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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

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

**IN RE: APPLICATION OF
BEXAR METROPOLITAN
WATER DISTRICT TO AMEND
WATER CCN NO 10675
IN BEXAR COUNTY**

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**BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS**

**MOTION TO DETERMINE APPLICATION OF
PRE-HEARING ORDERS 9 AND 19 TO BEXAR-METROPOLITAN
WATER DISTRICT PRE-FILED TESTIMONY, OR
IN THE ALTERNATIVE, FOR EXTENSION OF TIME
FOR BITTERBLUE, INC. TO PRE-FILE ITS TESTIMONY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Comes now Bitterblue, Inc., Intervenor in the above-referenced proceeding, and submits this its "Motion to Determine Application of Pre-Hearing Orders 9 and 19 to Bexar-Metropolitan Water District Pre-Filed Testimony, or, in the Alternative, for Extension of Time for Bitterblue, Inc. To Pre-File its Testimony" (the "Motion"), and in support thereof would respectfully show as follows:

1. In May, 2006, at the request of the Administrative Law Judge, all parties in this proceeding agreed to a proposed hearing schedule submitted to the ALJ. Pursuant to that agreement, the ALJ entered Order No. 19 in this proceeding setting the hearing for October 30, 2006, and requiring various deadlines for the filing of pre-filed testimony by all parties. Bexar Metropolitan Water District ("Bexar Met") was to pre-file its testimony and exhibits on June 12, 2006.

2. On June 12, 2006, Bexar Met pre-filed testimony and exhibits. Bexar Met's pre-filing on that date indicated that it would continue to rely on pre-filed testimony which had been previously submitted to the ALJ in 2005. The only new pre-filed testimony by Bexar-Met was the "Supplemental Testimony" of Michael Albach, Bexar Met's Operations Director, consisting of only four pages. However, at two places in his Supplemental Testimony, Mr. Albach indicates that Bexar Met intends to take additional actions in the future to both (1) amend its application, and (2) further supplement his testimony. More specifically, Mr. Albach states, on page 1, lines 16-22, of his Supplemental Testimony, that:

"In my most recent review of the application, I noticed some information which, although true in 2002, is no longer accurate. This information largely relates to the sources of water Bexar Met would use to serve the proposed area, if the

District ultimately receives the CCN Amendment. I am in the process of drafting an amendment to the application that will provide up-to-date information as Bexar Met has largely diversified and expanded the sources of water available to serve the proposed area.”

Later, on page 4, lines 12-14 of the Supplemental Pre-Filed Testimony, Mr. Albach states:

“I will testify about each of these improvements and additions [additional wells and water supply facilities] at the time of Hearing on the Merits in this action.”

3. The ALJ’s Order No. 19, setting the deadline for parties to pre-file their testimony specifically stated in Part IV of that Order that “[t]he general hearing procedures regarding discovery matters, pagination of exhibits, provision for a court reporter, and the like were set out in full in Order No. 9. These procedures are hereby reaffirmed and apply to further proceedings in this case, as if set forth fully in this Order.”

4. The ALJ’s Order No. 9, in Part VII, states the following regarding pre-filed testimony:

“All Parties shall pre-file their direct-case evidence in writing... The pre-filed evidence should include *all* testimony and other evidence necessary to support a Party’s direct case. [Emphasis added.]

Evidence even considered for use in a direct case should be pre-filed, although a Party may later choose not to introduce every item it pre-filed. Evidence that is not pre-filed may not be introduced as part of a Party’s direct case absent a showing of good cause. Good cause will be determined on a case-by-case basis. Generally, good cause will be determined after considering the offering Party’s need to introduce the evidence, the reasonableness of that Party’s not having anticipated that need, and the prejudice other Parties will suffer by the introduction of evidence that was not pre-filed....

The witness must be called to testify and adopt the pre-filed testimony under oath, the testimony must be offered as an exhibit, and the witness must be passed for cross-examination by the other Parties....

No evidence has been submitted by Bexar Met to show good cause for any supplementation of its pre-filed testimony for facts it knew or could have known with reasonable diligence by June 12, 2006. As noted earlier, Mr. Albach’s Supplemental Testimony in fact clearly indicates he already knows the additional information he intends to testify orally about because he says it relates to changes between 2002 and now.

5. Bexar Met’s pre-filed Supplemental Testimony of Mr. Albach clearly shows Bexar Met’s intent to violate this Order. Not only does Bexar Met intend to supplement Mr.

Albach's testimony on the record at the hearing, in clear violation of Order No. 9, but it further intends to even amend the application.

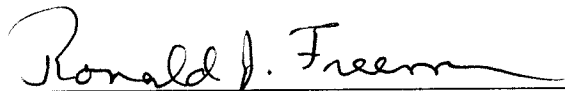
6. It is fundamental to due process that Bitterblue know what the substance of Bexar Met's application is before Bitterblue spends time, money and resources to protest that application and before preparing and filing Bitterblue's testimony and evidence. Further, Bitterblue is entitled to know, especially given the abbreviated time period for filing its pre-filed testimony, *all* evidence that Bexar Met is relying on to support its case. Bexar Met's pre-filed testimony indicates a clear intent on Bexar Met's part to violate these fundamental provisions of Order No. 9 and fundamental concepts of due process.

Wherefore, Bitterblue, while not wanting to abate this case, nonetheless respectfully requests that the ALJ:

- A. Issue an Order prohibiting Bexar Met from:
 - (i) amending its application any further; and
 - (ii) further supplementing any testimony or evidence filed by heretofore pre-filed by Bexar Met, if such supplement relates to facts that were in existence or could have been known by Bexar Met with reasonable diligence at the time of the June 12, 2006 filing by Bexar Met; or in the alternative,
- B. Grant a continuance to the deadline for pre-filing of Bitterblue's pre-filed testimony to a date in the future which is at least thirty days *after* whatever date Bexar Met decides it can file an amendment to its application and any supplemental testimony by Mr. Albach as it has indicated it intends to do; and
- C. For such other relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 23 day of June 2006, a true and correct copy of Bitterblue's Supplement to Motion for Dismissal by Summary Disposition was served on the parties of record by facsimile transmission and First Class Mail.

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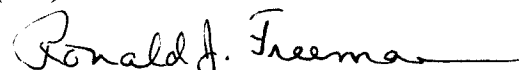
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