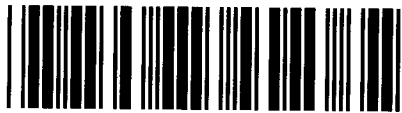


Control Number: 43537



Item Number: 3

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

43531

SOAH DOCKET NO. 582-05-3744
TCEQ DOCKET NO. 2004-1722-UCR

2005 APR 29 PM 4:03

APPLICATION BY CITY OF LINDALE §
TO OBTAIN DUAL CERTIFICATION §
WITH A PORTION OF CCN NO. 10772 §
FROM THE CITY OF TYLER AND TO §
AMEND CCN NO. 12795 IN SMITH §
COUNTY, APPLICATION NO. 34160-C §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OCT 15 PM 3:34

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**ORDER NO. 1
SETTING OUT SCHEDULE AND PROCEDURES;
SCHEDULING PREHEARING CONFERENCE AND HEARING ON THE MERITS;
AND REFERRING CASE FOR MEDIATION**

I. PARTIES

On April 26, 2005, a preliminary hearing was held in this case. The following were designated as parties:

PARTY	REPRESENTATIVES
City of Lindale (Applicant)	James N. Johnson, Attorney
Lindale Water Supply Corporation (LWSC)	Philip S. Haag, Attorney
Executive Director (ED)	David Klein, Attorney
Public Interest Counsel (OPIC)	Blas Coy, Jr., Attorney

II. REFERRAL FOR MEDIATION

The parties agreed to attempt settlement through discussion and/or participation in a mediated settlement conference (MSC) before discovery and other prehearing obligations commence. To facilitate the parties' agreement, the ALJ hereby *refers this case for a period of mediation* to Rence M. Rusch, Alternative Dispute Resolution Team Leader for the State Office of Administrative Hearings (SOAH).

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Any MSC should be conducted on or before **June 15, 2005**. The mediator(s) should file a brief report with SOAH on or before **June 20, 2005**, indicating whether the parties did or did not reach agreement at the MSC.

If mediation is not successful, the case will be returned to the presiding ALJ on **June 20, 2005**, unless the mediation period is extended by order of the undersigned presiding ALJ. *The parties must request any extensions of the mediation period or file any motions to dispose of this matter.*

The parties are **ordered** to appear at the MSC with a party representative (in addition to the attorney) who has full settlement authority for this matter.

III. SCHEDULE

The parties agreed on the following schedule for prehearing activities and the hearing on the merits of the application, which schedule shall govern this proceeding in the event the parties are unable to reach a settlement:

DEADLINE/DATE	ACTIVITY
July 5, 2005	Discovery begins. (<i>The parties have agreed to a 30-day deadline for filing responses</i>).
October 21, 2005	Deadline for serving last round of written discovery.
November 20, 2005	All written discovery responses due.
November 21, 2005	<ul style="list-style-type: none">• All parties designate witnesses.• All parties file list of applicable law, rules, and policies. (<i>The parties may file a joint list if they agree on applicable law.</i>)
November 28, 2005	Deadline to file all dispositive motions.
December 7, 2005	Responses due to any dispositive motions filed.

DEADLINE/DATE	ACTIVITY
December 2, 2005	<ul style="list-style-type: none">Applicant prefiles direct testimony, order of witnesses, and exhibits.Responses due, if any, to other parties' lists of applicable law, rules, and policies.
December 19, 2005	LWSC prefiles direct testimony, order of witnesses, and exhibits.
January 13, 2006	ED prefiles direct testimony, order of witnesses, and exhibits; OPIC prefiles direct testimony, order of witnesses, and exhibits, if any.
January 30, 2006	All parties file written objections, if any to prefiled testimony.
February 10, 2006	Parties replies to objections to any prefiled evidence.
February 16, 2006	Telephone prehearing conference; 10:00 a.m.
February 20, 2006	Hearing on the merits (HOM) of Application begins, 9:00 a.m.
February 22, 2006	Estimated end of HOM.

IV. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at **9:00 a.m., on February 20, 2006**, at William P. Clements, Jr. Office Building, 300 West 15th, Fourth Floor, Austin Texas. Unless the parties are notified otherwise, the hearing will continue from day to day thereafter until it is concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

The telephone prehearing conference will convene at **10:00 a.m. on February 16, 2006**, unless the Judge concludes that all prehearing matters are resolved. Unless notified in advance that the prehearing is canceled, counsel for the parties should be available at the scheduled time at their telephone number of record or at another number that they have previously supplied to the Judge's assistant, Patricia Pena, at 512/475-1515.

Topics at the prehearing conference will include any pending motions, allocation of hearing time, special scheduling or presentation needs for the hearing, and any other matters that will aid in efficient presentation of the hearing.

V. PROCEDURAL RULES

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of the TCEQ and SOAH. 30 TEXAS ADMIN. CODE ch. 80 and 1 TEX. ADMIN. CODE ch. 155. In the event of conflict, the TCEQ's rules apply. 1 TEXAS ADMIN. CODE § 155.1(b).

VI. DISCOVERY

Discovery shall be conducted according to Texas Rules of Civil Procedure (TRCP), as supplemented by SOAH's discovery rules, 1 TEX. ADMIN. CODE § 155.31. The Rules of Civil Procedure shall be interpreted consistently with Chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the APA. 30 TEX. ADMIN. CODE § 80.151. Pursuant to SOAH Rule 155.23(3), discovery documents shall be served on the other parties but ***shall not be filed with the ALJ*** unless such materials are the subject of a discovery dispute and only those portions relevant to the dispute shall be attached to any pertinent motion.

The parties are expected to attempt to resolve discovery disputes; however, significant disputes which cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for the Applicant, LWSC, and the ED for oral depositions may not exceed 50 hours each and the total number of written interrogatories that any party may serve on any other party may not exceed 25. 30 TEX. ADMIN. CODE §§ 80.152. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert

designated. Additionally, parties may obtain disclosure of information and material as provided in TRCP 194. The parties are encouraged to cooperate and reach agreements regarding discovery matters. However, in the absence of a filed written agreement, responses to discovery requests are due on the deadline date.

Parties should file objections to written discovery and motions to compel, if any, promptly in order to facilitate prompt resolution of discovery disputes.

If a motion to compel is filed, the party asserting a privilege from discovery shall produce the documents in question to the ALJ for an *in camera* inspection within three (3) working days after receiving the motion under the procedures set out at 1 TEX. ADMIN. CODE § 155.23(2). *In camera* documents will be returned only to the party that provided them regardless of the ruling. If the ruling is against the producing party, production shall follow on either the 20th working day or if this date has passed, then within two (2) working days. To the extent discovery requests involve confidential materials having a limited privilege(*e.g.*, TRE 507 trade secrets), the parties should file a motion seeking a protective order to facilitate discovery. Additionally, if it would facilitate orderly and efficient discovery, any party, after conferring with all other parties, may seek the issuance of a general protective order.

Responses to written discovery requests shall identify the preparer(s) and witness sponsor(s) of that response.

VII. PLEADINGS

Unless specified or agreed otherwise, to be considered filed on a particular day, filings must be received by the ALJ and the parties by 5:00 p.m. on that date. TEX ADMIN. CODE §§ 155.23 and 155.25.

Unless one party seeks additional oral argument and the motion is granted, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ specifies otherwise. The party requesting oral argument shall make arrangements for the telephone conference in a manner so as not to delay a ruling on the motion.

Motions or other correspondence may be *faxed* if the original is sent by mail. Filings should be sent to all parties on the same day they are filed with SOAH. If over 20 pages long, a filing may be sent by express mail for delivery on the next business day. *This is particularly important when deadlines for responses are involved since it will be assumed that all parties received a filing the same day the ALJ did and their time is running for responses.*

If a deadline is approaching and a party cannot get a fax through for reasons beyond its control [e.g. both SOAH fax numbers (Natural Resources 512/936-0730 and SOAH Main Docket 512/475-4994) have been busy since 4:00 p.m.], call and tell the ALJ's assistant, Patricia Pena, at 512/475-1515, or the SOAH Docket Division (512/475-3445) of the problem.

Parties shall use the ALJ's service list and this list should be attached to all filings.

VIII. PREFILED EVIDENCE

All parties shall prefile their direct-case evidence in writing. One copy shall be served on the representative of every other party, and one copy shall be filed with the judge. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a party's direct case.

Evidence that is not prefiled may not be introduced as part of a party's direct case absent a showing of good cause. Good cause will be considered on a case-by-case basis upon a showing of need, the reasonableness of not having anticipated its use, and that the other parties will not be

prejudiced by its late entry into the record. Therefore, evidence even considered for use in a direct case should be prefiled, although a party later may choose not to introduce every item it prefiles.

The Applicant is hereby warned against trying to obtain a tactical advantage by saving evidence for rebuttal that is more reasonably part of a direct case. Such evidence will not be admitted as "rebuttal" absent a showing of good cause, particularly that the need for such "rebuttal" evidence could not have been reasonably anticipated and prefiled with the direct case.

Prefiled testimony should be written as if the questions were asked by the party's lawyer and answered by the witness. The witness must be called to testify and adopt the prefiled testimony under oath, the testimony must be offered as an exhibit, and the witness must be passed for cross-examination by the other parties. *When no party wishes to cross-examine a witness, the parties should agree to the admission of the witness' testimony so that the witness need not come to the hearing for no purpose.*

By agreement, the parties may offer testimony by submitting the deposition of a witness if all parties were present at the deposition to cross-examine the deponent.

Since the purpose of prefiling evidence is to shorten the length and minimize the cost of the hearing, the Judge will discourage non-substantive evidentiary objections to prefiled evidence that seem to have little purpose other than lengthening the hearing and leaving evidentiary gaps, *e.g.*, form-of-the-question and leading-the-witness objections. Counsel to all parties are expected to confer and reach agreements on ways to minimize all evidentiary objections.

An order of witnesses shall be prefiled with the testimony. If there is a necessity to deviate from the established order, this should be raised with the ALJ and the other parties as soon as it becomes known.

Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference.

On the day they will be offered, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them and not delay the hearing.

IX. OPEN GOVERNMENT

The Judge intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. Texas law frowns on secret governmental proceedings or decisions of any kind.¹ The parties shall negotiate prior to the hearing to agree on redacted versions of the confidential documents that can be admitted or to stipulate to facts to which they pertain. The Judge is confident that the parties can reach such agreements. Gamesmanship on this point will not be tolerated. If the parties are legitimately unable to reach an agreement, the Judge will resolve the dispute at the hearing in a session closed to the public.

X. COURT REPORTER AND TRANSCRIPT

For any proceeding in a docket set to last longer than one day, a court reporter is generally required. 1 TEX. ADMIN. CODE § 155.43(b). Upon his or her own motion, the judge may request a verbatim record and an original and two copies of a transcript of a proceeding. 30 TEX. ADMIN. CODE § 80.23 (b)(4).

In that the parties estimate that the hearing on the merits will take more than one day, a court reporter will be needed at the hearing on the merits to transcribe the hearing and to deliver the original and one copy of that transcript to the ALJ and one copy to the ED. The Applicant shall work

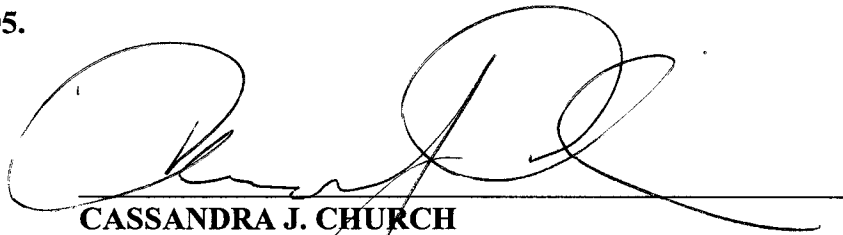
¹ See TEX. GOV'T CODE ANN. § 551.001 *et seq.* and § 552.001 *et seq.*

with the TCEQ Chief Clerk's Office to ensure that a court reporter attends the hearing. The Applicant shall pay the cost of that recording and transcription subject to an allocation of those costs among all the parties at the end of the case. 30 TEX. ADMIN. CODE § 80.23.

XI. ORDER OF HEARING

Unless otherwise ordered, the parties will present their cases in the following order: Applicant, LWSC, OPIC, and ED. The Applicant will have the opportunity to introduce rebuttal evidence, which it need not prefile. The opportunity for any other party to present rebuttal testimony will be evaluated on a case-by-case basis. 28 TEX ADMIN. CODE § 80.17(b). The ALJ anticipates an order of cross-examination which will permit the Applicant and LWSC each to be the last to cross examine each other's witnesses.

SIGNED April 29, 2005.



**CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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SERVICE LIST

**AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
(TCEQ)**

STYLE/CASE: CITY OF LINDALE

SOAH DOCKET NUMBER: 582-05-3744

REFERRING AGENCY CASE: 2004-1722-UCR

**STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

**CASSANDRA CHURCH
ADMINISTRATIVE LAW JUDGE**

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DATE: April 29, 2005

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REGARDING: ORDER NO. 1 SETTING OUT SCHEDULE AND
PROCEDURES; SCHEDULING PREHEARING
CONFERENCE AND HEARING ON THE MERITS;
AND REFERRING CASE FOR MEDIATION

DOCKET NUMBER: 582-05-3744

FROM: JUDGE CASSANDRA CHURCH

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