

Control Number: 43572



Item Number: 64

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

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R L WILSON, P.C.

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June 17, 2006

Honorable Cassandra J. Church
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

Via Fax 512/475-4994
Total Pages: 5

RE: SOAH Docket No. 582-03-3725; TCEQ Docket No. 2003-0664-UCR, *In Re: The Application of Bexar Metropolitan Water District To Amend Water CCN No. 10675 in Bexar County*, Before the State Office of Administrative Hearings

Dear Judge Church:

This correspondence is sent pursuant to Order No. 21, but is strictly subject to BexarMet's pending request for abatement of this proceeding. As set-forth in BexarMet's previous pleadings, all of the issues made the subject of Order No. 21 are pending before the Travis County District Court and/or Comal County District Court. As such, BexarMet re-iterates its request that this proceeding be abated until such time as these courts determine the effect and applicability of SB 1494 with regard to the above-referenced application.

Subject to and without waiving its request for abatement, please be advised that it is BexarMet's position that its March 2002 application to amend CCN 10675 was referred to SOAH on June 16, 2003 – two (2) days before the effective date of SB 1494. As set-forth in the Stipulation and Affidavit furnished to you under cover of my letter dated June 11, 2006, this date (June 16, 2003) is the date that Michelle Abrams – then-team leader of the TCEQ's utility certification and rate analysis team – authorized and approved the TCEQ "Interoffice Memorandum" transferring the agency's official files to SOAH. As team leader, it was Ms. Abrams' duty to determine when applications met the criteria for referral to SOAH, and to issue the Memorandum originating the referral. Any activity of the Chief Clerk or other clerical staff following issuance of such Memorandum was purely ministerial, and occurred *after* referral had been made.

This position is supported by a reading of the plain language of 30 T.A.C. § 80.6(b), which reads (in pertinent part with emphasis added) as follows:

- (b) *When* a case is referred to SOAH, the chief clerk shall:
- (1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;

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- (2) coordinate with SOAH to determine a time and place for hearing;
- (3) issue public notice of the hearing as required by law and commission rules;
- (4) send a copy of the chief clerk's case file to SOAH.

Use of the term "when" in subsection (b) is the crux of the regulation, and the trigger for the Chief Clerk's enumerated responsibilities. That is, the regulation requires the Chief Clerk to perform the ministerial duties set-forth in Rule 80.6 *once or after* (i.e. "when") the referral has been made by the appropriate staff member (in this case Ms. Abrams).

Further, it is clear from the regulation that it is not within the province of the Chief Clerk to "make the referral," or to determine whether or when referral is appropriate. Instead, the Chief Clerk's filing of the "Request to Docket Case" form is merely a ministerial manifestation of the referral made by the TCEQ's Utility Certification and Rate Analysis Team. A finding that the referral is made on the date of filing such document would be tantamount to a determination that the decision to "refer" is delegated to the Chief Clerk and other clerical staff.

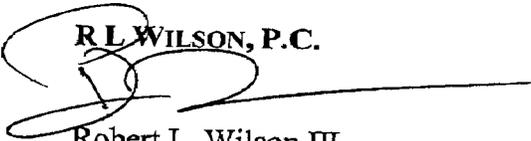
Also significant is the fact that by (on or before) June 16, 2003 – the date Ms. Abrams signed the Memorandum – the Chief Clerk had already assigned a Docket Number to BexarMet's application. Pursuant to 30 T.A.C. § 1.9, docket numbers are to be assigned "to each matter scheduled for consideration during a commission meeting or contested case referred to SOAH." It is undisputed that BexarMet's application was never scheduled for consideration during a commission meeting. Thus, the docket number could only have been assigned (by June 16, 2003) because the application had been "referred to SOAH" by that date. Prior to referral, the application would have been referenced by its "application number" (33862-C), as no docket number would be necessary.

For each of the foregoing reasons, BexarMet respectfully requests that, in the event that this proceeding is not abated, you determine that the above-referenced case was referred to SOAH on June 16, 2003.

Thank you for your attention to this matter.

Sincerely,

RL WILSON, P.C.


Robert L. Wilson III

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004/008

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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

ADMINISTRATIVE COURT

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

CASSANDRA J. CHURCH
PRESIDING ADMINISTRATIVE LAW JUDGE

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