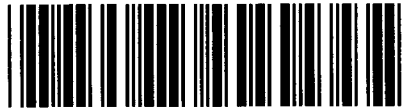


Control Number: 43551



Item Number: 51

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.



TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

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Kenneth Ramirez
Partner

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
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July 29, 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

2002-0189-UCR

Re: SOAH Docket No. 582-02-3056; 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; 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

SOAH Docket No. 582-02-3056; Application of Hornsby Bend Utility Company to Amend Certificate of Convenience and Necessity No. 20650

Dear Judge Sullivan:

Enclosed please find the latest draft of the Scheduling Order and Discovery Control Plan (redlined), which reflects changes from our original draft of July 12, 2002, especially as directed by you in Order No. 3.

Only Messrs. Zeppa and Freeman have responded to the revised draft Scheduling Order. Both of them believe that depositions should be allowed up until the date of trial, therefore, they disagree with the City's revised draft that allows for depositions after pre-filed testimony but terminating on April 7, 2003. Mr. Freeman (but not Mr. Zeppa) also disagrees with the City's proposal that January 6, 2003 should be the last day parties can file pleadings raising applicable statutes and rules. Accordingly, we submit today's Draft Scheduling Order without being able to represent consensus among the parties, and must now ask you to issue the Scheduling Order you deem appropriate. The only issues in dispute are those discussed in this letter.

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The Hon. Kerry Sullivan

July 29, 2002

Page 2

For the City's part, we disagree with Messrs. Zeppa and Freeman for the following reasons. Allowing depositions up to the day of trial sets the stage for chaos as the parties—especially the City—make final preparations for trial. As the party who carries the burden of proof, the City needs undistracted time to prepare for trial. We also fear that allowing depositions that late in the process could lead to abuse if any party waits until the last minute to schedule an important deposition.

Similarly, the applicable statutes and regulations should be established early so all parties understand the substantive rules that will apply and can prepare their cases accordingly. Regardless, your Honor's Order No. 2 clarifies that scheduling flexibility will be allowed should the need to amend applicable rules present itself after the deadline.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink that reads 'Kenneth Ramirez'.

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

SOAH DOCKET NO. 582-02-3056

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)

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BEFORE THE STATE OFFICE

 OF

 ADMINISTRATIVE HEARINGS

 BEFORE THE STATE OFFICE

 OF

 ADMINISTRATIVE HEARINGS

APPLICATION OF HORNSBY
 BEND UTILITY COMPANY
 TO AMEND CERTIFICATE
 OF CONVENIENCE AND
 NECESSITY NO. 20650

SCHEDULING ORDER AND DISCOVERY CONTROL PLAN

I. PARTIES

<u>PARTY</u>	<u>REPRESENTATIVE(S)</u>
City of Austin ("City")	Ken Ramirez Ruben Barrera Ronnie Jones Monica Jacobs
Executive Director ("ED")	John Deering Geoffrey Kirshbaum
Public Interest Counsel	Scott Humphrey
AquaSource Development AquaSource Utility City of Mustang Ridge Creedmoor-Maha Water Supply Corporation (Together, "Aligned Parties")	Mark Zeppa

<u>PARTY</u>	<u>REPRESENTATIVE(S)</u>
Capital Pacific Holdings, LLC ("Capital")	Gary Bradley
Hornsby Bend Utility Company, Inc. ("Hornsby Bend")	John Carlton
Lower Colorado River Authority ("LCRA")	Ronald Freeman Madison Jechow

II. SCHEDULE

The discovery schedule is designed to organize discovery such that the parties file discovery requests with each other at designated times, ensuring, for example, that no one party receives requests for discovery from five other parties at one time. In addition, not all parties wish to conduct discovery with all of the other parties.

Accordingly, the parties will send discovery requests to other parties as described below and in the schedule on the following pages. As addressed below, however, the parties will have thirty (30) days to respond to such requests.

- PHASE I:
 - City, ED and Capital exchange discovery requests
 - ED and LCRA exchange discovery requests
- PHASE II:
 - City, LCRA and Aligned Parties exchange discovery requests
 - ED and Hornsby Bend exchange discovery requests
- PHASE III:
 - City and Hornsby Bend exchange discovery requests
 - ED and Aligned Parties exchange discovery requests
 - Aligned Parties and Hornsby Bend exchange discovery requests

Discovery Part A consists of Phase I through III. The Phases are then repeated (Discovery Part B) to allow more than one round of discovery requests. ~~Discovery time period Part C is limited to taking depositions; depositions~~ Depositions may also be taken at any other

point after discovery begins on August 1, 2002. ~~Discovery~~ 2002 until April 7, 2003. Except for depositions, discovery will end on ~~February 10,~~ January 6, 2003. In the event that the Administrative Law Judge ("ALJ") consolidates Hornsby Bend's Applications application to Amend its CCN Nos No. 11978, 20650, 11978 (TNRCC Docket No. 2002-0756-UCR) and the Application filed on July 25, 2002 with the City's CCN applications, additional discovery time will be provided to the parties regarding those applications by a separate order.

The parties shall have 30 days to respond to discovery requests and 20 days to file any objections to requests.

<u>ACTIVITY</u>	<u>DEADLINE/DATE</u>
Parties file list of applicable statutes and rules	August 1, 2002
<p style="text-align: center;">DISCOVERY PART A</p> <p style="text-align: center;"><u>PHASE I:</u></p> <p>City, ED and Capital exchange discovery requests</p> <p>ED and LCRA exchange discovery requests</p>	August 1, 2002 – August 21, 2002
<p style="text-align: center;"><u>PHASE II:</u></p> <p>City, LCRA, and Aligned Parties exchange discovery requests</p> <p>ED and Hornsby Bend exchange discovery requests</p>	August 21, 2002 – September 11, 2002
<p style="text-align: center;"><u>PHASE III:</u></p> <p>City and Hornsby Bend exchange discovery requests</p> <p>ED and Aligned Parties exchange discovery requests</p> <p>Aligned Parties and Hornsby Bend exchange discovery requests</p>	September 11, 2002 – October 1, 2002

<u>ACTIVITY</u>	<u>DEADLINE/DATE</u>
<p>DISCOVERY PART B</p> <p><u>PHASE I:</u></p> <p>City, ED and Capital exchange discovery requests</p> <p>ED and LCRA exchange discovery requests</p>	<p>October 1, 2002 – October 21, 2002</p>
<p><u>PHASE II:</u></p> <p>City, LCRA, and Aligned Parties exchange discovery requests</p> <p>ED and Hornsby Bend exchange discovery requests</p>	<p>October 21, 2002 – November 11, 2002</p>
<p><u>PHASE III:</u></p> <p>City and Hornsby Bend exchange discovery requests</p> <p>ED and Aligned Parties exchange discovery requests</p> <p>Aligned Parties and Hornsby Bend exchange discovery requests</p>	<p>November 11, 2002 – December 2, 2002</p>
<p><u>Discovery PART C ends (all discovery responses from Part B, Phase III should be filed)</u></p> <p><u>Last day to file pleadings raising applicable statutes and rules</u></p>	<p>December 2, 2002 February 10, <u>January 6,</u> 2003</p>
<p>Preliminary hearing</p>	<p>February 19, <u>January 17,</u> 2003</p>
<p>Applicant files prefiled testimony and exhibits</p>	<p>March <u>February</u> 17, 2003</p>

<u>ACTIVITY</u>	<u>DEADLINE/DATE</u>
Parties other than Applicant and ED file prefiled testimony and exhibits	April 11 , <u>March 14</u> , 2003
ED files prefiled testimony and exhibits	April 25 , <u>March 28</u> , 2003
<u>Last day to take depositions</u>	<u>April 7</u> , 2003
<u>City files rebuttal prefiled testimony</u>	<u>April 21</u> , 2003
Deadline to file objections and motions to strike testimony and evidence	May 6 , <u>5</u> , 2003
Prehearing conference to set time limits for case presentation, address objections to prefiled testimony and exhibits and any remaining prehearing issues	May 16 , <u>19</u> , 2003
Hearing on merits	June 2, 2003 – June 20, 2003

III. CONSOLIDATION

There was considerable discussion at the preliminary hearing regarding the consolidation of this proceeding with three other CCN applications filed by Hornsby Bend. One is currently pending at SOAH and assigned to ALJ Hank Card (SOAH Docket No. 582-00-0545); one is expected to be referred to SOAH within the next two weeks (TNRCC Docket No. 2002-0756-UCR); and a third has recently been filed with the TNRCC and is undergoing technical review. Because the City's application includes the area requested by Hornsby Bend in Docket No. 582-00-0545 and because that proceeding has been in abeyance and has not proceeded to hearing, Docket No. 582-00-0545 has been consolidated by separate order with this proceeding. When TNRCC Docket No. 2002-0756-UCR is referred, it will be scheduled for preliminary hearing jointly with another preliminary hearing in the present docket.

Consolidation of the proceedings will be addressed at that time. A similar procedure is expected to be followed when the remaining Hornsby Bend case is referred by the TNRCC. The timing of TNRCC's referral of that case may impact the viability of consolidating that proceeding with this docket.

IV. SUBSTANTIVE AND PROCEDURAL RULES

After the August 1, 2002 filings by the parties, the ALJ will specify by order the substantive statutes and rules that will apply in this proceeding.

Except as otherwise specified in this order or subsequent orders of the Administrative Law ALJ, this case shall be conducted in accordance with the provisions of the Administrative Procedure Act, the Texas Rules of Civil Procedure, 30 TAC Chapter 80 and 1 TAC Chapter 155.

V. DISCOVERY CONTROL PLAN

1. Unless modified by subsequent order of the ALJ upon a showing of good cause, discovery will be conducted in accordance with the discovery control plan.
2. **Deadlines.** All responses to discovery shall be submitted within thirty (30) days of service of the discovery request in question, unless otherwise agreed to in writing by the party propounding the discovery. Objections to discovery requests shall be filed within twenty (20) days after receipt. A party seeking discovery shall file a motion to compel, if any, within five working (5) days of receiving such an objection. Unless specified or agreed otherwise, to be considered filed on a particular day, filings must be received by the ALJ and the parties by 5:30 p.m. on that date. When something is due by a certain date or time, it is not sufficient that the filing merely have been mailed that day. Receipt is required. Motions or correspondence may be faxed if the original is sent by mail. Filings should be sent to all parties contemporaneously with any filing to the ALJ.
3. **Discovery Period.** Unless modified by subsequent order of the ALJ upon a showing of good cause, all discovery must be completed in accordance with the time lines set out in this Scheduling Order and Discovery Control Plan.
4. **Service.** Discovery documents shall be served on the other parties but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute, and only those portions relevant to the dispute shall be attached to any pertinent motion.
5. **Disputes.** The parties are expected to attempt to resolve discovery disputes between themselves; however, significant disputes that cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute. The parties shall confer and attempt in good faith to settle discovery disputes between themselves prior to filing any request for relief. Any motion requesting relief in a discovery dispute must contain a certificate stating

that the parties have conferred, have been unable to resolve the dispute, and provide an explanation of the parties' inability to resolve the matter.

6. Total Time for Oral Depositions. The Aligned Parties (as a group) shall have no more than 50 hours in oral depositions to examine and cross-examine other parties, witnesses, or others subject to a party's control. All other parties shall each have no more than 50 hours in oral depositions to examine and cross-examine other parties, witnesses, or others subject to a party's control. If a party designates more than two experts, each of the other opposing parties who are scheduled to engage in discovery with the designating party may have an additional six hours of total deposition time for each additional expert designated.
7. Interrogatories. The Aligned Parties (as a group) and other parties may each serve no more than 25 written interrogatories on any other party, excluding interrogatories asking a party only to identify or authenticate specific documents. The other parties, however, may serve a total of 15 written interrogatories on each of the four Aligned Parties, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of the interrogatory is considered a separate interrogatory. Responses to interrogatories should identify the preparer(s) and sponsor(s) of that answer and should be verified.

VI. PREFILED TESTIMONY AND EXHIBITS

1. All parties shall prefile their testimony and exhibits in writing. One copy shall be served on the representative of every other party, and one copy shall be filed with the ALJ. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a party's case.
2. Prefiled testimony should be written as if the questions were asked by the party's lawyer and answered by the witness. The witness must be called to testify and adopt the prefiled testimony under oath, the testimony must be offered as an exhibit, and the witness must be passed for cross-examination by the other parties. When no party wishes to cross-examine a witness, the parties should agree to the admission of the witness' testimony so that the witness need not come to the hearing.
3. An order of witnesses shall be prefiled with the testimony. If there is a necessity to deviate from the established order, this should be raised with the ALJ and the other parties as soon as it becomes known. Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference.

VII. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., June 2, 2003, in a SOAH hearing room in the William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas. The

hearing will continue from day to day until concluded. It is expected that the hearing will conclude by June 20, 2003. The February 19, 2003 and May 16, 2003 prehearing conferences will convene at the same location at 10:00 a.m.

VIII. ORDER OF HEARING

The order of presentation at hearing shall be in accordance with 30 TAC § 80.117.

IX. RESOLUTION OF OTHER PENDING MOTIONS

The Applicant withdrew its Plea to the Jurisdiction and, for now, its motion to further define its burden of proof. Other issues raised by the Applicant in its motion to define the scope of the hearing will be addressed following the parties' August 1, 2002 filings pertaining to the laws applicable to this proceeding.