

Control Number: 43535



Item Number: 16

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.

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Margaret Hoffman, *Executive Director*



43535

RECEIVED

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution
PUBLIC UTILITY COMMISSION
FILING CLERK

May 17, 2004

Ms. LaDonna Castañuela, Chief Clerk
TCEQ Office of the Chief Clerk
MC-105, P.O. Box 13087
Austin, Texas 78711-3087

Re: Applications of City of Royse City, Verandah Communities, L. P., and Parker Creek Estates, L. P., SOAH Docket Nos. 582-04-0253 and 582-04-1268; TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, and 2003-1289-UCR.

Dear Ms. Castañuela:

Please find enclosed for filing in the above-referenced matter:

"Executive Director's Motion to Extend Procedural Deadlines and to Compel Discovery Responses from City of Fate, or, in the Alternative, End City of Fate's Participation"

Please return two file-stamped copies.

If you have any questions, please do not hesitate to contact me at (512) 239-6257. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Geoffrey P. Kirshbaum".

Geoffrey P. Kirshbaum
Staff Attorney
Environmental Law Division

Enclosures

14

MAILING LIST

**City of Royse City, Verandah Communities, L.P., and Parker Creek Estates, L.P.
SOAH Docket Nos. 582-04-0253 and 582-04-1268
TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR and 2003-1289-UCR**

The Honorable Craig R. Bennett
Administrative Law Judge
State Office of Administrative Hearings
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Austin, Texas 78711-3025
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Fax: (512) 475-4994

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Representing: City of Royse City

Representing: Verandah Communities, L.P.,
Verandah Freshwater Supply District, and
Parker Creek Estates, L.P.

Representing: City of Fate

Representing: Honorable Dean M. Gandy

MAILING LIST

City of Royse City, Verandah Communities, L.P., and Parker Creek Estates, L.P.

SOAH Docket Nos. 582-04-0253 and 582-04-1268

TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR and 2003-1289-UCR

Page 2

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James D. Parker, Staff Attorney
TCEQ Environmental Law Division
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Representing: the Executive Director of the
Texas Commission on Environmental
Quality

Blas J. Coy, Jr., Public Interest Counsel
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**SOAH DOCKET NOS. 582-04-0253 and 582-04-1268
TCEQ DOCKET NOS. 2003-0737-UCR, 2003-0738-UCR and 2003-1289-UCR**

**APPLICATIONS OF THE CITY OF
ROYSE CITY TO AMEND WATER
CCN NO. 12827 AND TO OBTAIN A
SEWER CCN IN COLLIN, ROCKWALL
AND HUNT COUNTIES, TEXAS;
APPLICATION NOS. 34270-C AND
34277-C**

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BEFORE THE STATE OFFICE

**APPLICATION OF VERANDAH
COMMUNITIES, L.P. TO OBTAIN A
SEWER CCN IN HUNT AND
ROCKWALL COUNTIES, TEXAS;
APPLICATION NO. 34267-C**

§
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OF

ADMINISTRATIVE HEARINGS

**APPLICATIONS OF PARKER CREEK
ESTATES, L.P. TO OBTAIN A WATER
AND A SEWER CCN IN ROCKWALL
COUNTY, TEXAS; APPLICATION
NOS. 34297-C AND 34301-C**

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**EXECUTIVE DIRECTOR'S MOTION TO EXTEND PROCEDURAL DEADLINES AND
TO COMPEL DISCOVERY RESPONSES FROM CITY OF FATE, OR, IN THE
ALTERNATIVE, END CITY OF FATE'S PARTICIPATION**

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), by and through a representative of the Commission's Environmental Law Division, and files the Executive Director's Motion to Extend Procedural Deadlines and to Compel Discovery Responses from City of Fate, or, in the Alternative, End City of Fate's Participation. The Executive Director requests that procedural deadlines in State Office of Administrative Hearings ("SOAH") Docket Nos. 582-04-0253 and 582-04-1268 be extended by one week and that City of Fate be compelled to respond by May 20, 2004 to the Executive Director's discovery requests served March 5, 2004. In the alternative, the City of

Fate should withdraw its protests of the applications which are the subject of SOAH Docket Nos. 582-04-0253 and 582-04-1268, or otherwise end its participation in these dockets.

I. REVISED PROCEDURAL SCHEDULE

In Order No. 5 applicable to SOAH Docket Nos. 582-04-0253 and 582-04-1268, the Honorable Administrative Law Judge ("ALJ") extended the last day to propound written discovery on the parties until May 10, 2004 and revised several other procedural deadlines. The parties wish to continue the discovery schedule for these dockets without abating any of those proceedings, but the Executive Director has yet to receive responses to the Executive Director's first round of discovery requests served on City of Fate on March 5, 2004 (attached as Exhibit "A").

The Executive Director served discovery requests on all parties in this proceeding on March 5, 2004, but City of Fate has extended its deadline to respond to the discovery requests through several Rule 11 agreements with the Executive Director. The last such Rule 11 agreement was discussed by telephone between the Executive Director and City of Fate on April 22, 2004, and executed in writing by the Executive Director on April 23, 2004 (attached as Exhibit "B"). That agreement contemplated a two-week extension for City of Fate to serve responses to the Executive Director's discovery requests and an extension of the deadline for any staff follow-up on Fate's written discovery requests for a two-week period. No Rule 11 agreement has been executed between the Executive Director and City of Fate to allow for a further extension of the discovery deadlines agreed to on April 22, 2004.

II. MOTION TO EXTEND DEADLINES

The Executive Director is aware that the parties in this matter, including City of Fate, are diligently working to finalize settlement agreements that would resolve all issues in this

contested case proceeding. However, as long as SOAH Docket Nos. 582-04-0253 and 582-04-1268 continue unabated, and no discovery responses are received from City of Fate, the Executive Director must continue requesting extension of the last day to propound written discovery in this case. The Executive Director realizes that each time this request is made, the deadlines for all discovery responses and supplementation, as well as the deadline for the applicants' prefiled direct testimony, are also affected.

At this time, the Executive Director requests extension of procedural deadlines in SOAH Docket Nos. 582-04-0253 and 582-04-1268 and requests the following new procedural deadlines:

May 24, 2004: Last day to propound written discovery requests on the parties

June 17, 2004: All discovery responses and supplementation due

June 24, 2004: All Applicants' prefiled direct testimony due.

The Executive Director may need to request a further extension of these deadlines depending on what action is taken by City of Fate.

III. MOTION TO COMPEL CITY OF FATE TO SERVE RESPONSES OR END FATE'S PARTICIPATION

Last week, the City of Fate represented to the Executive Director that it had decided to withdraw its protests of the applications filed with the Commission by City of Royse City, Parker Creek Estates, L.P., and Verandah Communities, L.P., effectively ending its participation in SOAH Docket Nos. 582-04-0253 and 582-04-1268. The City of Fate's application would still remain the subject of SOAH Docket No. 582-04-2730, which Your Honor has abated until June 4, 2004. If this action is taken, it would solve the Executive Director's discovery issues in SOAH Docket Nos. 582-04-0253 and 582-04-1268 without any abatement of these dockets. At

this time, however, City of Fate has filed no such withdrawal of its protests from SOAH Docket Nos. 582-04-0253 and 582-04-1268.

Abatement of SOAH Docket Nos. 582-04-0253 and 582-04-1268 would provide a solution for the Executive Director's discovery issue with City of Fate. However, City of Royse City has expressed opposition to such an abatement.

In the absence of withdrawal from or otherwise ending participation in these dockets, and in the absence of abatement of these dockets, the Executive Director respectfully requests, in accordance with 1 Texas Administrative Code ("TAC") § 155.31, that the ALJ issue an order compelling City of Fate to provide responses to the Executive Director's Request for Disclosure, First Interrogatories and First Requests for Production to City of Fate in the above-referenced matter, served March 5, 2004, by this Thursday, May 20, 2004. This deadline would be two additional weeks past the last agreed upon deadline between City of Fate and the Executive Director, and will allow a few days for the Executive Director to determine whether further discovery requests are necessary by Monday, May 24, 2004. Hopefully, this will facilitate expeditious completion of discovery in SOAH Docket Nos. 582-04-0253 and 582-04-1268.

IV. ATTEMPTS TO CONFER WITH OTHER PARTIES' COUNSEL

The Executive Director received a voice message from City of Fate's attorney communicating City of Fate's intent to withdraw on May 12, 2004. The Executive Director is not aware of a withdrawal by City of Fate filed since that time. Attempts to contact City of Fate's attorney this morning were unsuccessful. The Executive Director's attorney left a message for City of Fate's attorney to call him regarding the above-described issues, but has not received a response at the time of this filing.

The Executive Director's attorney attempted to contact Royse City's attorney this morning regarding the deadline extension, but was unsuccessful. A voice message was left, but no response has been received at this time.

The Executive Director's attorney successfully contacted an attorney representing Hon. Dean M. Gandy, and obtained agreement to the requested procedural schedule deadline extensions. Similarly, the Executive Director's attorney successfully contacted the attorney representing Verandah Communities, L.P., Verandah Freshwater Supply District, and Parker Creek Estates, L.P. and obtained agreement to the requested procedural schedule deadline extensions. The Office of the Public Interest Counsel is not participating in this contested case hearing.

V. CONCLUSION

At this time, the Executive Director respectfully requests extension of procedural deadlines in SOAH Docket Nos. 582-04-0253 and 582-04-1268 and requests the following new procedural deadlines:

May 24, 2004: Last day to propound written discovery requests on the parties

June 17, 2004: All discovery responses and supplementation due

June 24, 2004: All Applicants' prefiled direct testimony due.

The Executive Director has attempted to confer with representatives for all parties participating in SOAH Docket Nos. 582-04-0253 and 582-04-1268 regarding the issues set forth in this motion. The Executive Director successfully obtained agreement from all parties except the City of Royse City and City of Fate regarding the procedural deadline extensions. The Executive Director has discussed the discovery response issue with City of Fate on several occasions, but, today, was unable to ascertain the status of City of Fate's withdrawal from these dockets or

whether it plans to respond to the Executive Director's discovery requests. Therefore, the Executive Director respectfully requests that the ALJ order City of Fate to respond to its March 5, 2004 discovery requests by May 20, 2004, or, in the alternative, withdraw its protests of the applications filed with the Commission by City of Royse City, Verandah Communities, L.P., and Parker Creek Estates, L.P. or otherwise end its participation in SOAH Docket Nos. 582-04-0253 and 582-04-1268 by May 20, 2004.

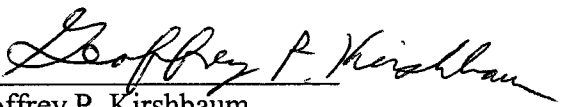
The Executive Director also prays for all other further relief to which it is entitled in law or in equity. The Executive Director submits the request for procedural deadline extensions not for the purpose of delay, but so that justice may be served.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

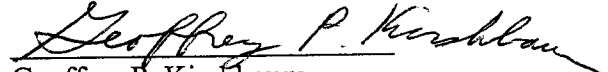
Glenn W. Shankle
Acting Executive Director

Stephanie Bergeron, Director
Environmental Law Division

By 
Geoffrey P. Kirshbaum
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24029665
MC-173, P.O. Box 13087
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Phone: (512) 239-0600
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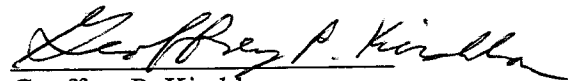
CERTIFICATE OF CONFERENCE

I certify that a reasonable effort has been made to resolve the issue regarding City of Fate's failure to respond to the Executive Director's Request for Disclosure, First Interrogatories and First Requests for Production to City of Fate without the necessity of court intervention, and the effort failed.


Geoffrey P. Kirshbaum

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2004, a true and correct copy of the foregoing Executive Director's Motion to Extend Procedural Deadlines and to Compel Discovery Responses from City of Fate, or, in the Alternative, End City of Fate's Participation was sent by first class mail, agency mail and/or facsimile to all persons on the attached mailing list.


Geoffrey P. Kirshbaum
Staff Attorney
Environmental Law Division
Texas Commission on Environmental
Quality

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 5, 2004

Skip Newsom
Fisher & Newsom, P.C.
3724 Jefferson Street, Suite 210
Austin, Texas 78731-6222

Re: Applications of City of Royse City to Amend Water Certificate of Convenience and Necessity ("CCN") No. 12827 and Obtain a Sewer CCN in Rockwall and Hunt Counties, Texas; Application of Verandah Communities, L.P. to Obtain a Sewer CCN in Rockwall and Hunt Counties, Texas; Applications of Parker Creek Estates, L.P. to Obtain a Water and a Sewer CCN in Rockwall County, Texas; and Applications of City of Fate to Amend Water CCN No. 12889 and to Amend Sewer CCN No. 20856 in Rockwall County, Texas; SOAH Docket Nos. 582-04-0253, 582-04-1268 and 582-04-2730; TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, 2003-1289-UCR and 2003-1491-UCR.

Dear Mr. Newsom:

Enclosed please find the Executive Director's Request for Disclosure, First Interrogatories and First Requests for Production to City of Fate in the above-referenced matter.

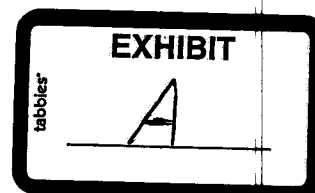
Sincerely,

A handwritten signature in cursive script that reads "Geoffrey P. Kirshbaum".

Geoffrey P. Kirshbaum
Staff Attorney
Environmental Law Division

cc: Mailing List

Enclosures



MAILING LIST

**City of Royse City, Verandah Communities, L.P., Parker Creek Estates, L.P. and
City of Fate**

SOAH Docket Nos. 582-04-0253, 582-04-1268 and 582-04-2730

**TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, 2003-1289-UCR and 2003-1491-
UCR**

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Tel.: (512) 346-4011
Fax: (512) 346-6847

Representing: Verandah Communities, L.P.,
Verandah Freshwater Supply District,
and Parker Creek Estates, L.P.

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Representing: City of Fate

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Representing: Blackland Water Supply
Corporation

MAILING LIST

**City of Royse City, Verandah Communities, L.P., Parker Creek Estates, L.P. and
City of Fate**

SOAH Docket Nos. 582-04-0253, 582-04-1268 and 582-04-2730

**TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, 2003-1289-UCR and
2003-1491-UCR**

Page 2

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Representing: the Executive Director of the
Texas Commission on Environmental
Quality

Blas J. Coy, Jr., Public Interest Counsel
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Fax: (512) 239-6377

Representing: the Public Interest Counsel of the
Texas Commission on Environmental
Quality

SOAH DOCKET NOS. 582-04-0253, 582-04-1268 and 582-04-2730
TCEQ DOCKET NOS. 2003-0737-UCR,
2003-0738-UCR, 2003-1289-UCR and 2003-1491-UCR

APPLICATIONS OF THE CITY OF	§	
ROYSE CITY TO AMEND WATER	§	
CCN NO. 12827 AND TO OBTAIN A	§	
SEWER CCN IN COLLIN, ROCKWALL	§	
AND HUNT COUNTIES, TEXAS;	§	
APPLICATION NOS. 34270-C AND	§	
34277-C	§	
	§	
APPLICATION OF VERANDAH	§	
COMMUNITIES, L.P. TO OBTAIN A	§	BEFORE THE STATE OFFICE
SEWER CCN IN HUNT AND	§	
ROCKWALL COUNTIES, TEXAS;	§	
APPLICATION NO. 34267-C	§	OF
	§	
APPLICATIONS OF PARKER CREEK	§	
ESTATES, L.P. TO OBTAIN A WATER	§	ADMINISTRATIVE HEARINGS
AND A SEWER CCN IN ROCKWALL	§	
COUNTY, TEXAS; APPLICATION	§	
NOS. 34297-C AND 34301-C	§	
	§	
APPLICATIONS OF THE CITY OF FATE	§	
TO AMEND WATER CCN NO. 12889	§	
AND TO AMEND SEWER CCN NO.	§	
20856 IN ROCKWALL COUNTY, TEXAS;	§	
APPLICATION NOS. 34361-C AND	§	
34362-C	§	

**EXECUTIVE DIRECTOR'S REQUEST FOR DISCLOSURE, FIRST
INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION TO
CITY OF FATE**

TO: CITY OF FATE, BY AND THROUGH ITS ATTORNEY, MR. SKIP NEWSOM, FISHER
AND NEWSOM, P.C., 3724 JEFFERSON STREET, SUITE 200, AUSTIN, TEXAS 78731.

Pursuant to §2001 *et seq.* of the Administrative Procedure Act ("APA"), Texas Government Code, Rules 190-197 of the Texas Rules of Civil Procedure and 30 Texas Administrative Code ("TAC") § 80.151, and TAC Title 1, Part VII, Section 155.23, the Executive Director serves the following Request for Disclosure, First Interrogatories and First Requests for Production to City of Fate ("Fate"). You are required to answer each request for disclosure and interrogatory in complete detail

and in writing, and to produce documents responsive to the request for disclosure and requests for production. You are required to deliver your responses to Geoffrey P. Kirshbaum, Staff Attorney, Texas Commission on Environmental Quality, Environmental Law Division, MC-173, P.O. Box 13087, Austin, Texas 78711-3087 by 20 days after service of this request, in accordance with 1 TAC 155.31 and the scheduling orders issued on January 6, 2004 and February 24, 2004 by the Administrative Law Judge ("ALJ") in this matter.

I.

DEFINITIONS

YOU, YOUR, YOURSELF

As used herein, the terms "you," "your," or "yourself," refer to City of Fate, the party to whom these requests are addressed, as well as to each of its parents, predecessors, subsidiaries and affiliates, each of its present and former officers, employees, agents, representatives and attorneys, and each person acting or purporting to act on its behalf.

REPRESENTATIVE

As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on your behalf.

PERSON

As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, municipality or department.

DOCUMENT

As used herein, the term "document" means any medium upon which information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, facsimile transmission, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, computer tape or disk, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, which is in your possession, custody or control, or which has been, but is no longer, in your possession, custody, or control. The term

"document" further means a copy of any document, as referred to above, if such copy contains notes, writings or is in any way different from or an alteration of the original document.

COMMUNICATION

As used herein, the term "communication" means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements and other understandings between or among two or more persons.

IDENTIFICATION

As used herein, the terms "identification," "identify," or "identity," when used in reference to: (a) a natural individual - require you to state his or her full name and residential and business address; (b) a corporation - require you to state its full corporate name and any names under which it does business, its state of incorporation, the address of its principal place of business, and the addresses of all of its offices; (c) a business -require you to state the full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engaged, the geographic areas in which it conducts those business, and the identity of the person or persons who own, operate, and control the business; (d) a document - require you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (e) a communication - require you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and, to the extent that the communication was non-written, to identify the persons participating in the communication and to state the date, manner, place and substance of the communication.

II.

INSTRUCTIONS

IDENTIFICATION OF DOCUMENTS

With respect to each interrogatory, in addition to supplying the information requested, you are to identify all documents that support, refer to or evidence the subject matter of each request and your answer thereto.

If any or all documents identified herein are no longer in your possession, custody or control because of destruction, loss or any other reason, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

If you contend that any material or information responsive to any of the interrogatories is privileged, state in response that: (a) the information or material responsive to the interrogatories has been withheld; (b) the interrogatory to which the information or material relates; and (c) the privilege or privileges asserted.

CONTENTION REQUESTS

When a request requires you to "state the basis of" a particular claim, contention, or allegation, state in your answer the identity of each and every communication and each and every legal theory that you think supports, refers to, or evidences such claim, contention, or allegation.

CONTINUING REQUESTS

These requests are to be considered continuing in nature and you are under a duty to timely supplement any response given to such request(s) as required by Rule 193 of the Texas Rules of Civil Procedure.

III.

REQUEST FOR DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, 1 TAC 155.31, and the scheduling orders issued on January 6, 2004 and February 24, 2004 by the ALJ in this matter, you are requested to disclose, within 20 days of service of this request, the information or material described in Rule 194.2 (a), (b), (c), (e), (f), (h), and (i).

IV.

INTERROGATORIES

Interrogatory No. 1: For each person Fate expects to call as a fact witness at the evidentiary hearing in this matter, please provide: (a) the person's name and business address and telephone number; and (b) a brief description of the testimony Fate expects that person to provide.

Interrogatory No. 2: For each expert not listed in the response to the Request for Disclosure whom Fate has consulted and whose mental impressions and opinions have been reviewed by an expert Fate expects to testify in this matter, please provide: (a) the consulting expert's name and business address and telephone number; (b) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with this matter, regardless of when and how the factual information was acquired; (c) the expert's mental impressions and opinions formed or made in connection with this matter and any methods used to derive them; and (d) a curriculum vitae or other detailed description of the expert's qualifications.

Interrogatory No. 3: Please describe in detail Fate's position regarding the adequacy of water and sewer utility service currently provided to the areas requested by City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. in their respective water and sewer Certificate of Convenience and Necessity ("CCN") applications, including, if known, a description of whether people currently reside in the requested areas that receive water and/or sewer utility service, identification of each of those people, and identification of the water and/or sewer utility service provider for each of those people. Please distinguish between water and sewer in your response.

Interrogatory No. 4: Please describe in detail Fate's position regarding the need for additional water and/or sewer utility service to the areas requested by City of Royse City, Fate, Parker Creek Estates, L.P. and Verandah Communities, L.P., including, but not limited to, identification of any person or entity who has requested service from each entity in its requested area(s), identification of the name(s), address(es), and phone number(s) of each person or entity, description of the population in the proposed area(s) sought by each entity in its application(s), and description of the water and sewer utility service currently available to each identified person. Please distinguish between water and sewer in your response.

Interrogatory No. 5: Please describe in detail the position of Fate regarding the effect of the proposed water and sewer CCNs and CCN amendments requested by City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. on the water and sewer CCN applicants in this matter, or on any retail public utility of the same kind already serving the areas proximate to those areas requested to be served by the water and sewer CCN applicants in this matter. Please distinguish between water and sewer in your response.

Interrogatory No. 6: Please describe in detail Fate's position regarding the ability of City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. to provide continuous and adequate water and/or sewer utility service to the areas requested by each of those entities in their respective water and sewer CCN applications. Please distinguish between water and sewer in your response.

Interrogatory No. 7: Please describe in detail Fate's managerial capability to provide continuous and adequate water and/or sewer utility service to its requested service areas and identify any Fate employee and/or contractor who will be utilized for providing managerial functions and/or services. Please distinguish between water and sewer in your response.

Interrogatory No. 8: Please describe in detail Fate's position regarding the feasibility of obtaining water or sewer utility service from another retail public utility adjacent to the areas City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. propose to serve in their respective CCN applications. Please distinguish between water and sewer in your response.

Interrogatory No. 9: Please describe in detail Fate's position regarding the effect granting City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. their respective CCN applications would have on the environmental integrity of the service areas requested by those entities. Please distinguish between water and sewer in your response.

Interrogatory No. 10: Please describe in detail Fate's position regarding the probable improvement in service or lowering of cost to consumers in the areas requested by City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. should their applications be granted, including the rates they plan to charge those consumers. In your response, please include a description of historical water service reliability and historical water quality data in Fate's proposed service areas, and describe current and projected costs to consumers in Fate's proposed service areas. Also, please distinguish between water and sewer in your response.

Interrogatory No. 11: Please describe the proximity of the proposed areas sought in the applications filed by City of Royse City, Fate, Parker Creek Estates, L.P., and Verandah Communities, L.P. to any existing facilities currently operated by Fate and any other retail public utility, if known, and to any water and/or sewer facilities Fate proposes to construct. Please distinguish between water and sewer in your response.

Interrogatory No. 12: Please identify and describe, including amount and type, any and all costs that will be passed to potential customers in the proposed Fate water and sewer CCN areas if Fate becomes the water and/or sewer utility service provider for those areas, including, but not limited to, any and all initial and long-term facility costs. Please distinguish between water and sewer in your response.

Interrogatory No. 13: If Fate proposes to construct a new stand alone water and/or sewer system to serve any of the areas requested in its applications, please provide a detailed analysis of all the costs necessary for the first five years to construct, operate, and maintain those facilities.

Interrogatory No. 14: Is it your position that Fate has a water treatment and distribution system and/or a wastewater treatment system in place that is adequate to provide utility service to the areas Fate proposes to serve in its applications? If so, please describe any potable water treatment and delivery system that you believe is in place and adequate to provide water utility service to the proposed areas sought in Fate's water CCN amendment application, as well as any wastewater treatment system. Please describe the capacities of each component of any such systems, including, but not limited to: well capacities (including a description of each well's depth, aquifer, and gallons per minute production during average and peak drought conditions); feet of distribution lines in the systems and the diameters of those lines; pumps and their rated capacities; and treatment plants and their capacities not already used to meet peak demands of existing Fate customers and/or customers Fate is already committed to serve. Please distinguish between water and sewer in your response.

Interrogatory No. 15: Please describe the financial stability of Fate, including, if applicable, the adequacy of Fate's debt-equity ratio and cash flow for debt service coverage.

Interrogatory No. 16: Please estimate the time it would take for Fate to provide water and sewer utility service to the entire Fate proposed areas in compliance with all applicable Commission rules and statutes, and please describe the time it would take Fate to provide water and sewer utility service to any person requesting service in any outlying portions of the areas requested by Fate in its applications. Please distinguish between water and sewer in your response.

Interrogatory No. 17: Do you contend that the City of Royse City, Parker Creek Estates, L.P., or Verandah Communities, L.P. water and/or sewer CCN applications should not be granted by the Texas Commission on Environmental Quality? Please state the basis for your contention. Please distinguish between water and sewer in your response.

Interrogatory No. 18: On a large scale map, please identify the locations of Fate's proposed water and sewer CCN area(s), the water and sewer CCN areas requested in the City of Royse City, Parker Creek Estates, L.P, and Verandah Communities, L.P. water and sewer CCN applications, and Fate's current water and sewer service areas. Please identify the name of the applicant and certificate number for each CCN area identified on the map. Also, please distinguish between water and sewer CCNs in your response.

Interrogatory No. 19: On large scale copies of the service area maps submitted with Fate's original applications, please identify, to the best of your knowledge, all Fate's existing water and/or sewer connection(s) located outside the corporate limits of Fate. Please distinguish between water and sewer in your response.

Interrogatory No. 20: Please describe whether granting Fate's water and/or sewer CCN applications would promote the Commission's policy goal of regionalization.

V.

REQUESTS FOR PRODUCTION

Request for Production No. 1: Please provide a copy of the report from the most recent inspection by the TCEQ region office on any Fate public water system facility that may be used to provide water utility service to the area Fate requests to serve in its water CCN amendment application and a copy of any notice of violation issued to Fate and Fate's response to the notice of violation.

Request for Production No. 2: Please provide any and all documents relating to TCEQ, County and/or all other regulatory agency approvals required for Fate's existing and proposed water and sewer utility service facilities. Please distinguish between water and sewer in your response.

Request for Production No. 3: Please provide any and all documents sent between Fate, City of Royse City, Parker Creek Estates, L.P., and Verandah Communities, L.P. regarding the proposed areas sought in each entity's water and/or sewer CCN applications. Please distinguish between water and sewer in your response.

Request for Production No. 4: Please provide Fate's latest audit report or financial information for the past fiscal year and current balance sheet information.

Request for Production No. 5: Please provide any and all documents from any person or entity requesting service from you in the proposed areas sought in the Fate applications and your response. Please distinguish between water and sewer in your response.

Request for Production No. 6: Please provide any and all maps showing the location or locations of those persons requesting service in the proposed areas sought in the Fate CCN applications. Please distinguish between water and sewer in your response.

Request for Production No. 7: Please provide any and all estimates of the capital costs for Fate to provide water and sewer utility service to the proposed areas sought in the Fate CCN applications. Please distinguish between water and sewer in your response.

Request for Production No. 8: Please provide any and all existing capital asset acquisition budgets for Fate. Please distinguish between water and sewer in your response.

Request for Production No. 9: Please provide any and all documents that contain or discuss the method and terms of financing the capital acquisition costs for Fate.

Request for Production No. 10: Please provide any and all maps that illustrate the location of all water and sewer treatment facilities currently in place in or within two miles of the proposed water and sewer utility service areas in the Fate CCN applications. Please distinguish between water and sewer in your response.

Request for Production No. 11: Please provide any and all maps that illustrate the location(s) within the water and/or sewer service areas requested in Fate's CCN applications where Fate currently provides water and/or sewer service.

Request for Production No. 12: Please provide any and all colored maps that illustrate the water and/or sewer service areas requested in Fate's CCN applications and any overlap of those areas with service areas requested by City of Royse City, Parker Creek Estates, L.P., and Verandah Communities, L.P. in this proceeding.

Request for Production No. 13: Please provide a copy of any and all complaints Fate has received in the past five years related to Fate's water or sewer utility service, operations, or management. Please distinguish between water and sewer in your response.

Request for Production No. 14: Please provide a copy of any and all requests or applications for loans or grants made by Fate.

Request for Production No. 15: Please produce copies of any and all service agreements, either wholesale and/or retail, between Fate and the City of Royse City, Parker Creek Estates, L.P., Verandah Communities, L.P. or any other utility to provide water and/or sewer service.

Request for Production No. 16: Please produce copies of any and all documents identified in your responses to Interrogatory Nos. one (1) through twenty (20) listed above or used to assist you in responding to Interrogatory Nos. one (1) through twenty (20) listed above.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Margaret Hoffman
Executive Director

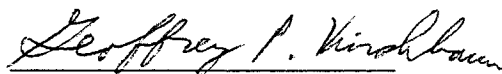
Stephanie Bergeron, Director
Environmental Law Division

By *Geoffrey P. Kirshbaum*
Geoffrey P. Kirshbaum
Staff Attorney

Environmental Law Division
State Bar of Texas No. 24029665
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0600
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2004, a true and correct copy of the foregoing Executive Director's Request for Disclosure, First Interrogatories and First Requests for Production to City of Fate were sent by first class mail, agency mail and/or facsimile to all persons on the attached mailing list.


Geoffrey P. Kirshbaum
Geoffrey P. Kirshbaum

FISHER & NEWSOM, P.C.

ATTORNEYS AT LAW

3724 JEFFERSON STREET, SUITE 210
AUSTIN, TEXAS 78731
(512) 477-4121
FAX (512) 477-2860

Skip Newsom
Board Certified Administrative Law
Texas Board of Legal Specialization

April 22, 2004

Via Telecopy 239-0606

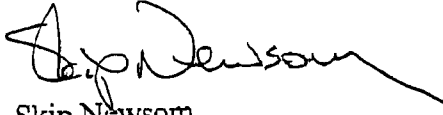
Mr. Geoffrey P. Kirshbaum, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Re: City of Fate CCN Application; SOAH Docket No. 582-04-2730

Dear Mr. Kirshbaum:

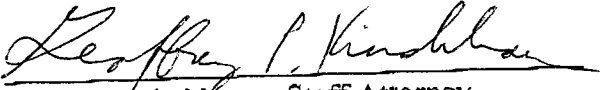
This will confirm our conversation yesterday in which we agreed to extend the time for filing responses to your discovery requests in this matter for an additional two weeks and to likewise extend the deadline for any staff follow up written discovery requests by a like period. It is intended that this letter satisfy the requirements of Rule 11 of Texas Rules of Civil Procedure and that both parties may rely upon and, if necessary, enforce same. Please indicate your written agreement to these terms by your signature below and return to me. We anticipate that all settlement documents will be executed within the intervening period.

Yours very truly,


Skip Newsom

SN/ads

AGREED TO BY:


Geoffrey Kirshbaum, Staff Attorney
Texas Commission on Environmental Quality

EXHIBIT

tabbles®

B

*** TX REPORT ***

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TCEQ

Protecting Texas
by Reducing and
Preventing Pollution

FAX TRANSMITTAL

DATE: April 23, 2004 Total Pages (including this cover sheet): 2

TO: Name Skip Newsom
Organization Fisher & Newsom, P.C.
Telephone Number 477-4121
FAX Number 477-2860

FROM: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Name Geoffrey Kirshbaum
Title Staff Attorney
Telephone Number 512) 239-6257
FAX Number 512) 239-0606 / 239-0626 / 239-3434

PLEASE CALL AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.

NOTES:

Re: Rule 11 Agreement; Applications from City of Fate to Amend Water Certificate of Convenience and Necessity (CCN) No. 12889 and to Amend Sewer CCN No. 20856 in Rockwall County; Application Nos. 34361-C and 34362-C; Consolidated Docket, SOAH Docket Nos. 582-04-0253 and 582-04-1268; TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, and 2003-1289-UCR



TCEQ

Protecting Texas
by Reducing and
Preventing Pollution

F A X T R A N S M I T T A L

DATE: April 23, 2004

Total Pages (including this cover sheet):

2

TO:

Name	<u>Skip Newsom</u>
Organization	<u>Fisher & Newsom, P.C.</u>
Telephone Number	<u>477-4121</u>
FAX Number	<u>477-2860</u>

FROM: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Name	<u>Geoffrey Kirshbaum</u>
Title	<u>Staff Attorney</u>
Telephone Number	<u>512) 239-6257</u>
FAX Number	<u>512) 239-0606 / 239-0626/ 239-3434</u>

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If you have received this facsimile in error, please notify us by telephone immediately and return the original message to us at Texas Commission on Environmental Quality, Office of Legal Services, P.O. Box 13087, MC 173, Austin, Texas 78711-3087 by First Class Mail via the United States Postal Services. Thank you.