

Control Number: 43551



Item Number: 43

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.

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PUBLIC UTILITY COMMISSION  
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July 8, 2002

The Honorable Kerry Sullivan  
Administrative Law Judge  
State Office of Administrative Hearings  
PO Box 13025  
Austin TX 78711-3025

Re: SOAHDocket 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

SOAHDocket 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 Judge Sullivan:

The City of Austin submitted a proposed Scheduling Order for the above-referenced Docket late Friday afternoon, July 12. As indicated in the cover letter to the Docket Clerk, LCRA did not agree to it. LCRA has two requests of the Administrative Law Judge.

1. LCRA does not object to the proposed activity for August 1, 2002, that the parties file a list of what they believe to be applicable statutes and rules. However, the first sentence in Part III of the proposed Order would have the ALJ specify by Order the substantive statutes and rules that will apply to the proceedings. LCRA believes that it is inappropriate for the ALJ to specify the statutes and rules that will apply in the proceeding if the intent of that specification is to limit any further statutes or rules or the applicability thereof. Austin's Motion to limit the issues was denied. Often, it is only after discovery takes place, and sometimes after pre-filed testimony is done, that an issue clearly emerges, and the ALJ should not inadvertently limit the issues by specifying the statutes and rules that will apply to the proceeding.
2. LCRA does not object to the proposed phasing of discovery, and particularly does not object to Discovery Part C being limited to taking depositions. However, LCRA does object to depositions being cut off after the February 10, 2003, end of Discovery Part C as proposed in the Order. That date is prior to any pre-filed testimony by the Applicant, Protestants, or the Executive Director. LCRA believes that any party should be able to take depositions of witnesses after pre-filed testimony of a party. LCRA would not object to limiting the time for those depositions, but it should be a reasonable time after a party has pre-filed its testimony so that the witness who pre-filed the testimony may be deposed before he or she is cross-examined. There are two reasons the ability to take depositions at this point is important. First, there will

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probably be expert testimony in this case by all parties, and it is common for an expert not to have formed opinions until just before his or her pre-filed testimony is filed. Therefore, deposing that witness before he or she pre-files testimony is often a thankless endeavor. The expert simply responds that he or she has not formed any opinion. Second, allowing the parties to take depositions of the witnesses after the pre-filing of testimony will often clarify and shorten the cross-examination process and the ultimate hearing process.

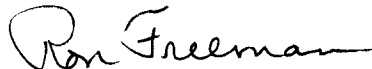
Accordingly, LCRA would request that the Scheduling Order be revised to clarify in Part III that the ALJ's ruling on the applicable substantive statutes and rules will not be meant to limit what statutes and rules are applicable. LCRA would also request that the Scheduling Order be revised to allow deposition discovery in Part C to continue after the pre-filing of testimony for at least one week in order for parties to schedule depositions of witnesses who pre-file testimony.

The undersigned has not discussed the first suggestion in this letter with counsel other than the City of Austin. It was the understanding of the undersigned that Austin's counsel did not intend for the ALJ's ruling on substantive statutes and rules to limit the consideration of other statutes and rules at a later time. LCRA simply believes that the Scheduling Order should indicate that fact.

LCRA discussed with John Carlton (attorney for Hornsby Bend Utility Company), Mark Zeppa (attorney for the Aligned Parties), and John Deering (attorney for the Executive Director), LCRA's suggestion of taking depositions of witnesses after they have pre-filed their testimony. The first two attorneys supported LCRA's suggestion, and Mr. Deering said that while he did not necessarily support it, he did not object to it. LCRA believes that only Austin objects to this second suggestion.

Thank you for the opportunity to present these suggestions.

Very truly yours,



Ronald J. Freeman

RJF/jjs  
Enclosure

cc: All parties of record per attached Certificate of Service

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CERTIFICATE OF SERVICE  
Mailing List  
SOAH DOCKET NO. 582-02-3056  
TNRCC DOCKET NO. 2002-0189-UCR

I hereby certify that a true and correct copy of the above and foregoing instrument was served via facsimile transmission and/or U.S. Mail on this the 15<sup>th</sup> day of July, 2002, to the following:

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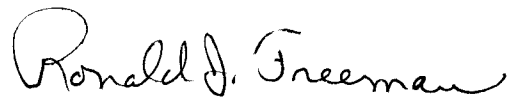
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