a public hearing concerning the above referenced application.

In order for the TCEQ to hold a public hearing to determine if the transaction will serve the public interest, we must consider the criteria in §291.109(e) of the agency's rules. We have carefully reviewed your request and have determined that the concerns listed in your letter do not meet the criteria in §291.109(e). Therefore, a public hearing will not be scheduled. However, your name will be added to the mailing list for this application.

Thank you for taking the time to contact the TCEQ. If you have any questions or reasons other than those listed in your letter to object to the transaction, please contact Mr. Brian Dickey by phone at 512/239-0963, by fax at 512/239-6972, or by email at Brian.Dickey@tceq.texas.gov. If contacting our office by correspondence, please include MC 159 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Benter".

Tammy Benter, Manager
Utilities & Districts Section
Water Supply Division

TB/BDD

cc: Mr. John Rapier, Rapier, Wilson & Wendland, P.C.

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • www.tceq.texas.gov

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RAPIER, WILSON & WENDLAND, P.C. Attorneys at Law
1333 W. McDermott Drive, Suite 100, Allen, Texas 75013



Mr. Brian Dickey - MC 153
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental
Quality
P. O. Box 13087
Austin, Texas 78711-3087

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TCEQ MAIL CENTER
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