



Control Number: 43551



Item Number: 30

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.

43551

22016
UCR

H

RECEIVED
2014 OCT 27 AM 10:48
PUBLIC UTILITY COMMISSION
FILING CLERK

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

February 21, 2002

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

OPA

FEB 25 2002

BY MC

2002 FEB 21 PM 3:41
CHIEF CLERKS OFFICE

Texas Natural
Resource Conservation
Commission

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 Mr. John K. Condon'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. John K. Condon

30

Kenneth Ramirez
Partner

February 21, 2002

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

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

OPA

FEB 25 2002

BY *AK*

2002 FEB 21 PM 3:41
CHIEF CLERK'S OFFICE

FILED
FOR
COMMISSIONER
OF
THE
STATE

Re: Response to Mr. John K. Condon's Request for Contested Case Hearing on
the City of Austin's Sewer CCN Application (33563-C)

Dear Mr. Holcomb:

On November 27, 2001, Mr. John K. Condon filed a letter of protest as an "interested" party regarding the City of Austin's ("City") sewer Certificate of Convenience and Necessity ("CCN") application (33563-C) ("Application.")

It is unclear from his letter whether Mr. Condon is requesting standing as a party in a contested case hearing. If so, however, Mr. Condon's request for a public hearing should be denied because it is untimely. The City filed its Application on August 13, 2001. The City issued Application and published notices under 30 TAC § 291.106; the last date of publication was October 3, 2001. The Texas Natural Resource Conservation Commission ("TNRCC") received Mr. Condon's November 27, 2001 letter well after the end of the regulatory public comment period.

Even if Mr. Condon's request had been timely, he still would not be entitled to a hearing. 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 Mr. Condon 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).



Mr. Doug Holcomb
February 21, 2002
Page 2

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

- Whether the interest claimed is one protected by the law under which the application will be considered;
- Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- The likely impact of the regulated activity on the health, safety, and use of property of the person; and
- 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. Condon does not qualify as an affected person and his request for hearing is not reasonable and supported by competent evidence; therefore, Mr. Condon's request for hearing should be denied. To our knowledge, Mr. Condon is not authorized to represent any owners of property within five (5) miles of the City's proposed sewer CCN area. Similarly, to our knowledge, Mr. Condon does not represent a wastewater utility within five (5) miles of the City's proposed sewer CCN area, nor is he authorized to provide wastewater utility service to any property within five (5) miles of the City's proposed sewer CCN area. Hence, Mr. Condon has failed to present any evidence to show that any of his property will be negatively impacted by the granting of the City's sewer CCN application. Overall, the City's provision of sewer utility service in its proposed sewer CCN area will have no impact upon Mr. Condon greater than that which is common to members of the general public.

For these reasons, we request that Mr. Condon's untimely request for hearing be denied.

Also, the City takes this opportunity to clarify several inaccuracies stated in Mr. Condon's letter.

First, Mr. Condon states that the "Final Plat Approval" (presumably for the proposed Legends Way subdivision) has ". . . been neither denied or approved because of their [the City's] demand that I not hook up with Onion Creek Wastewater." Actually,



Mr. Doug Holcomb
February 21, 2002
Page 3

Mr. Condon's final plat approval has not been approved due to the City's concerns with his proposed development. As part of the subdivision approval process, Mr. Condon is required to show that service will be provided by a utility and that the development's internal infrastructure will be built to City standards. Mr. Condon produced an agreement with the Onion Creek Wastewater Corporation ("Onion Creek") that indicated service would only be provided to the Legends Way tract if several conditions were met. Until these conditions are met, the subdivision review committee has no assurance that utility service will be provided to the tract. One of these conditions is that Onion Creek seek approval from TNRCC to serve the Legends Way tract through an amendment of its wastewater CCN. We have no knowledge of Onion Creek filing a wastewater CCN amendment to include the Legends Way tract in its certificated sewer service area. The tract, however, is currently within the City's impact fee boundary and is included in the City's proposed wastewater CCN application.

In fact, as we have indicated to Mr. Condon on December 14, 2000, the Austin City Council amended the City's Annexation Plan to include the Legends Way tract, and the City stands ready to provide wastewater service to this tract. Specifically, the wastewater flows from this tract could be sent directly to the City's 54" wastewater main that is located within one (1) mile of the tract and has more than sufficient capacity to meet the wastewater needs in this area. Moreover, the City has proposed several alternatives for wastewater service to Mr. Condon. Each of these alternatives include proposed reimbursement by the City for the vast majority of associated expenses in accordance with its Service Extension Request Policy (and did not, as Mr. Condon incorrectly asserts, require him to pay \$3.97 million).

Second, Mr. Condon questions the City's financial stability. The information provided in the City's Application shows that the City has the financial resources to provide continuous and adequate service to customers within its proposed CCN area. In addition, the City's Service Extension Request Policy of having landowners pay for certain necessary improvements to provide service includes cost participation and reimbursement programs, which allow the landowners and the City to share project costs. Such cost-sharing practices are neither unusual nor unreasonable.

Third, Mr. Condon makes a statement that the City cannot compete with other utilities and that the City's Application is a "land grab." The City's Application was initiated due to its concern for the City's existing and future utility customers. As detailed in the City's Application, the City's reasons for filing its Application include:



Mr. Doug Holcomb
February 21, 2002
Page 4

- The granting of the CCN area will secure the area for better long-range planning and cost-effective infrastructure placement. This planning will result in more efficient and effective use of public funds.
- The granting of the CCN area will assure infrastructure construction to City standards and specifications that results in a higher level of public health and safety.
- The granting of the CCN area will ensure utility service for a more reasonable cost to customers since most utilities' rates are higher than the City's rates.
- The granting of the CCN area will minimize the negative financial impact to City customers as annexation of the CCN area occurs since the infrastructure will be built to City standards and will not need to be replaced to meet municipal requirements.
- The granting of the CCN area will benefit future customers due to the depth and magnitude of the City's managerial, technical, and customer service experience and abilities.
- The granting of the CCN area follows state law and the City's established environmental policy since it promotes regionalization of sewer utility service and will enhance the City's promotion of development within the City's designated Desired Development Zone rather than in environmentally sensitive areas.

Overall, the City's provision of sewer utility service in its proposed sewer CCN area will have no impact upon Mr. Condon greater than that which is common to members of the general public. As such, Mr. Condon is not an affected person with respect to the City's sewer CCN application. In addition, Mr. Condon has failed to provide any competent evidence that would support an attempt by him to become a party to a contested case



Mr. Doug Holcomb
February 21, 2002
Page 5

regarding the City's sewer CCN application. Consequently, any such attempts to achieve party status—including his untimely letter of November 27, 2001—should be denied.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in cursive script, appearing to read 'Kenneth Ramirez'.

Kenneth Ramirez

KR/jcb

cc: Bart Jennings, Water and Wastewater Utility
Ronnie Jones, Assistant City Attorney
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
John K. Condon