



Control Number: 43551



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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.



Kerry

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July 15, 2002

VIA HAND DELIVERY

The Honorable Kerry Sullivan
Administrative Law Judge
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 Judge Sullivan:

On July 15, 2002, Ronald Freeman, an attorney representing the LCRA, by a letter dated July 8, 2002, submitted proposed revisions to the proposed Scheduling Order for the above-referenced matter that was submitted to your office on July 12, 2002 by the City in accordance with your request at the preliminary hearing that was held on July 9, 2002. During the preliminary hearing, the City's proposed Scheduling Order was discussed and the City agreed to talk to the other parties and submit a proposed Scheduling Order to your office by July 12, 2002. Along with the City of Austin, John Deering (for the Executive Director), Mark Zeppa (for the Aligned Parties), and Gary Bradley (for Capital Pacific Holdings, LLC) agreed to the proposed Scheduling Order.

The City believes that Mr. Freeman's requested revisions to the proposed Scheduling Order should be denied because they are inconsistent with the rules and policies of the State Office of Administrative Hearings ("SOAH") and the Texas Natural Resource Conservation Commission ("TNRCC"). In support of its position, the City would show as follows:

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1. Mr. Freeman incorrectly states that it is inappropriate for the Administrative Law Judge ("ALJ") to specify the statutes and rules that will apply in this proceeding. 1 TAC §155.33 specifically gives the ALJ broad authority to issue orders concerning the above-referenced proceeding. More specifically, SOAH Rule 155.33 authorizes the ALJ to establish deadlines, clarify the scope of the proceeding, and take any other steps conducive to a fair and efficient process in a contested case. Contrary to Mr. Freeman's assertions in his letter, dated July 8, 2002, the considerations for determining whether to grant a Certificate of Convenience and Necessity are established by Chapter 13 of Water Code and Rules of the TNRCC. In administrative law cases, it is not often after discovery takes place, and sometimes after pre-filed testimony is done, that an issue clearly emerges. In addition, the precedent of establishing deadlines and clarifying the scope of the proceeding is clearly established at SOAH. *See, e.g.*, Attachments A and B.

2. Mr. Freeman incorrectly states that parties should be able to take depositions of witnesses after pre-filed testimony has been filed by a party. 30 TAC § 80.127(c) authorizes the ALJ to require or allow parties to prepare their direct testimony in written form if the ALJ determines that a proceeding will be expedited and that the interests of the parties will not be prejudiced substantially. The ALJ may require the parties to file and serve their direct testimony and exhibits before the beginning of the hearing. The witness is subject to cross-examination, and the prepared testimony is subject to objection. In this case, all of the parties have agreed to prepare direct testimony in written form to expedite the above-mentioned proceeding, and seemingly agree that their interests will not be prejudiced substantially. Mr. Freeman incorrectly asserts that it is important to take depositions after a party has submitted pre-filed testimony. The City believes that he is incorrect in his assertion that there will probably be expert testimony in this case by all parties, and it is common for an expert in administrative law cases not to have formed opinions until just before his or her pre-filed testimony is filed. The City believes that all of the parties will not offer expert testimony, and that most experts in this case will form their opinions during the discovery period (August 1, 2002 through February 10, 2003) before his or her per-filed testimony is filed. Nevertheless, under the TNRCC's rules, the direct case testimony is subject to cross-examination and the prepared testimony is subject to objection. Contrary to Mr. Freeman's assertion, the City, based on its experience in administrative law cases, believes that allowing the parties to take depositions of the witnesses after the pre-filed testimony may confuse the issues and require an extension of the proposed hearing on the merits.



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Therefore, the City respectfully requests that Mr. Freeman's revisions to the proposed Scheduling Order be denied and that the ALJ issue the proposed Scheduling Order submitted by the City on July 12, 2002.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink that reads "Kenneth Ramirez / jcb".

Kenneth Ramirez

KR/jcb
Enclosure(s)

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
Ronald Freeman, Attorney
Scott Humphrey, Attorney
Gary Bradley
LaDonna Castañuela, TNRCC Chief Clerk