

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.

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July 22, 2002

The Honorable Kerry Sullivan
Administrative Law Judge
State Office of Administrative Hearings
P O Box 13025
Austin, Texas 79711-3025

CHIEF CLERKS OFFICE

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TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

Re: SOAH Docket No. 582-02-3056; TNRCC Docket No. 2002-0189-UCR;
Applications of the City of Austin for Water and Sewer CCN's in Hays and
Travis Counties; Applications Nos. 33562-C and 33563-C

Dear Judge Sullivan:

Upon my return from vacation, I reviewed the July 12th submittal of Mr. Ken Ramirez wherein Mr. Ramirez sent you a proposed Scheduling Order, which he represented had been agreed to by all parties except Mr. Ron Freeman for the LCRA. Apparently there had been some unfortunate miscommunication that I was unable to correct while out of state because Mr. Ramirez's submittal did not reflect the agreement of the parties – far from it.

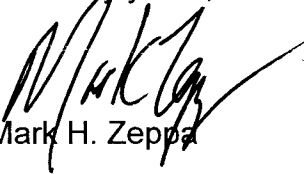
On behalf of my aligned clients, I have always insisted on a schedule allowing depositions until the time of trial. Contrary to Mr. Ramirez's preferred practice in his letter to you of July 15th, I do not choose to conduct discovery of expert witnesses during trial. I like to avoid nasty embarrassing surprises whenever possible. Prefiled testimony is often written in a global fashion without precise references to specific supporting foundations that may or may not have been produced during discovery. This is particularly true of witnesses for the Executive Director who traditionally take no formal position in a case until all other parties prefile their respective direct cases.

If Mr. Ramirez's view of appropriate trial procedure is to be followed, it is incumbent upon your Honor to allow all parties adequate time to fully explore all aspects of each witness' testimony. Discovery will have to be conducted through cross-examination at trial as Mr. Ramirez suggests. Therefore, no time limitations should be imposed. However, based upon my experience with the City of Austin in the Creedmoor-Maha WSC CCN docket now before Judge Craven, the City can be expected to present a disproportionately large number of

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purported "expert" witnesses compared to the other parties combined. Imposing the traditional number of hours per party time limits would not afford due process to all participants in this case. However, I am sure that Mr. Ramirez's client would like to have this done. Mine would not.

Sincerely yours,



Mark H. Zeppa

cc: Ken Ramirez
Ron Freeman
Madison Jechow
John Carlton
John Deering
Gary Bradley
Scott Humphrey
TNRCC Docket Clerk