



Control Number: 43585



Item Number: 21

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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TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
UTILITIES AND DISTRICTS

SOAH DOCKET NO. 582-02-3056
TCEQ DOCKET NOS. 2002-0189-UCR and 2000-0112-UCR

IN THE MATTER OF THE)	BEFORE THE STATE OFFICE
APPLICATIONS OF THE CITY OF)	
AUSTIN FOR A WATER)	
CERTIFICATE OF CONVENIENCE)	OF
AND NECESSITY (NO. 33562-C))	
AND A WASTEWATER CERTIFICATE)	
OF CONVENIENCE AND NECESSITY)	
(NO. 33563-C))	ADMINISTRATIVE HEARINGS
)	
APPLICATION OF HORNSBY)	BEFORE THE STATE OFFICE
BEND UTILITY COMPANY TO)	
AMEND CERTIFICATE OF)	OF
CONVENIENCE AND NECESSITY)	
NO. 20650)	ADMINISTRATIVE HEARINGS
)	
APPLICATION OF HORNSBY)	BEFORE THE STATE OFFICE
BEND UTILITY COMPANY TO)	
AMEND CERTIFICATE OF)	OF
CONVENIENCE AND NECESSITY)	
NO. 11978)	ADMINISTRATIVE HEARINGS

ORAL DEPOSITION OF

MIKE HOWELL

November 12, 2002

Volume 2

ORIGINAL

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ORAL DEPOSITION OF

MIKE HOWELL

VOLUME 2

November 12, 2002

ORAL DEPOSITION of MIKE HOWELL, produced as a witness at the instance of the City of Austin, and duly sworn, was taken in the above-styled and numbered cause on the 12th day of November, 2002, from 9:10 a.m. to 9:39 a.m., before Lorrie A. Schnoor, Certified Shorthand Reporter in and for the State of Texas, and Registered Merit Reporter,

1 reported by computerized stenotype machine, at the
2 offices of Bracewell & Patterson, LLP, 111 Congress
3 Avenue, Suite 2100, Austin, Texas, pursuant to the
4 Texas Rules of Civil Procedure and the provisions
5 attached to the deposition of Michelle Abrams.

6 A P P E A R A N C E S

7 FOR THE CITY OF AUSTIN

8 **Ms. Monica Jacobs**

9 Bracewell & Patterson, LLP
111 Congress Avenue, Suite 2100
Austin, Texas 78701

10 FOR AQUASOURCE UTILITY, INC., AQUASOURCE DEVELOPMENT
11 COMPANY, CREEDMORE-MAHA WATER SUPPLY CORPORATION,
CITY OF MUSTANG RIDGE

12 **Mr. Mark H. Zeppa**

13 Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436

14 FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

15 **Mr. Geoffrey P. Kirshbaum**

16 12100 Park 35 Circle
Building A
Austin, Texas 78753

17 FOR HORNSBY BEND UTILITY COMPANY

18 **Mr. John J. Carlton**

19 Armbrust & Brown, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701

20 ALSO PRESENT:

21 Mr. Bart Jennings, City of Austin
22
23
24
25

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MIKE HOWELL

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EXHIBITS

(No Exhibits Marked)

1 MS. JACOBS: And I will pass the
2 witness.

3 MIKE HOWELL,
4 having been previously duly sworn, continued to
5 testify as follows:

6 EXAMINATION

7 Q. (BY MR. CARLTON) Mr. Howell, I'm John
8 Carlton. We've met a couple of times in the last
9 deposition. I just had a couple of questions for
10 you. Kind of turn your attention to fire flow. I
11 think you testified that there are no rules that the
12 TCEQ has adopted that relate to fire flow; is that
13 correct?

14 A. Well, there is one 290 rule that addresses
15 fire flow, and I believe it says that if you do
16 provide fire flow that you must maintain 20 psi
17 during fire flow conditions, but that's the only
18 rule I know of that addresses fire flow.

19 Q. Okay. Does that rule define what fire flow
20 is?

21 A. Not that I know of.

22 Q. Do you have a definition for fire flow that
23 you use?

24 A. No. There may be one in the 290 rules.

25 Q. All right. But you're not aware of one

1 being in the 290 rules?

2 A. No.

3 Q. Okay. Does anyone that you've talked to
4 about processing CCN applications within the
5 agency -- I guess that would mean probably Michelle
6 Abrams or Doug Holcomb or your previous
7 supervisor -- have any of them given you information
8 about what you should be looking for when evaluating
9 fire flow?

10 A. No.

11 Q. Okay. Do you have any experience outside
12 of your current position with the agency that would
13 give you any knowledge or background in fire
14 fighting or fire flow?

15 A. No, sir.

16 Q. I believe you said you had dealt with a
17 couple of other municipal CCN applications or
18 contested applications. Did -- and they were, what,
19 Wimberley?

20 A. And City of Bulverde.

21 Q. And City of Bulverde. In either of those
22 applications, was fire flow an issue there?

23 A. No.

24 Q. Okay. To your recollection, did anyone
25 present any testimony or evidence about fire flow?

1 A. Well, the Wimberley case didn't go to
2 evidentiary hearing. And the Bulverde case, I can't
3 recall what was said about fire flow during the
4 hearing.

5 MR. CARLTON: I think that's all I had
6 on those issues. Pass the witness.

7 EXAMINATION

8 Q. (BY MR. ZEPPA) Mr. Howell, I'm Mark Zeppa.
9 In this case, I represent four different parties, as
10 you know: AquaSource Utility Company, AquaSource
11 Development Company, Creedmore-Maha Water Supply
12 Corporation and the City of Mustang Ridge. The
13 first thing I would like you to do is tell me: When
14 you're reviewing a CCN application, what standards
15 do you go by?

16 A. The 291 rules, the rules that apply, I
17 believe the eight criteria, use for granting or
18 denying a CCN and any of the rules that are
19 important in the application.

20 Q. Okay. And those rules are all found in the
21 Commission's Chapter 291 rules, is that -- is that
22 not correct?

23 A. Yes, sir.

24 Q. And those rules are enacted pursuant to
25 Chapter 13 of the Texas Water Code?

1 A. Yes.

2 Q. And are those enacted pursuant to Chapter
3 341 of the Texas Health & Safety Code?

4 A. Yes, I believe they are.

5 Q. Are there any other legal standards -- and
6 when I say "legal standards," any statute enacted by
7 the Texas legislature that you follow?

8 A. Not that I know of.

9 Q. Well, in your training, have you been given
10 any other legal standard or statute by your
11 supervisors that you personally follow?

12 A. No.

13 Q. Okay. What definition of the word
14 "service" do you follow in evaluating a CCN
15 application?

16 A. Definition of the word "service"?

17 Q. Yes, sir. Is there a particular definition
18 of the word "service" that you follow, either set
19 out by rule or statute or your own personal
20 definition?

21 A. If a utility is going to -- proposes to
22 serve -- provide water service, then providing water
23 service is what I believe that applicant proposes to
24 do. If they propose to provide sewer service, then
25 I take it that they want to provide sewer service to

1 their proposed area.

2 Q. Well, how do you define "service"?

3 A. The applicant proposes to provide a
4 service, either water or sewer service, to the
5 applicant. So the definition that I would use for
6 service is providing water service or sewer service
7 to their proposed area.

8 Q. Are you aware of whether or not either by
9 rule or statute there is a definition of the word
10 "service"?

11 A. I do not know.

12 Q. Okay. You were questioned on
13 December 30th -- strike that.

14 Do you remember that on December 30th
15 (sic), you were questioned by Ms. Jacobs in the
16 first part of your deposition?

17 A. Yes, sir, I was.

18 Q. Okay. Now, do you remember that you were
19 questioned about population forecasts?

20 A. Yes.

21 Q. Okay. And do you remember whether or not
22 you were questioned on the topic of population
23 forecasts being a valid indication of need in a
24 proposed service area?

25 A. Yes.

1 Q. Okay. And the City of Austin has submitted
2 a population forecast for its proposed service area
3 as part of its application, has it not?

4 A. Yes, it has.

5 Q. And you were questioned about that
6 population forecast, were you not?

7 A. Yes, I was.

8 Q. Have you reviewed that apply -- that
9 forecast as part of this application?

10 A. Yeah. I looked through it when the
11 application first came in.

12 Q. Okay. And you were asked whether or not
13 you had any concerns about the methodology. Do you
14 remember that questioning?

15 A. Yes.

16 Q. And do you remember your answers?

17 A. I don't believe that I had a -- that I
18 questioned the methodology --

19 Q. Okay.

20 A. -- of the growth projection.

21 Q. At this time do you have any questions
22 about the methodology?

23 A. No.

24 Q. Have you ever had any training on
25 methodologies used in population forecasting?

1 A. No, I have not.

2 Q. Okay. So you don't consider yourself any
3 kind of expert in population forecasting?

4 A. No, I do not.

5 Q. All right, sir. So how about the data used
6 in the forecast? Do you know anything about the
7 data?

8 A. No.

9 Q. So you're not qualified to provide any kind
10 of expert opinion on that forecast, are you,
11 Mr. Howell?

12 A. No, sir.

13 Q. Okay. The City of Austin has presented a
14 map in its application which purports to show
15 requests for service. Is that not correct?

16 A. Yes.

17 Q. And have you studied that map, sir?

18 A. Yes, I have.

19 Q. Okay. Have you studied the request for
20 services that that map purports to reflect?

21 A. Yes, sir.

22 Q. Are those requests for services actual
23 requests that have resulted in service?

24 A. I don't know that that service has been
25 provided to those people requesting service.

1 Q. Are those service requests the type that
2 indicate that a person is willing to put down money
3 and actually take service?

4 A. I believe that they -- those people
5 requesting service would be willing to -- to put up
6 whatever it costs to pay for the infrastructure
7 needed to get them water.

8 Q. Do you believe that that's true of all of
9 them, or is it possible that some of them are just
10 an inquiry of whether or not service would be
11 available, a general inquiry of the type of -- for
12 example, I own a piece of property here at this
13 location and would -- would service be available
14 here at this location if I were to need it as
15 opposed to, in the alternative, I own a piece of
16 property at this location. I need service here, and
17 I'm willing to pay to have service at this location?

18 A. I believe that those people that request
19 service to the City of Austin may have also
20 requested service from other existing utilities.

21 Q. Okay. I -- I think we're not quite on the
22 same wavelength at this point, Mr. Howell, so let me
23 kind of re-ask my question.

24 A. Okay.

25 Q. I want to ask first: Is it possible that

1 some of the service requests shown on the City's map
2 in their supporting data are just inquiries of the
3 availability of service as opposed to an actual
4 request for definite service?

5 A. I believe that those people that request
6 service may have -- want to know if they could get
7 service from City of Austin.

8 Q. And in asking if they could get service,
9 they may not have actually intended to apply for
10 service at that time, but they're only seeking
11 information if service would be available; is that
12 correct?

13 A. Yes.

14 Q. Okay. And your prior statement is that
15 they were applying for service from other utilities
16 other than the City of Austin was to the effect that
17 they were making similar requests of neighboring
18 utilities at the same time?

19 A. That is possible.

20 Q. Okay. The point of my questions,
21 Mr. Howell, was that looking at the City of Austin's
22 map, it is somewhat elusory, is it not, that the
23 City is -- cannot really anticipate all these
24 potential customers taking the City's service
25 because all these people really are not looking at

1 tying onto the City utility system since some of
2 them were only looking to find out if service might
3 be available. Is that not correct?

4 A. Yes, that's true.

5 Q. And, in fact, isn't it true that some of
6 these people now may be getting adequate utility
7 service by on-site, privately-owned systems? Is
8 that not correct?

9 A. That is possible, yes.

10 Q. And it's equally possible that these people
11 could be receiving service from another neighboring
12 utility if the Commission would allow that other
13 neighboring utility to be certificated to their
14 property. Is that not correct?

15 A. Yes.

16 Q. Mr. Howell, do you know of any reason why
17 the City of Austin could not have filed an
18 application for this service area since September
19 1st, 1975?

20 A. No, I do not.

21 MR. ZEPPA: I have no further
22 questions.

23 MR. JENNINGS: Can we have a break?

24 MS. JACOBS: I'm sorry?

25 MR. JENNINGS: Can we have a break?

1 MS. JACOBS: Yeah. Do y'all mind if
2 we take a quick break?

3 MR. ZEPPA: No.

4 (Recess taken from 9:26 a.m. to
5 9:31 a.m.)

6 FURTHER EXAMINATION

7 Q. (BY MS. JACOBS) Okay. Mr. Howell, I just
8 have a couple of follow-up questions. First of all,
9 when Mr. Zeppa was asking you about the possibility
10 that some of the SERs that are illustrated on the
11 map included in the application may be merely
12 general inquiries, are you aware that the City of
13 Austin also receives, in addition to written SERs,
14 verbal inquiries regarding service?

15 A. I imagine that does happen.

16 Q. Okay. And that the City responds to these
17 verbal inquiries?

18 A. I would imagine they do.

19 Q. And -- and that for -- do you recall the --
20 the response that the City of Austin submitted to
21 your request for information?

22 A. Yes.

23 Q. And included in that response, there were a
24 number of actual SER applications, SER forms --

25 A. Yes.

1 Q. -- in that? And that -- do you -- do
2 you -- are you aware that those forms correspond to
3 the SERs shown on the SER map in the application?

4 A. Yes.

5 Q. Okay. Are you aware that people and
6 entities that submit SER applications to the City
7 pay a fee to do so?

8 A. I did not know that.

9 Q. Okay. On those actual SER applications --

10 A. Uh-huh.

11 Q. -- that are included in the RFI, did you
12 have a chance to review those?

13 A. I looked through some of them, yes.

14 Q. Okay. Do you know what kind of detail is
15 included in those applications? Do you recall the
16 level of detail about the proposed developments
17 that's included in those applications?

18 A. I do not.

19 Q. Is it -- is it your recollection that there
20 is -- is a description of the proposed
21 development --

22 A. I believe there is.

23 Q. -- on these applications?

24 A. Yes.

25 Q. Is it your recollection that those

1 descriptions are fairly specific about, for example,
2 the land involved, the number of connections
3 anticipated, so on and so forth?

4 A. Yes.

5 Q. Does that kind of information -- would you
6 characterize that as being a general inquiry or a
7 specific inquiry regarding service? And, again,
8 I'm -- I'm saying someone comes in, pays a fee --
9 and we can talk about it in hypothetical terms, if
10 you want to. Someone comes in, pays a fee for an
11 application, gives specific data about GPM, number
12 of connections, the type of development, the place
13 it's going to be located. Would you characterize
14 that as a -- as a -- as more of a general inquiry or
15 as a specific inquiry for service?

16 A. I suppose that would be a specific inquiry
17 for service.

18 Q. If you saw that, would you think, "Gee,
19 this person is probably interested in receiving
20 service from the City of Austin"?

21 A. They may be, but they may be shopping
22 around and comparing costs to provide service and
23 the time that it would take to provide service from
24 other utilities also.

25 Q. Okay. Do you have any information that

1 would support the statement that you just made that
2 these people are also submitting applications to
3 other utilities?

4 A. No, I do not.

5 Q. Okay. Do you have any information
6 specifically about the service extension requests
7 included in the City of Austin's application that
8 might indicate that the people responsible for these
9 service extension requests were shopping around?

10 A. No.

11 Q. Okay. Nothing in those service extension
12 requests led you to believe that?

13 A. No.

14 Q. Okay.

15 MS. JACOBS: Pass the witness.

16 MR. CARLTON: No questions now.

17 **FURTHER EXAMINATION**

18 Q. (BY MR. ZEPPA) Mr. Howell, in light of
19 Ms. Jacobs' last questions, do you have any
20 information that would lead you to believe that if
21 somebody paid a fee and gave the City detailed
22 information about a potential real estate
23 development of a future subdivision that might need
24 water service from a utility, including the City of
25 Austin, that the City of Austin is actually going to

1 be the service provider to that development just
2 because they made this or filed this application or
3 service request with the City of Austin?

4 A. I don't think that it's finalized just
5 because they submit a request for service.

6 Q. Okay. Based upon your experience working
7 with the TCEQ, do all developments actually
8 materialize just because somebody made a request for
9 a utility service at some point?

10 A. I doubt that all of them actually are
11 developed.

12 MR. ZEPPA: No further questions.

13 FURTHER EXAMINATION

14 Q. (BY MS. JACOBS) I've got one more --
15 actually, a couple more questions.

16 If you -- if you received -- so -- so
17 you're saying -- and I understand you're -- you're
18 saying that you can't -- you just can't be sure
19 about what the result of an SER is going to be, an
20 SER to the City.. Can you be sure absolutely by just
21 looking at a service extension request, for example,
22 to Hornsby Bend that that service extension request
23 is going to result in actual development?

24 A. No.

25 Q. Can you be sure that a service extension

1 request or letter of intent to Creedmore-Maha will
2 result in actual development?

3 A. No.

4 Q. Or to AquaSource?

5 A. No.

6 Q. Okay. Does that mean in your mind that
7 when you review these applications, the service
8 extension request is not a good indicator of need
9 because you don't know the end result that might --
10 that might happen? Does that mean that it's not an
11 indicator of -- of need in your mind?

12 A. Well, the -- there's several -- the request
13 for service demonstrates a need for service in the
14 area.

15 MS. JACOBS: Okay. Okay. I have no
16 further questions.

17 MR. CARLTON: No questions at this
18 time.

19 **FURTHER EXAMINATION**

20 Q. (BY MR. ZEPPA) Mr. Howell, these -- you
21 say the service request indicates a need for service
22 in the area. Does it definitely indicate a specific
23 utility that must fulfill that need or does it just
24 indicate that a need exists?

25 A. It indicates that a need exists.

1 MR. ZEPPA: . Okay. No further
2 questions.

3 MS. JACOBS: I have nothing further.
4 (Proceedings concluded at 9:38 a.m.)
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1
2 I, MIKE HOWELL, have read the foregoing
3 deposition and hereby affix my signature that same
4 is true and correct, except as noted above.
5

6 _____
7 MIKE HOWELL
8

9
10 THE STATE OF _____)

11 , COUNTY OF _____)
12

13 Before me, _____, on this day
14 personally appeared MIKE HOWELL, known to me (or
15 proved to me on the oath of _____ or
16 through _____ (description of
17 identity card or other document)) to be the person
18 whose name is subscribed to the foregoing instrument
19 and acknowledged to me that he executed the same for
20 the purposes and consideration therein expressed.

21 (Seal) Given under my hand and seal of office
22 this _____ day of _____, _____.

23 _____
24 NOTARY PUBLIC IN AND FOR
25 THE STATE OF _____

26
27 JOB NO. 8928
28
29
30

SOAH DOCKET NO. 582-02-3056
TCEQ DOCKET NOS. 2002-0189-UCR and 2000-0112-UCR

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REPORTER'S CERTIFICATION
ORAL DEPOSITION OF MIKE HOWELL
VOLUME 2

November 12, 2002

I, Lorrie A. Schnoor, Certified Shorthand
Reporter in and for the State of Texas and
Registered Merit Reporter, hereby certify to the
following:

That the witness, MIKE HOWELL, was duly sworn by
the officer and that the transcript of the
deposition is a true record of the testimony given
by the witness;

That the deposition transcript was submitted on
November 24, 2002 to the witness or to the attorney

1 for the witness for examination, signature, and
2 return to me by December 24, 2002;

3 That pursuant to information given to the
4 deposition officer at the time said testimony was
5 taken, the following includes all parties of record
6 and the amount of time used by each party at the
7 deposition:

8 Ms. Monica Jacobs, Attorney for The City of
9 Austin, (0:05)

10 Mr. John J. Carlton, Attorney for Hornsby Bend
Utility Company, (0:03)

11 Mr. Mark H. Zeppa, Attorney for AquaSource
Utility, Inc., AquaSource Development Company,
12 Creedmore-Maha Water Supply Corporation and City of
Mustang Ridge, (0:16)

13 Mr. Geoffrey P. Kirshbaum, Attorney for The
Texas Commission on Environmental Quality, (0:0)

14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties in
16 the action in which this proceeding was taken, and
17 further that I am not financially or otherwise
18 interested in the outcome of this action.

19 Further certification requirements pursuant to
20 Rule 203 of TRCP will be complied with after they
21 have occurred.

Certified to by me this 5th day of November,
2002.

Errie A. Shnor

LORRIE A. SCHNOOR, RMR
Certified Shorthand Reporter
Certification Number 4642
Expiration Date: 12/31/03

FREDERICKS-CARROLL REPORTING & LITIGATION SERVICES
7719 Wood Hollow Drive, Suite 156
Austin, Texas 78731
Phone: (512) 477-9911
Fax: (512) 345-1417

JOB NO. 8928

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to
3 the deposition officer on _____;

4 If returned, the attached Changes and Signature
5 page(s) contain(s) any changes and the reasons
6 therefor;

7 If returned, the original deposition was
8 delivered to Ms. Monica Jacobs, Custodial Attorney;

9 That \$_____ is the deposition officer's
10 charges to the City of Austin for preparing the
11 original deposition transcript and any copies of
12 exhibits;

13 That the deposition was delivered in accordance
14 with Rule 203.3, and that a copy of this certificate
15 was served on all parties shown herein and filed
16 with the Clerk.

17 Certified to by me this _____ day of
18 _____, 2002.

19
20 _____
21 LORRIE A. SCHNOOR, RMR
22 Certified Shorthand Reporter
23 Certification Number 4642
24 Expiration Date: 12/31/03

25 FREDERICKS-CARROLL REPORTING & LITIGATION SERVICES
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