

Control Number: 43551



Item Number: 42

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.

RECEIVED
2014 OCT 27 AM 10:51
UTILITY COMMISSION
PUBLIC FILE CLERK

TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

SOAH DOCKET NO. 582-02-3056
TNRCC DOCKET NO. 2002-0189-UCR 2002 JUL -1 PM 4:05

IN THE MATTER OF THE
APPLICATIONS OF THE CITY OF
AUSTIN FOR A WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY (NO. 33562-C) AND
A WASTEWATER CERTIFICATE OF
CONVENIENCE AND NECESSITY
(NO. 33563-C)

§ BEFORE THE STATE OFFICE
§ OF
§ ADMINISTRATIVE HEARINGS
§

THE CITY OF AUSTIN'S PLEA TO THE JURISDICTION

TO: The Honorable William G. Newchurch, Administrative Law Judge, State Office Of
Administrative Hearings, 300 W. 15th Street, Austin, Texas 78711

The City of Austin ("City") files this Plea to the Jurisdiction and requests that the
Administrative Law Judge's ("ALJ") assertion of jurisdiction over the City's applications for
water and sewer certificates of convenience and necessity ("CCN") (Application Nos. 33562-C
and 33563-C) be conditional on the Executive Director ("ED") declaring the applications
technically complete within a certain period of time designated by the ALJ. In support of this
plea, the City respectfully shows the following:

The City filed its CCN 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. On February 25,
2002, the City received a letter from Dr. Victoria Harkins of the ED staff stating that: (1) the
commission staff was protesting the applications for reasons that were unstated; (2) the matter
had been referred to the State Office of Administrative Hearings; and (3) "In order to review
these CCN applications, the staff of the TNRCC may need additional information. . . . You may
be receiving staff Requests for Information ("RFI's") within a few weeks." See Attachment A.

The City was puzzled by the ED's simultaneous declarations that it had formulated a position against the applications even though staff had not yet completed its technical review. The City sent a letter requesting clarification (Attachment B) on March 14, 2002, and met with staff representatives on March 19, 2002. The staff did not formally reply to the City's letter, but during the March 19 meeting stated that it was not unusual for the ED to take a position regarding applications before technical review was complete. Consequently, the City did not pursue the matter further at that time, but instead responded to the ED's subsequent March 6, 2002 RFI on April 8, 2002 with the expectation that a declaration of technical completeness would be forthcoming. The ED has issued no further RFIs.

It is the City's position that, in accordance with TNRCC's own regulations, the applications must be declared technically complete before the ALJ can take jurisdiction over them. *See, e.g.*, 30 TAC §§ 281.19 (defining the length of the technical review period); 281.20 (relating to the approval process for extensions to the technical review period); 281.22 (providing that applications shall be forwarded to the commission after administrative and technical review has been completed); and § 55.26 (indicating that the processing of hearing requests occurs after technical review is completed).

All of these regulations indicate that (1) the technical review period is a finite period of time; and (2) applications and hearing requests are forwarded to the evaluator of hearing requests—in this case, the ALJ—after technical review is complete.


Furthermore, from a practical standpoint, in order to adequately prepare its case and meet its burden of proof, the City needs to know whether it has supplied sufficient information for TNRCC staff to evaluate and make a technical assessment of the City's applications.

Therefore, the City requests that the ALJ take conditional jurisdiction and set a deadline for TNRCC staff to declare the applications technically complete.

In addition, the City requests to have such other and further relief, both general and specific, at law and in equity, to which the City may be entitled.

Respectfully submitted,

BRACEWELL & PATTERSON, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Telephone: (512) 472-7800
Facsimile: (512) 472-9123



Kenneth Ramirez
State Bar No. 16502200
Monica Jacobs
State Bar No. 24007433

-and-

Ronnie Jones
State Bar No. 00786003
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2568
Facsimile: (512) 974-2912

ATTORNEYS FOR THE CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been sent by Facsimile and Regular U.S. Mail, on this 1st day of July, 2002, to the following:

Mark Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436

Representing: AquaSource Utility, Inc.,
AquaSource Development Company,
Creedmoor-Maha WSC, and City of
Mustang Ridge

John J. Carlton
Ambrust, Brown, & Davis, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701-3087

Representing: Hornsby Bend Utility
Company, Inc.

John Deering
Geoffrey Kirshbaum
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-173
Austin, TX 78711-3087

Representing: The Executive Director

Gary Bradley
Bradley Development
The Castle
1111 West 11th Street
Austin, Texas 78703

John Condon
405 Beardsley Lane
Austin, Texas 78746

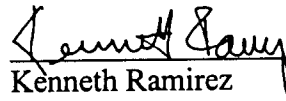
Madison Jechow
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

Representing: Lower Colorado River
Authority

Blas Coy
Public Interest Counsel
Texas Natural Resource Conservation
Commission
P.O. Box 13087, MC-103
Austin, Texas 78711-3087

Representing: Office of Public Interest
Counsel

TNRCC Docket Clerk
Office of Chief Clerk
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-105
Austin, Texas 78711-3087


Kenneth Ramirez

VERIFICATION

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

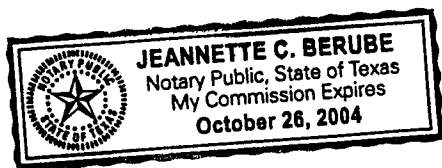
§

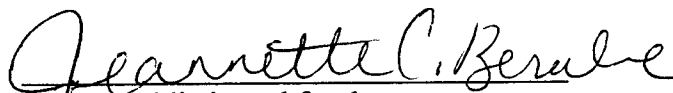
§

BEFORE ME, the undersigned authority, this day personally appeared Ronnie Jones, who upon his oath, does state that he has personal knowledge of the facts set forth in this Plea to the Jurisdiction and that such facts are true and correct.



Ronnie Jones





Notary Public in and for the
State of Texas

My Commission Expires:

October 26, 2004

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

February 25, 2002

CERTIFIED MAIL

Mr. Ronnie Jones
City of Austin
Assistant City Attorney
P.O.B. 1546
Austin, TX 78767-1546

Re: Docket No. 2002-0189-UCR; Application of the City of Austin to Obtain a Water Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33562-C

Docket No. 2002-0189-UCR; Application of the City of Austin to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33563-C

Dear Mr. Jones:

The Texas Natural Resource Conservation Commission (TNRCC) received protests to your applications to obtain a water and a sewer CCN in Travis, Hays and Williamson Counties. The Commission's Chief Clerk has assigned Docket Nos. 2002-0189-UCR and 2002-0189-UCR to this matter. Any further communications should refer to these docket numbers. V.T.C.A. Water Code, Section 13.246 provides that affected parties may protest the application and request a hearing on whether a CCN should be amended. The Lower Colorado River Authority, Creedmore-Maha Water Supply Corporation, Onion Creek Wastewater Company, Hornsby Bend, Gary Bradley, Dessau Utilities, and AquaSource Utility, Inc. have protested the referenced applications. Commission staff are also protesting these applications. Since an initial sixty day period was granted to address potential protests, a second extension will not be granted. However, continued discussion with the protestants is always encouraged.

This matter has been referred to the State Office of Administrative Hearings to schedule a hearing. When a hearing has been scheduled, you will receive a notice of hearing which explains when and where the hearing will be held.

Attachment A

Mr. Ronnie Jones

Page2

February 25, 2002

In order to review these CCN applications, the staff of the TNRCC may need additional information regarding your utility's service. You may be receiving Staff Requests for Information (RFI's) within a few weeks. We would appreciate your cooperation in providing the information requested.

If you have questions about this process or what material you should bring with you to the hearing, please contact Mike Howell at (512) 239-6960.

Sincerely,



Victoria Harkin, Ph.D., P. E.
Utilities and Districts Section, MC 153
Water Supply Division

VH/mh/ac

cc: TNRCC Region No. 11 Office
Attached Mailing List

TNRCC Chief Clerk's Office; ATTN: Melanie Mohair
TNRCC Legal; ATTN: Scott Humphrey

PROPOSED MAILING LIST FOR
DOCKET NO. 2002-0189-UCR and 2002-0189-UCR
(Application Nos. 33562-C for water and 33563-C for sewer)

Chris Lippe, P.E., Director
City of Austin Water and Wastewater Utility
625 East 10th Street
Suite 800
Austin, Texas 78701

Bart Jennings
City of Austin
625 E. 10th Street
Suite 800
Austin, Texas 78701

Monica Jacobs
Bracewell & Patterson L.L.P.
111 Congress Avenue
Suite 2300
Austin, Texas 78701-4043

Representing City of Austin

Mr. Mark Zeppa
Attorney at Law
4833 Spicewood Springs Road
Suite 202
Austin, Texas 78759-8436

Representing AquaSource Utility, Inc. and AquaSource
Development Company, and Creedmore-Maha WSC

Mark W. Smith
Casey, Gentz & Sifuentes, L.L.P.
919 Congress Avenue
Suite 1060
Austin, Texas 78701

Representing Onion Creek Wastewater Corporation

John J. Carlton
Ambrust Brown & Davis, L.L.P.
100 Congress Avenue
Suite 1300
Austin, Texas 78701-2744

Representing Hornsby Bend

Gary Bradley
Bradley Development
The Castle
1111 West 11th Street
Austin, Texas 78703

Madison Jechow
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

Representing Lower Colorado River Authority

Steve Stratton
Dessau Utilities Inc.
4104 Belmont Park Drive
Austin, Texas 78746

Mr. Ed Wolf
Route 2, Box 236 "D"
Cameron, Texas 76520

Kent Taylor
Taylor Commercial
900 Congress Avenue
Suite L-165
Austin, Texas 78701

Richard Buratti
6617 Argentia Road
Austin, Texas 78757

Jack Condon
405 Beardsley Lane
Austin, Texas 78746

Teresa Reel
3503 Crownover Street
Austin, Texas 78725



City of Austin
Law Department

Norwood Tower, 114 West 7th Street, P.O. Box 1546
Austin, Texas 78767-1546
(512)974-2268

Writer's Direct Line

512-974-2568

Writer's Fax Line

512-974-2912

March 14, 2002

Victoria R. Harkins, Ph.D., P.E.
Utilities and Districts Section
Water Permits & Resource Management Division
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-153
Austin, TX 78711-3087

Re: Docket No. 2002-0189-UCR; Application of the City of Austin to Obtain a Water Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33562-C

Docket No. 2002-0189-UCR; Application of the City of Austin to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33563-C

Dear Dr. Harkins:

We received your letter dated February 25, 2002 concerning the various protests that have been filed regarding the above stated Applications. In your February 25 letter, you stated that the Commission staff is protesting the City's applications and that this matter has been referred to the State Office of Administrative Hearings ("SOAH") to schedule a hearing. You also stated that the staff of the TNRCC may need additional information regarding the City's utility service to review the City's Applications. Additionally, you stated that if we had questions about the hearing and review process we should contact Mike Howell. We understand, however, that Mr. Howell is currently on leave, so we address our questions regarding the hearing and review process to you:

1. When was the technical review of the City's Applications completed by your staff?

Attachment B

Victoria R. Harkins, Ph.D., P.E.

March 14, 2002

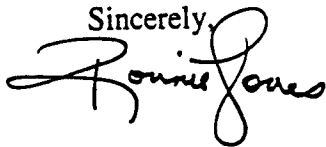
Page 2

2. May we review TNRCC documents concerning the technical review that was performed by your staff?
3. Do you, or your staff, have any specific concerns regarding the City's applications?
4. If so, please explain your, or your staffs, specific concerns regarding the City's applications.
5. Have you, or your staff, determined whether any of the persons requesting a hearing on the City's applications are "affected persons" under the Rules of the Commission?
6. Have you referred this matter to SOAH, under the Rules of the Commission, for consolidation with other applications related to the City's Applications that are pending at SOAH?

We also want to take this opportunity to remind you that we have resolved the concerns of four of the original protestants, and assure you that even though a second extension will not be granted for us to address some of the remaining protestants concerns, we are, as you suggest, continuing to meet with most of the remaining protestants in an effort to resolve their concerns before hearing.

We look forward to discussing these issues with you on March 19. Thank you.

Sincerely,



Ronnie Jones
Assistant City Attorney

xc: Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility
Kenneth Ramirez



TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

2002 JUL -1 PM 4: 05

CHIEF CLERKS OFFICE

Kenneth Ramirez
Partner

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

July 1, 2002

By Hand Delivery

Ms. Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street
P.O. Box 13025
Austin, TX 78711-3025

Re: SOAH Docket No. 582-02-3056; TNRCC Docket No. 2002-0189-UCR;
Application from City of Austin to Obtain a Water Certificate of
Convenience and Necessity (CCN) in Travis, Hays and Williamson
Counties; Application No. 33562-C

SOAH Docket No. 582-02-3056; TNRCC Docket No. 2002-0189-UCR;
Application from City of Austin to Obtain a Sewer Certificate of
Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties;
Application No. 33563-C

Dear Ms. Wise:

Enclosed for filing please find the original and one copy of the following documents in
the above-referenced matter:

- 1) The City of Austin's Plea to the Jurisdiction;
- 2) The City of Austin's Motion to Define the Scope of the Hearing; and
- 3) The City of Austin's Motion to Deny Party Status.

Please file the original, date-stamp the copy and return the copy to my messenger.



Ms. Holly Wise, Docket Clerk
July 1, 2002
Page 2

If you have any questions, please do not hesitate to contact me at (512) 494-3611.

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
Enclosure(s)

cc: **(Via Hand Delivery)**
Hon. William G. Newchurch
LaDonna Castañuela, TNRCC Chief Clerk

cc: **(Via Facsimile and Regular Mail)**

Christopher Lippe, Director, Water and Wastewater Utility
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility
Ronnie Jones, Assistant City Attorney
Mark H. Zeppa, Attorney
John J. Carlton, Attorney
John Deering, Attorney
Geoffrey Kirshbaum, Attorney
Madison Jechow, Attorney
Blas Coy, Attorney
Mr. Gary Bradley
Mr. John Condon