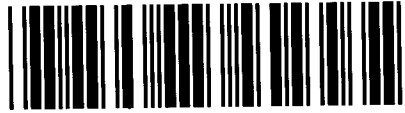


Control Number: 42946



Item Number: 8

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.

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LAW OFFICES OF MARK H. ZEPPA, P.C.

2014 OCT 16 PM 2:22

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Austin, Texas 78759-8436
(512) 346-4011 Fax (512) 346-6847
markzeppa@austin.rr.com

PUBLIC UTILITY COMMISSION
FILING CLERK

March 13, 2013

Via email to: Tammy.Benter@tceq.texas.gov

Ms. Tammy Benter, Manager
Utilities & Districts Section
TCEQ
P O Box 13087, MC 153
Austin, Texas 78711-3087

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

Response to Letter of Mustang SUD dated March 6, 2013

Dear Ms. Benter:

I am writing to respond to the March 6, 2013 letter to you from Mr. Tony Corbett, attorney for Mustang SUD.

1. Mr. Corbett repeatedly acknowledges that the STM application at issue is a "joint" application from "co-applicants" yet he does not recognize that Providence Village WCID of Denton County fka Denton County FWSD 9 has equal rights under the application and the law. (Neither co-applicant can bind the other, especially in the case of political subdivisions.) Mr. Corbett claims that Mustang filed the joint application pursuant to a valid contract but he does not provide any excerpts from the contracts with his letter pointing out Mustang's purported authority to act for both parties. Contrary to Mr. Corbett's suggestions, the contract between the parties does not give Mustang the District's power of attorney to unilaterally file or do anything in the District's name. Mr. Corbett

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merely asks you to accept his representations on this issue; even though, as he as a fine attorney knows, only a court of proper jurisdiction may entertain a declaratory judgment request and decide contracting parties' rights and obligations.

2. Mr. Corbett states that the District has attempted to unilaterally withdraw the "joint" STM application and requested that the application be cancelled and returned. This is not true. The District has only exercised its sovereign right to withdraw as a party to the application. (Just as Mustang has no authority to compel action from the District, the District does not have authority to withdraw Mustang as a party to an application Mustang filed.) The application should now be returned as expired under Rule 291.112(e) and void under that rule. In the alternative, the application should be returned because it has only one party and it takes two to Tango the STM as no extension request was ever made by the District.

3. Mr. Corbett states that the closing period on the "joint" STM application was extended under the rule. This is not true. While Mr. Corbett may have had Mustang's consent to ask for an extension of the one-year closing deadline, he is not the District's attorney and has never had this authority from the District. Further, assuming *in arguendo* that Mr. Corbett could make such a request for both parties, his request was never properly made or granted by the Executive Director. Mr. Corbett spoke to Staff Engineer Brian Dickey on the telephone. (The District, a statutory party to this application, has never been served with a copy of an extension request by Mustang. No representative of the District participated in this telephone conversation.) No TCEQ staff member can issue a verbal order for the Executive Director. There has never been a written order issued on this purported extension and a copy of that order served on the District.

4. Mr. Corbett claims he holds a Rule 11 agreement that controls this matter. He is mistaken. A Rule 11 agreement was issued in a separate judicial proceeding. The TCEQ does not have jurisdiction over that case or the power to enforce any agreements in it. That is up to the court and only for so long as the court has jurisdiction over the original suit.

5. Mr. Corbett claims that it is Mustang's position that the STM application remains in "effect for all purposes". Such a statement is meaningless. The TCEQ cannot order the District to turn over the valuable assets of a political

Ms. Tammy Benter
March 12, 2013
Page 3

subdivision to another water district. Mustang has not condemned those assets under the requirements of the Texas Constitution and Chapter 21 of the Property Code. The application is over 2 years old and there is no valid extension order.

The application was neither referred to SOAH nor a hearing requested within the statutory period. How long must the District wait for this matter to be permanently resolved? Rule 291.112(e) says one year.

Please comply with the rule and return the application under Rule 112(e). If Mustang truly believes this is still a viable deal, it can refile much easier than we can all litigate the matter in district court.

Sincerely yours,



Mark Zeppa

Cc: Christiaan Siano
Tony Corbett
Clay Crawford

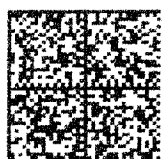
Mark Zeppa

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Austin, Texas 78759-8436

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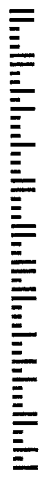
MAR 13 2013

TCEQ MAIL CENTER
MM



PITNEY BOWES
4011 10

Tammy Holguin-Benter
Utilities & Districts Section
Water Supply Division
TCEQ
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