



Control Number: 43572



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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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SOAH DOCKET NO. 582-03-3725  
TCEQ DOCKET NO. 2003-0664-UCR

IN RE: THE APPLICATION OF BEXAR § BEFORE THE STATE OFFICE  
METROPOLITAN WATER DISTRICT §  
TO AMEND WATER CCN NO. 10675 IN § OF  
BEXAR COUNTY § ADMINISTRATIVE HEARINGS

ORDER NO. 15  
RULING ON PARTY STATUS APPLICATIONS

Two parties sought party status in this case under the provisions for late-filed applications set forth in the Texas Commission on Environmental Quality (TCEQ or Commission) rules on admission of parties. On August 17, 2005, the San Antonio Water System (SAWS) requested party status in this case and on August 31, 2005, Bitterblue, Inc. (Bitterblue) sought party status in this case. Bexar Met (Applicant) opposed granting party status to either entity. The Executive Director (ED) of TCEQ and the protestant utility, BSR Water Supply Company (BSR) did not take positions on either movant's request.

Evidentiary hearings were conducted on separate days on both applications for late-filed party status. At that time, documents and testimony concerning the two movants' assertions of a justiciable interest and the movants' reasons for filing their requests so long after the preliminary hearing in June 2003 were received. At the hearing held on September 19, 2005, the ALJ named Bitterblue as a party in this case, and denied SAWS application.

This Order memorializes that decision and discusses the application of the criteria for late admission set forth in the Commission rules. Timely application for party status is favored and late applications can be approved only upon certain factual showings.

Although raising several concerns about the Applicant's ability to serve, SAWS relied chiefly on their newly-filed application with the TCEQ for a certificate of convenience and necessity (CCN) to provide water service in substantially the service territory being sought in this case and the request for service from SAWS from Bitterblue. SAWS stated that it had not filed its request for party status

earlier as its concerns about Bexar Met's ability to serve had arisen recently, as had the request to serve from Bitterblue.

Bitterblue represents several property owners within the proposed amended service territory and is actively engaged in planning for and the development of those properties, including, most notably, the 772-acre Kinder tract.<sup>1</sup> The agreement to develop was entered into on October 20, 2004. Bitterblue does not own land in the proposed service territory.

Applicant opposed the requests on the grounds that neither was timely and that neither party had demonstrated the kind of extraordinary circumstances necessary for such a late entry into this hearing required by the applicable rule, 1 TEX. ADMIN. CODE § 80.109(a). Applicant also asserted that Bitterblue had failed to show that it either owned land or had sufficient authority to appear on behalf of the landowners.

Based on the evidence, the ALJ concluded that, as a potential competitor for the CCN to provide utility service to the same area and as a neighboring utility, SAWS does have a justiciable interest which would qualify it to be a party under 30 TEX. ADMIN. CODE § 80.109(b)(5).<sup>2</sup> However, the ALJ also concluded that SAWS' request was not timely and that it failed to demonstrate good cause and extenuating circumstances, and that the hearing in progress will not be unreasonably delayed.

The preliminary hearing in this case was held on July 17, 2003. BSR was named a party. SAWS did not appear and request party status at that time. This case has been abated for the majority of the time elapsed since the preliminary hearing due to the agreement of the parties as Applicant and BSR sought to resolve their differences. At Applicant's request, this matter was

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<sup>1</sup> Bitterblue. Exh. 1.

<sup>2</sup> The party-status criteria themselves are set out in 30 TEX. ADMIN. CODE §§ 55.29 and 55.203, relating to the determination of affected person.

returned to the active docket on June 16, 2005, and a new procedural schedule was set.<sup>3</sup> The hearing on the merits was scheduled for October 17, 2005, although it has since been continued to entertain summary disposition motions being filed by the parties.

SAWS did not seek party status at the preliminary hearing in 2003. SAWS argued that—at the time—it felt no need to intervene, but that recent concerns about the deterioration of Applicant's capacity to provide water and sewer service in the proposed amended service territory prompted them to file its own application and also seek to intervene in this case.<sup>4</sup> It also noted that Bitterblue has withdrawn its request for water service from Bexar Met.

SAWS raised the kinds of capacity and delivery of service issues that may well be relevant in determination of Applicant's request to amend its service territory. However, SAWS failed to establish that its entry into the case at this late point is the only vehicle to have those concerns addressed. There is no reason that the capacity issues raised by SAWS could not be advanced by BSR, the ED, or Bitterblue through their sponsorship of SAWS' personnel as witnesses. SAWS is not a necessary party to raise these issues.

SAWS and the ED were correct in stating that some competing applications for CCN service territory have been referred contemporaneously to SOAH, essentially for hearing on both at the same time, and that such a joint referral results in judicial efficiency. However, the timing in this case is markedly different. Applicant has been in the approval process for several years. Even with expeditious review, Todd Galiga, attorney for the ED, predicted that with applicable notice periods,

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<sup>3</sup> SAWS argued that it might have intervened earlier had the case not been abated. While such a motion might not have triggered restoration of this matter to SOAH's active docket, there was nothing barring SAWS from making its request of record as early as soon as its concerns became manifest.


<sup>4</sup> SAWS has announced its support of the summary disposition motion filed by Bitterblue.

it is unlikely that SAWS' application would be ripe for a contested case hearing until spring 2006.<sup>5</sup> This delay, plus the additional time that would be needed for re-structuring the contested case hearing between competing parties, including possibly repeating some discovery, would unduly prolong the hearing process and would not result in judicial efficiency.

Bitterblue established it did have authority to proceed in this case in regard to the Kinder property and also that, in its role as development manager, it had itself both a reasonable relationship to the interest claimed and the activity regulated as well as an economic interest as required by 30 TEX. ADMIN. CODE § 55.29. Bitterblue established itself to be an affected person within the meaning of that rule and has been *admitted* as a party to this case.

Further, the entry of Bitterblue does not suggest there will be an unreasonable delay in the proceedings. Expedited timetables can be set for submission of its evidence and the case can proceed fairly quickly to a hearing on the merits.

**SIGNED September 28, 2005.**

  
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**CASSANDRA J. CHURCH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>5</sup> ED's counsel was requested to give a good faith estimate of the time review of a CCN application might take to aid the ALJ and did not constitute a specific representation as to the time the ED might need to review the application.

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AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: IN THE APPLICATION OF BEXAR METROPOLITAN WATER  
DISTRICT TO AMEND WATER CCN NO. 10675 IN BEXAR  
COUNTY

SOAH DOCKET NUMBER: 582-03-3725

TCEQ DOCKET NUMBER: 2003-0664-UCR

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**ADMINISTRATIVE COURT**

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

CASSANDRA J. CHURCH  
PRESIDING ADMINISTRATIVE LAW JUDGE

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