

Control Number: 43551



Item Number: 25

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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PUBLIC UTILITY COMMISSION
FILING CLERK

December 21, 2001

Kenneth Ramirez
Partner

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Austin, Texas 78701-4043
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Via Hand Delivery

LaDonna Castañeula, Chief Clerk
Office the Chief Clerk
Texas Natural Resource Conservation
Commission
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

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Texas Natural
Resource
Conservation
Commission

Re: City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

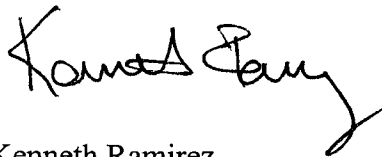
Dear Ms. Castañeula:

Enclosed please find an original and one copy of a letter to Doug Holcomb in response to Gary Bradley's Request for Contested Case Hearing on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C). Please date-stamp the copy and return it to my messenger.

If you have any questions, please contact me at 512/494-3611.

Very truly yours,

Bracewell & Patterson, L.L.P.



Kenneth Ramirez

KR/jcb
Enclosure

cc: Mr. Doug Holcomb
Mr. Gary Bradley
Mr. Ronnie Jones
Mr. Bart Jennings



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Partner

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By Hand Delivery

December 21, 2001

Mr. Doug Holcomb
Utilities & Districts Section
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-153
Austin, TX 78711-3087

Re: Response to Gary Bradley's Request for Contested Case Hearing on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

Dear Mr. Holcomb:

On October 24, 2001, Mr. Gary Bradley filed a request for contested case hearing on his own behalf regarding the City of Austin's ("City") water and sewer Certificate of Convenience and Necessity ("CCN") applications (33562-C and 33563-C) ("Application(s)"). The City filed its Applications on August 13, 2001. The Applications were declared administratively complete on August 20, 2001. The City issued individual and published notices under 30 TAC § 291.106; the last date of publication was October 3, 2001.

A request for a contested hearing may be granted if made by an "affected person." See 30 TAC § 55.27(b)(2); *see also* 30 TAC §§ 291.107(d) and 55.101(g)(5). An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by an application. See 30 TAC § 55.29(a). An interest that is common to members of the general public does not qualify as a personal justiciable interest. See *id.* This standard requires Mr. Bradley to show that he will potentially suffer harm or has a justiciable interest that will be affected. See United Copper Industries, Inc. v. Grissom, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. denied).

Relevant factors to be considered in evaluating whether a person is an affected person include:

- (1) Whether the interest claimed is one protected by the law under which the application will be considered;



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- (2) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (3) The likely impact of the regulated activity on the health, safety, and use of property of the person; and
- (4) The likely impact of the regulated activity on use of the impacted natural resource by the person.

30 TAC § 55.29(c).

In addition, a request for hearing must also be reasonable and supported by competent evidence. *See* 30 TAC § 55.27(b)(2).

Mr. Bradley states that he (1) represents the ownership of certain property within Creedmoor-Maha Water Supply Corporation's ("Creedmoor") water service area, and (2) is in litigation over the ownership of other acreage within Creedmoor's water service area to which Hatsy Heep currently holds title. The City objects to Mr. Bradley being granted a hearing on the City's water and sewer CCN applications because he does not qualify as an affected person. Additionally, Mr. Bradley's request for hearing is not reasonable and supported by competent evidence.

To the City's knowledge, Mr. Bradley does not own any property within the City's proposed water utility service area, or operate, maintain, or control any facilities for the provision of potable water or sewer service for compensation in the proposed water and sewer utility service area. Additionally, he is not authorized and has not filed a competing application for either water or sewer service for any part of the City's proposed water and sewer utility service area. The only interest that he mentions is his alleged interest in representing the owners of certain property within Creedmoor's water service area and his interest in a legal dispute over the ownership of property within Creedmoor's water service area that is owned by Hatsy Heep. Neither of these claims provide a basis for Mr. Bradley being an affected person. The City's water and sewer CCN applications do not adversely affect ownership of property within Creedmoor's water service area or the City's proposed water and sewer utility service area. The City's proposed water and sewer CCN applications only affect the provision of retail potable water and sewer service within the proposed area. Thus, the City's provision of utility service within the proposed water and sewer utility service area will have no impact on Mr. Bradley's interest greater than that which is common to members of the general public.

Specifically, Mr. Bradley's protest and request for a hearing does not show that he will potentially suffer harm or has a justiciable interest that will be affected by the City's



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water and sewer CCN applications. Mr. Bradley's alleged ownership interest is not one that is addressed by the law under which the Applications will be considered. He has not shown that a reasonable relationship exists between his interest and the City's water and sewer CCN applications, or the likely impacts of the regulated activity on the health, safety, and use of his alleged property. Approval of the City's CCN applications will not adversely affect Mr. Bradley's alleged status as owner of his property, nor will it negatively impact his use of that property. Mr. Bradley has failed to put forth any evidence to show otherwise.

Finally, Mr. Bradley's request is unreasonable because it fails to acknowledge the State of Texas' mandate for regionalization of water and sewer utility service. *See* Texas Water Code sections 13.241(d), 13.183(c), and 16.053; and Texas Constitution Art. 3, § 49-d. The City is prepared to meet this mandate. Aside from asserting an alleged ownership interest in property within Creedmoor-Maha's water utility service area, Mr. Bradley has presented no evidence that he is authorized or willing to do so. Overall, Mr. Bradley has provided no evidence to support any part of his claim regarding his alleged ownership interest that entitles him to a hearing on the City's water and sewer CCN applications.

For these reasons, the City requests that Mr. Bradley's request for a contested case hearing be denied.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez'.

Kenneth Ramirez

KR\jcb

cc: Mr. Ronnie Jones
Mr. Bart Jennings
Mr. Gary Bradley