



Control Number: 43551



Item Number: 32

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

March 29, 2002

Kenneth Ramirez
Partner

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Phone: 512.494.3611
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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

OPA
MAR 29 2002
BY

TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION
2002 MAR 29 AM 10:32
CHIEF CLERKS OFFICE

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 Union Creek Wastewater Corporation's Request for Contested Case Hearing on the City of Austin's Sewer CCN Application (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
Mark Smith, Attorney for Union Creek Corp.
Ronnie Jones, Assistant City Attorney
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility

32



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2002 MAR 29 AM 10:32
CLERKS OFFICE
TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

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

Re: Response to Onion Creek Wastewater Corporation's Request for
Contested Case Hearing on the City of Austin's Sewer CCN Application
(33563-C)

Dear Mr. Holcomb:

On October 26, 2001, Mr. Mark W. Smith filed a request for contested case hearing on behalf of Onion Creek Wastewater Corporation ("Onion Creek Corp.") 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 case 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 Onion Creek Corp. 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:



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- (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;
- (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, Onion Creek Corp. does not qualify as an affected person and its request for hearing is not reasonable and supported by competent evidence; therefore, Onion Creek Corp. is not entitled to a contested case hearing.

Onion Creek Corp. requests a hearing because it asserts that it is under contract with an adjoining property owner to extend sewer service to approximately 205 acres sought by the City. At this time, Onion Creek Corp. is not authorized to provide wastewater utility service to the Legends Way tract. The City's provision of wastewater service to the Legends Way tract will have no impact on Onion Creek Corp. greater than that which is common to members of the general public.

Onion Creek Corp. also requests a hearing because it asserts that it is negotiating with the owner of another adjoining 180 acres sought by the City, and is considering extension of service to one other adjoining parcel. Thus, Onion Creek Corp. claims its financial stability will be impacted if the City's sewer CCN application is approved. This assertion is not a basis for affected person status. Onion Creek Corp. has not provided competent evidence to support its claim regarding its alleged negotiations with adjacent landowners or its authority to extend sewer service to any adjoining parcel outside of its certificated sewer utility service area. In fact, according to information provided to the City by TNRCC, Onion Creek Corp. is not authorized to provide sewer utility service to any adjoining parcel outside of its certificated sewer utility service area, and may not have existing sewer capacity to provide additional sewer utility service to adjoining parcels. Moreover, some of the same adjacent landowners are in discussion with the City concerning the provision of water and wastewater utility service by the City to those



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adjoining parcels. Additionally, Onion Creek Corp. has not provided competent evidence to support its claim that its financial stability will be adversely impacted if the City's sewer CCN application is approved. Therefore, the City's provision of wastewater service to adjoining parcels will have no impact on Onion Creek Corp. greater than that which is common to members of the general public.

The primary consideration under the law under which the Application will be considered is the well-being of the customers in the area, not the financial success of the utility. Customers in these areas will gain from City sewer service because the City's wastewater rates and fees are generally lower than Onion Creek Corp.'s rates, and the City can also provide water utility service to some customers that reside within certain adjoining parcels.

The argument that Onion Creek Corp. may be affected by the loss of revenue from potential customers is irrelevant since Onion Creek Corp. has no inherent right or privilege to expand its sewer utility service area in the future or to acquire new customers. As such, Onion Creek Corp. has no economic interest protected by the law under which the Application will be considered, and there will be no impact on the use of its current property or natural resources.

Onion Creek Corp. also argues that its extension of sewer service to these areas within the City's proposed sewer service area will promote the reuse of treated effluent since treated effluent is the primary source of water for the Onion Creek Golf Course. Effluent reuse is not an interest that is protected by the law under which the Application will be considered. Even if it were an issue to be evaluated, however, approval of the City's sewer CCN application will not prevent Onion Creek Corp. from continuing to use its sewer effluent as the primary source of irrigation water for the Onion Creek Golf Course. In addition, the City is concerned that Onion Creek Corp.'s use of treated effluent as the primary source to irrigate the Onion Creek Golf Course, under its current permit, may adversely affect the environmental integrity of property used by the public within the golf course and adversely affect the water quality in Onion Creek.

Lastly, Onion Creek Corp. incorrectly claims that it is the most economically efficient provider of sewer service to the aforementioned tracts given the proximity of the tracts and the fact that the City does not have facilities in place that are closer than approximately 1.5 miles. The City has a 54" interceptor within approximately one mile of these tracts that could be used to provide regional sewer utility service to the aforementioned tracts as well as other tracts in the area. In addition, the tracts are completely within the City's Desired Development Zone in which the City has established incentives for development that provide for City participation in the costs of



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building infrastructure that benefits developers and customers in the proposed sewer utility area.

Thus, Onion Creek Corp. has not shown itself to be an affected person and has provided no competent evidence to support its request for hearing. Consequently, the City requests that Onion Creek Corp.'s request for hearing be denied.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', written in a cursive style.

Kenneth Ramirez

KR/jcb

cc: Mark Smith, Attorney for Onion Creek Corp.
Ronnie Jones, Assistant City Attorney
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility