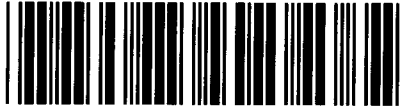


Control Number: 43551



Item Number: 33

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
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.

2002  
UCR



RECEIVED

2014 OCT 27 AM 10:49

PUBLIC UTILITY COMMISSION  
FILING CLERK

March 29, 2002

Kenneth Ramirez  
Partner

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

Via Hand Delivery

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

OPA  
MAR 29 2002  
BY [Signature]

CHIEF CLERKS OFFICE  
2002 MAR 29 AM 10:32  
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 Hornsby Bend Utility Company, Inc.'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: Doug Holcomb  
John J. Carlton, Attorney for Hornsby Bend  
Ronnie Jones, Assistant City Attorney  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Bart Jennings, Water and Wastewater Utility

33

X



Kenneth Ramirez  
Partner

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Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

March 29, 2002

By Hand Delivery

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

2002 MAR 29 AM 10:53  
CHIEF CLERKS OFFICE  
TEXAS NATURAL  
RESOURCES CONSERVATION  
COMMISSION

Re: Response to Hornsby Bend Utility Company, Inc.'s Request for Public Hearing on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

Dear Mr. Holcomb:

On October 17, 2001, Mr. John J. Carlton filed a request for public hearing on behalf of Hornsby Bend Utility Company, Inc. ("Hornsby") 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 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 Hornsby 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).



Mr. Doug Holcomb  
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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;
- (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, Hornsby does not qualify as an affected person with respect to the majority of the Water and Sewer Applications. In addition, its request for hearing is not reasonable and supported by competent evidence.

**The City's Proposed Water Service Area  
Excludes Hornsby's Water Service Area**

Hornsby requests a hearing because it asserts that it will be adversely affected by the granting of the City's water CCN application because some of the City's proposed water service area is currently served by Hornsby. This assertion is incorrect and thus is not a basis for affected person status. According to maps provided to the City by TNRCC, none of the City's proposed water utility service area is within Hornsby's certificated water utility service area. Additionally, as is stated in the City's water CCN application and the notice of the City's water CCN application, the proposed water area expressly excludes any areas that lie within the boundary of a TNRCC-issued water CCN (such as Hornsby's) that was valid and in effect as of the date the City's water CCN application was filed and any connections currently being served by such provider. Thus, granting the City's water CCN application will not affect Hornsby's economic interest in its water CCN or use of its property or natural resources.



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**The City's Proposed Sewer Service Area  
Excludes Hornsby's Sewer Service Area**

Hornsby requests a hearing because it asserts that it will be adversely affected by the granting of the City's sewer CCN application because some of the City's proposed wastewater service area is currently served by Hornsby. Again, this assertion is incorrect and thus is not a basis for affected person status. According to maps provided to the City by TNRCC, none of the City's proposed sewer utility service area is within Hornsby's certificated sewer utility service area. Additionally, as is stated in the City's sewer CCN application and the notice of the City's sewer CCN application, the proposed wastewater service area expressly excludes any areas that lie within the boundary of a TNRCC-issued sewer CCN (such as Hornsby's) that was valid and in effect as of the date the City's sewer CCN application was filed and any connections currently being served by such provider. Thus, granting the City's sewer CCN application will not affect Hornsby's economic interest in its sewer CCN or use of its property or natural resources.

**Hornsby Is Not An Affected Person and Its  
Request for Hearing Is Unreasonable and  
Not Supported by Competent Evidence With  
Respect to the Majority of the City's Sewer CCN Application**

Hornsby also requests a hearing because it states that it intends to provide service to some of the area within the proposed sewer area and thus will be adversely affected by the granting of the City's sewer CCN application. While the City is willing to concede that Hornsby may be an affected person with respect to the area sought by Hornsby in its pending application to amend its sewer CCN (CCN No. 20650; SOAH Docket No. 582-00-0545), the City strongly objects to Hornsby being granted a hearing with respect to the remainder of the City's sewer CCN application.

At this time, Hornsby has not filed a competing application to provide sewer utility service to any other tracts within the City's proposed sewer service area. The City's provision of service in all areas other than that which is the subject of Hornsby's pending application will therefore have no impact upon Hornsby greater than that which is common to members of the general public. Specifically, except to the extent that Hornsby has filed a competing sewer application, Hornsby has no economic interest protected by the law under which the City's sewer CCN application will be considered and there will be no impact on its use of its property or natural resources. As such, Hornsby meets none of the relevant factors to be considered in evaluating affected person status for the majority of the proposed sewer area in the City's sewer CCN application.



Mr. Doug Holcomb  
March 29, 2002  
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In addition, Hornsby's request is unreasonable because it fails to acknowledge the State of Texas' mandate for regionalization of 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; Hornsby has presented no evidence that it can or will do so.

Finally, Hornsby has failed to provide any competent evidence to support its claim that it is entitled to a hearing with respect to the part of the proposed sewer area for which there is no competing application. Consequently, Hornsby's request for hearing, to the extent that it is not related to the area that is the subject of the Hornsby pending sewer CCN amendment application, should be denied.

**Hornsby Is Not An Affected Person  
and Its Request for Hearing Is Unreasonable  
and Not Supported by Competent Evidence  
With Respect to the Integrity of the City's Water CCN Application**

On December 31, 2001, Hornsby filed an application to amend its water CCN No. 11978. The area requested in this application overlaps area requested by the City in its water CCN application.

As previously stated, 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." 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.* In addition, requests for hearing must also be reasonable and supported by competent evidence. *See*, 30 TAC § 55.27(b)(2).

While the City is willing to concede that Hornsby may be an affected person with respect to the area sought by Hornsby in its pending application to amend its water CCN, the City strongly objects to Hornsby being granted a hearing with respect to the remainder of the City's water CCN application.

At this time, Hornsby has not filed a competing application to provide water utility service to any other tracts within the City's proposed water service area. The City's provision of service in all areas other than that which is the subject of Hornsby's pending application will therefore have no impact upon Hornsby greater than that which is common to members of the general public. Specifically, except to the extent that Hornsby has filed a competing water application, Hornsby has no economic interest protected by the law under which the City's water CCN application will be considered and there will be no impact on its use of its property or natural resources. As such,



Mr. Doug Holcomb  
March 29, 2002  
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Hornsby meets none of the relevant factors to be considered in evaluating affected person status for the majority of the proposed water area in the City's water CCN application.

In addition, Hornsby's request is unreasonable because it fails to acknowledge the State of Texas' mandate for regionalization of water 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; Hornsby has presented no evidence that it can or will do so.

Finally, Hornsby has failed to provide any competent evidence to support its claim that it is entitled to a hearing with respect to the part of the proposed water area for which there is no competing application. Consequently, Hornsby's request for hearing, to the extent that it is not related to the area that is the subject of the Hornsby pending water CCN amendment application, should be denied.

#### Conclusion

Overall, except to the extent that Hornsby has filed competing applications for sewer and water service, the City's provision of water and sewer service in its proposed water and sewer area will have no impact upon Hornsby greater than that which is common to members of the general public. As such, Hornsby is not an affected person with respect to the City's water and sewer CCN applications, to the extent that they are not related to the areas that are the subject of Hornsby's pending competing water and sewer CCN amendment applications. In addition, Hornsby has failed to provide any competent evidence to support its requests for hearing. Consequently, the City requests that if Hornsby's request for a public hearing is granted, that it be limited to a hearing concerning only the areas for which there are competing water and sewer applications filed by Hornsby.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', written over a horizontal line.

Kenneth Ramirez

KR:jcb



Mr. Doug Holcomb

March 29, 2002

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cc: John J. Carlton, Attorney for Hornsby Bend  
Ronnie Jones, Assistant City Attorney  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Bart Jennings, Water and Wastewater Utility