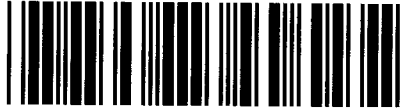


Control Number: 43529



Item Number: 4

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
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.

43599

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**SOAH DOCKET NO. 582-05-1528  
TCEQ DOCKET NO. 2004-1201-UCR**

<b>APPLICATIONS OF FALL CREEK UTILITY COMPANY, INC., TO RAISE WATER AND SEWER UTILITY RATES IN HOOD COUNTY, TEXAS</b>	§ § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**ORDER NO. 1  
MEMORIALIZING PRELIMINARY HEARING AND  
REFERRING CASE FOR MEDIATED SETTLEMENT CONFERENCE**

This Order confirms actions taken at the preliminary hearing in the above-captioned matter, held on January 25, 2005, in Austin, Texas.

**JURISDICTION**

Based upon documents placed in the record at the preliminary hearing, which demonstrated adequate public notice of this action and of the scheduling of the preliminary hearing, the Administrative Law Judge ("ALJ") concluded that jurisdiction over this matter on the part of the Texas Commission on Environmental Quality ("TCEQ") and the State Office of Administrative Hearings ("SOAH") had been formally confirmed.

**PARTIES**

The following are designated as parties to this proceeding:

- \* The applicant, Fall Creek Utility Company, Inc.;
  - \* The Executive Director of TCEQ;
  - \* The Public Interest Counsel ("PIC") of the TCEQ;
- 4

\* The following 24 entities and persons who oppose the applicant's proposed rate changes:

Lake Granbury RV Ranch Property Owners Association, Richard Beaty, Don Clair, Ron Deeds, Gene Floyd, Naneth and Patrick Green, Ronald Griffin, Charles Huey, Deloris and Marion Lewis, Charlene Marincik, Janice and Lyle Martinie, Deborah and Michael Pate, Ron Sigo, Francis and James W. Smith, Clyde and Gloria Stokes, Elaine and Thomas W. Walls, Gary Whitworth.

### **AGREED SCHEDULE**

The parties have agreed to the following schedule, which the ALJ hereby adopts, for this proceeding:

- |                  |   |
|------------------|---|
| * Immediately    | Referral to mediation at SOAH by agreement of parties. .  |
| * Immediately:   | Discovery begins.   |
| * April 1, 2005: | Expected date for conclusion of mediation process.<br><br>Petitioner to submit brief written status report concerning mediation and any other relevant matters. Other parties may submit reports, as well, if desired.  |
| * April 12:      | Deadline for filing motions relating to whether pre-filed testimony should be required in this case.<br><br>Deadline for filing other dispositive motions.  |
| * April 19:      | Deadline for responses to motions with April 12 deadlines.  |
| * May 13:        | ALJ will attempt to rule by this date on motions relating to pre-filed testimony or other dispositive motions<br><br>Deadline for all parties to submit lists of witnesses they intend to call. (Parties may designate other witnesses at a later date upon a showing of good cause.)<br><br>Discovery ends; all answers due. |

Deadline for parties to propose allocations of hearing time.

- \* May 31: Deadline for applicant to file all exhibits and written testimony for all witnesses it intends to call in its direct case.
- \* June 21: Deadline for all parties (except applicant and Executive Director) to file all exhibits and written testimony for all witnesses those parties intend to call in their direct case.
- \* July 22: Deadline for Executive Director's office to file all exhibits and written testimony for all witnesses the staff intends to call in its direct case.
- \* July 29: Deadline for submitting any objections to pre-filed testimony and exhibits.
- \* August 11: Deadline for replies to objections to pre-filed testimony and exhibits.
- \* August 30: Telephonic prehearing conference at 10 a.m., if needed.
- \* September 7: Evidentiary hearing (two days), to convene at **9 a.m.** in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Tex.

#### **REFERRING CASE FOR MEDIATED SETTLEMENT CONFERENCE**

During the preliminary hearing, all parties agreed to a mediated settlement conference, pursuant to 1 TAC 155.37(a), to be conducted within the subsequent 60 days, if practicable, with the object of resolving disputes among the parties with respect to the pending applications.

The ALJ has determined that the request for a mediated settlement conference has merit.

**IT IS, THEREFORE, ORDERED:**

1. This case is hereby referred for a period of mediation to Renee M. Rusch, Alternative Dispute Resolution Team Leader for SOAH, who will coordinate with SOAH personnel regarding the mediation.
2. If mediation is not successful, the case will be returned to the presiding ALJ by **March 28, 2005**, unless the parties inform the undersigned ALJ that the mediation period needs to be extended and the ALJ issues an order to that effect.
3. Each party is ordered to appear at the mediated settlement conference in person or through a party representative who has full settlement authority for this matter.

### **DISCOVERY**

Discovery in this matter will be conducted in accordance with the Texas Rules of Civil Procedure ("TRCP")—and specifically in accordance with TRCP 190.4 ("Level 3 discovery")—except as provided in this order and subsequent orders issued by the ALJ in this proceeding. Discovery in this matter shall be compellable.

Parties should NOT file with the ALJ any discovery requests, responses to discovery requests, or similar discovery documents directed primarily to other parties, unless their submission becomes necessary to enable the ALJ to rule upon a discovery dispute.

**Discovery Disputes.** The parties are expected to attempt in good faith to resolve discovery disputes between themselves; however, significant disputes which cannot be resolved should be brought to the judge's attention – in the form of a written motion copied to all parties – as they occur. Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

While the parties are encouraged to negotiate discovery disputes, they are on notice that they are responsible for completing discovery within the overall scheduling framework for this proceeding. Parties may not avoid substantive deadlines and should not expect continuances if they have waited too long to bring unresolved problems or outstanding discovery requests to the ALJ's attention and have therefore failed to obtain discovery needed for the timely completion of preparations prior to hearing.

### **TIME ALLOCATIONS**

To assure that the evidentiary hearing can be completed within the scheduled time period, the parties will be allocated specific amounts of time within which to complete their presentations (direct cases, cross-examination, and any rebuttal).

Experience indicates that one day of a hearing will yield about six hours of allocable time for presentations. The parties are directed to submit proposals for the allocation of such time (supported, as necessary, by coherent rationales) by **May 13, 2005**. Of course, as long as the parties are efficient in their utilization of hearing time, the ALJ will attempt to be somewhat flexible in administering any time limitations imposed.

### **CONFERRING PRIOR TO SEEKING RELIEF**

The parties are directed to confer and attempt in good faith to negotiate an agreed resolution to all procedural and discovery disputes prior to seeking relief from the judge. Any party seeking relief shall certify that this attempt has been made.

### **APPLICABLE RULES**

This hearing will be conducted in accordance with the TCEQ enforcement rules (30 TAC Chap. 70) and other pertinent TCEQ and SOAH in effect on the date of the preliminary hearing (January 25, 2005).

### **MOTIONS: DELIVERY AND RESPONSES**

Any motion filed in this proceeding shall be actually delivered to other parties the same day it is delivered to the ALJ. Motions (and other correspondence) may be delivered initially via FAX, followed by hard copy. Unless otherwise provided, parties may respond to any motion within five calendar days after receipt of such motion. Rulings will be based on the written pleadings unless the ALJ determines that a prehearing conference is necessary.

### **TELEPHONE CONFERENCES**

If a party desires a telephone conference for any purpose, that party is responsible for arranging a time for the conference call and for setting up the call. The party must ascertain that the ALJ is available.

If the assigned ALJ is unavailable on a given day and a ruling is needed immediately, the parties must consult the director of SOAH's Natural Resource Division, who will make provision for this contingency.

### **MAILING LIST**

When submitting to the ALJ any pleading or correspondence relating to this matter, the sender must submit the original of the document to the Docket Clerk of the TCEQ, whose address

is noted on the attached mailing list. One copy should be provided to the ALJ and one copy to each other person on the mailing list.

### **PRESENTATION AND BURDEN OF PROOF**

The applicant has the right to open and close and bears the burden of proof to show that the authorization sought is consistent with the public interest. Pertinent proofs are by a preponderance of the evidence. 30 TAC § 80.17. The Executive Director has the right to present its case after presentations by other parties. 30 TAC § 80.117(b).

Number of rounds of questioning per witness:	Direct examination
	Cross (covering any relevant issue)
	Redirect (limited to cross)
	Re-cross (limited to redirect)

### **GENERAL PROCEDURE**

Unless a party clearly requests and justifies oral argument in its filings, rulings on all motions or matters that may arise will be made on the basis of the written pleadings.

Any document or matter ordered "due" by a certain date or time must be delivered to the receiving parties by such deadline. Unless otherwise noted, the delivery deadline on any prescribed date is 5 p.m. For purposes of calculating deadlines on responses and replies, the ALJ assumes that anything he receives is also received by the other parties on the same day.



### PROCEDURAL QUESTIONS

Routine procedural and logistical questions may be directed to Brenda Bishop at (512) 463-5766; however, please note that SOAH support personnel are not authorized to provide general advice or the interpretation of regulations or policy.

**SIGNED January 27, 2005.**

  
\_\_\_\_\_  
**MIKE ROGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**WILLIAM P. CLEMENTS BUILDING, Jr.**

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**Austin, Texas 78701**

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**Facsimile (512) 475-4994**

**SERVICE LIST**

**AGENCY:** Texas Commission on Environmental Quality (TCEQ)

**STYLE/CASE:** FALL CREEK UTILITY CO INC

**SOAH DOCKET NUMBER:** 582-05-1528

**REFERRING AGENCY CASE:** 2004-1201-UCR

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**STATE OFFICE OF  
ADMINISTRATIVE HEARINGS**

**MIKE ROGAN  
ADMINISTRATIVE LAW JUDGE**

---

**PARTIES**

**REPRESENTATIVE / ADDRESS**

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TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
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FALL CREEK UTILITY COMPANY

WENDALL CORRIGAN BRANIFF  
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(512) 291-1006 (FAX)

**PARTIES**

**REPRESENTATIVE / ADDRESS**

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xc. Docket Clerk, State Office of Administrative Hearings

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**Facsimile (512) 475-4994**

DATE:

**January 27, 2005**

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

**11**

REGARDING:

**ORDER NO. 1 - MEMORIALIZING PRELIMINARY  
HEARING AND REFERRING CASE FOR  
MEDIATED SETTLEMENT CONFERENCE.**

DOCKET NUMBER:

**582-05-1528**

FROM:

**JUDGE MIKE ROGAN**

**FAX TO:**

**FAX NO:**

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PGS. 11  
TX/RX INCOMPLETE  
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(2) 92390606  
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(4) 92911006  
(5) 92393311  
ERROR INFORMATION  
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**STATE OFFICE OF ADMINISTRATIVE HEARINGS****WILLIAM P. CLEMENTS BUILDING, Jr.****300 West Fifteenth Street****Austin, Texas 78701****Phone (512) 475-4993****Facsimile (512) 475-4994**

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FROM:

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