

Control Number: 42962



Item Number: 24

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

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

RECEIVED
2014 NOV 20 PM 2:21
QUALITY COMMISSION
CLERK

November 15, 2002

VIA HAND DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Office of Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087 MC 105
Austin, TX 78711-3087

RE: Application of the City of Lyford for a Water CCN in Willacy County
SOAH Docket No. 582-02-3005; TCEQ Docket No. 2002-0431-UCR

Dear Ms. Castañuela:

Attached for filing is the original and eleven copies of the Executive Director's Exceptions to the Proposal for Decision in the above referenced matter. If you have any questions, please contact me at 239-3578. Thank you for your attention to this matter.

RECEIVED
NOV 16 2002
TCEQ
QUALITY COMMISSION
UTILITIES AND DISTRICTS

Sincerely,

A handwritten signature in cursive script that reads "Todd Galiga".
Todd Galiga, Staff Attorney
Environmental Law Division

Attachment

24

**TCEQ DOCKET NO. 2002-0431-UCR
SOAH DOCKET NO. 582-02-3005**

APPLICATION OF THE CITY	§	BEFORE THE TEXAS
OF LYFORD TO OBTAIN A	§	
WATER CERTIFICATE OF	§	COMMISSION ON
CONVENIENCE AND	§	
NECESSITY IN WILLACY	§	ENVIRONMENTAL QUALITY
COUNTY	§	

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

The Executive Director of the Texas Commission on Environmental Quality submits the following exceptions to the Proposal for Decision:

The Executive Director recommends that Lyford's application be dismissed without prejudice, instead of denied as recommended in the PFD. Denying the application is inconsistent with the TCEQ's rule at 30 TAC § 80.113(b) which provides that the remedy if an applicant fails to appear at the public hearing is withholding consideration of a matter or dismissal without prejudice.¹ In addition, although Lyford failed to adequately pursue this CCN application, and the Executive Director agrees that dismissal is appropriate, the Executive Director does not support denial because the record does not contain adequate information to consider the merits of the application. Furthermore, in Order No.3 the ALJ advised the applicant that the application would be dismissed if Lyford could not show good cause for its failure to appear. Instead of dismissing the application, however, the ALJ proceeded to grant, in effect, a summary

¹ Section 80.113(b): Except for good cause, the applicant or petitioner shall appear at the public hearing. Failure to so appear may be grounds for withholding consideration or for dismissal without prejudice.

disposition on the merits of the application, although no motion for summary disposition had been filed and the procedures for briefing and offering evidence for or against summary disposition had not been followed.² Moreover, denying the application is not necessary for the resolution of this matter. As noted above, the Commission's rules specifically provide for dismissal of the application under these circumstances. SOAH's rules also provide for dismissal for failure to prosecute and would resolve this case under 1 TAC § 155.57(b), which provides: [d]ismissal under this rule removes the case from the SOAH docket and does not propose or make any decision on the merits of the case. The ALJ, however, asserts that dismissing the application from SOAH's docket would leave Lyford's application in an ambiguous posture. As a result, the ALJ recommends that the Commission deny Lyford's application.

The Executive Director does not agree with the ALJ's conclusion that dismissing the application from SOAH without a recommendation that the application be denied creates any ambiguity regarding the application. If the Commission dismisses the application, the matter is closed. Accordingly, it is not necessary for the Commission to deny the application.

Therefore, the Executive Director recommends that the word "Denying" in the caption of the proposed Order be changed to "Dismissing." The Executive Director also recommends that Ordering provision number 1 in the proposed Order be amended to read: "Lyford's application for a CCN to provide retail water utility service in Willacy County is dismissed without prejudice." In addition, the Executive Director recommends that Conclusion of Law No. 4 be amended to read: "As the party seeking Commission approval, Lyford has a duty to appear at the

² See 30 TAC § 80.137.

public hearing. 30 TAC § 80.113(b)." Conclusion of Law No. 5 should be amended to read: "As shown by the above Findings of Fact, Lyford failed to fulfill its duty to appear at the public hearing." The Executive Director also recommends that Conclusions of Law Nos. 3, 6, 7, and 9, which relate to denial of the application, be deleted.


In addition, the Executive Director recommends that the Commission delete the references to North Alamo's Motion to Dismiss from the proposed Order. If the Commission dismisses Lyford's application, it is not necessary for the Commission's Order to address North Alamo's Motion. As a result, the Executive Director recommends that the Commission delete Findings of Fact Nos. 3, 4, 18, and 19, and Conclusion of Law No.8.

Finally, the Executive Director recommends the following corrections to the proposed Order. In Conclusion of Law No. 2, the "30" should be deleted from the citation to 1 Texas Administrative Code § 155.27, and the citation to 30 TAC §1.12 should be changed to 30 TAC §1.11.

Respectfully submitted,

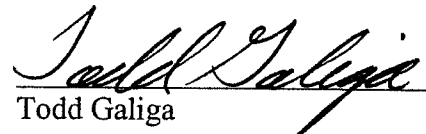
Margaret Hoffman,
Executive Director

Stephanie Bergeron, Director
Environmental Law Division

By 
Todd Galiga, Staff Attorney
Environmental Law Division
State Bar No. 00793767
P.O. Box 13087 MC 173
Austin, TX 78711

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2002, the original plus eleven copies of the attached document was filed with the Chief Clerk of the TCEQ. I further certify that a true and correct copy of the attached document was filed with all parties on the attached mailing list by hand delivery, fax, interagency mail, or deposit into the U. S. Mail.


Todd Galiga

Mailing List
City of Lyford
SOAH Docket No. 582-02-3005
TNRCC Docket No. 2002-0431-UCR

Richard S. Hoffman
1718 Boca Chica Blvd.
Brownsville, Texas 78520
Ph: 956/544-2345
Fax: 956/982-1909

Representing City of Lyford

J. W. Dyer
Dyer & Associates
3700 North Tenth St., Suite 105
McAllen, Texas 78501
Ph: 956/686-6606
Fax: 956/686-6601

Representing North Alamo WSC

Blas Coy, Attorney
Public Interest Counsel - MC-103
Texas Commission Environmental Quality
P. O. Box 13087
Ph: 512/230-6363
Fax: 512/230-6377

William G. Newchurch, Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th, Suite 502
P. O. Box 13025
Austin, TX 78711-3025
Ph: 512/936-0728
Fax: 512/936-0730

Docket Clerk
Office of Chief Clerk - MC-105
Texas Commission Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087