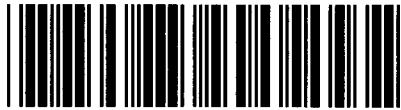




Control Number: 43551



Item Number: 29

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.



BRACEWELL & PATTERSON
ATTORNEYS AT LAW, L.L.P.

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PUBLIC UTILITY COMMISSION
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43551

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Phone: 512.472.7800
Fax: 512.472.9123

February 21, 2002

Via Hand Delivery

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

OPA

FEB 25 2002

BY ML

Re: City of Austin's Sewer CCN Application (33563-C)

Dear Ms. Castañeula:

Enclosed please find an original and one copy of a letter to Doug Holcomb in response to Lower Colorado River Authority's Request for Contested Case Hearing on the City of Austin's Sewer CCN Application. Please date-stamp the copy and return it to my messenger.

If you have any questions, please contact me at 512/494-3620.

Very truly yours,

Bracewell & Patterson, L.L.P.

Monica Jacobs

MJ/jcb
Enclosure

cc: Mr. Doug Holcomb
Mr. Andrew Covar
Mr. Ronnie Jones
Mr. Bart Jennings
Mr. Madison Jechow



4

Kenneth Ramirez
Partner

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Phone: 512.494.3611
Fax: 512.472.9123
kramirez@bracepatt.com

February 21, 2002

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

OPA

FEB 25 2002

BY *ll*

Re: Response to Lower Colorado River Authority's Request for Contested Case Hearing on the City of Austin's Sewer CCN Applications

Dear Mr. Holcomb:

On October 18, 2001, Mr. Madison Jechow filed a request for contested case hearing on behalf of the Lower Colorado River Authority ("LCRA") regarding the City of Austin's ("City") sewer Certificate of Convenience and Necessity ("CCN") application (33563-C) ("Application"). The City filed its Application on August 13, 2001. The Application was 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 the 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 LCRA to show that it 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;
- (2) Whether a reasonable relationship exists between the interest claimed and the activity regulated;

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Mr. Doug Holcomb, PE
February 21, 2002
Page 2

- (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).

As is explained below, LCRA does not qualify as an affected person and its request for hearing is not reasonable and supported by competent evidence; therefore, LCRA is not entitled to a contested case hearing.

LCRA requests a hearing because of its alleged authority to provide water and wastewater services in the area for which the City seeks its CCN. To our knowledge, LCRA has no statutory right or authority to provide exclusive sewer utility service to customers in the City's proposed sewer utility service area. To the contrary, under Section 13.042(e) of the Water Code, the TNRCC has exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services. More importantly, to our knowledge, LCRA does not currently have any existing water or wastewater facilities within five (5) miles of the City's proposed area and is not currently providing water or wastewater services to any customers within the proposed area. The City's provision of service in its proposed sewer CCN area will therefore have no impact upon LCRA greater than that which is common to members of the general public.

LCRA also requests a hearing based on the assertion that it may purchase Creedmoor-Maha Water Supply Corporation's ("Creedmoor") water CCN and service area and, if this purchase occurs, would like to provide retail wastewater service to the area as well. This assertion is not a basis for affected person status. The potential purchase of Creedmoor's certificated water utility service area is not an interest that is protected by the law under which the City's sewer CCN application will be considered. Section 13.301 of the Water Code governs the sale of a water system that is required by law to possess a CCN.

In fact, no reasonable relationship exists between LCRA's interest in acquiring Creedmoor's certificated water utility service area and the City's sewer CCN application. Indeed, a significant portion of Creedmoor's certificated water utility service area is not included in the City's proposed sewer CCN. Thus, the provision of sewer utility service in the proposed area by the City would not adversely impact the provision of water service by LCRA in



Mr. Doug Holcomb, PE
February 21, 2002
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Creedmoor's certificated water utility service area or adversely impact the use of natural resources by LCRA.

In addition, as previously stated, to our knowledge, LCRA does not currently have any existing wastewater facilities within five (5) miles of the City's proposed area that could be used to provide wastewater service to customers in the Creedmoor area. Furthermore, LCRA is not currently providing wastewater services to any customers within five (5) miles of the CCN area. Consequently, LCRA has no economic interest protected by the law under which the Application will be considered. In contrast, the City has regional water and sewer facilities near the Creedmoor area and a long history as a regional water and sewer service provider to customers in the Creedmoor area. Moreover, on December 14, 2000, the Austin City Council amended the City's Annexation Plan to include certain tracts within the Creedmoor certificated area.

Overall, LCRA has not shown that it will potentially suffer harm or has a justiciable interest that will be affected by the City's sewer CCN application. In addition, LCRA has failed to provide any competent evidence to support any of its assertions regarding its right to a hearing. As such, LCRA meets none of the relevant factors or legal requirements to be considered in evaluating affected person status for this Application.

Consequently, the City requests that LCRA's request for a contested case hearing be denied.

Very truly yours,

Bracewell & Patterson, L.L.P.


Kenneth Ramirez

MJ/jcb

cc: Ronnie Jones, Assistant City Attorney
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility
Madison Jechow, Associate General Counsel, LCRA