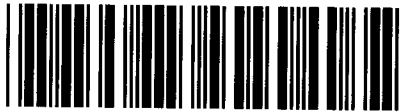


Control Number: 43585



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Addendum StartPage: 0

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

43585

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
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PUBLIC UTILITY COMMISSION  
FILING CLERK

SOAH DOCKET NO. 582-02-3056  
TCEQ DOCKET NOS. 2002-0189-UCR, 2000-0112-UCR,  
2002-0756-UCR, and 2002-1197-UCR

IN THE MATTER OF THE	§	
APPLICATIONS OF THE CITY OF	§	BEFORE THE TEXAS COMMISSION
AUSTIN TO OBTAIN A WATER	§	
CERTIFICATE OF CONVENIENCE	§	ON
AND NECESSITY (APPLICATION	§	
NO. 33562-C) AND A SEWER	§	ENVIRONMENTAL QUALITY
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY (APPLICATION NO. 33563-C)	§	
IN HAYS, TRAVIS, AND WILLIAMSON	§	
COUNTIES, TEXAS	§	
	§	
AND	§	
	§	
IN THE MATTER OF THE APPLICATIONS	§	
OF HORNSBY BEND UTILITY COMPANY,	§	
INC. TO AMEND CERTIFICATE	§	
OF CONVENIENCE AND	§	
NECESSITY NOS. 11978 AND 20650	§	
(APPLICATION NOS. 33738-C, 32800-C,	§	
33988-C & 33989-C) IN TRAVIS COUNTY,	§	
TEXAS	§	

ORDER

Applications by the City of Austin to obtain a new water and sewer Certificate of Convenience and Necessity (CCN) in Hays, Williamson, and Travis Counties, Texas, and by Hornsby Bend Utility Company, Inc. (Hornsby Bend) to amend CCN Nos. 11978 and 20650 in Travis County, Texas, were presented to the Executive Director of the Texas Commission on Environmental Quality (Commission) for approval pursuant to Section 5.122 of the Texas Water Code (Code) and Commission rules. The City of Austin's applications have been revised to request amendments to Water CCN No. 11322 and Sewer CCN No. 20636 in Hays, Williamson, and Travis

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Counties, Texas, instead of obtaining new water and sewer CCNs.

The City of Austin currently provides water and sewer utility service in Williamson and Travis Counties, Texas, and seeks to also provide water and sewer utility service in Hays County, Texas, and is a retail public utility as defined in Section 13.002(19) of the Code. Hornsby Bend provides water and sewer utility service in Travis County, Texas, and is a retail public utility as defined in Section 13.002(19) of the Code.

On August 13, 2001, the City of Austin filed two applications with the Commission, pursuant to Section 13.241, *et seq.* of the Code, to obtain water and sewer CCNs in Hays, Williamson, and Travis Counties, Texas. The applications were declared administratively complete on August 20, 2001, were accepted for filing on August 31, 2001, by the Commission and assigned Application Nos. 33562-C and 33563-C. The City of Austin provided mailed notice of its water CCN application to neighboring utilities and affected persons on September 25, and 26, 2001, and mailed notice of its sewer CCN application to neighboring utilities and affected persons on September 25, 2001.

Notices by the City of Austin for both the water and sewer CCN applications were published on the following dates in the following publications: September 24, and October 1, 2001, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas; September 25, and October 2, 2001, in the San Marcos Daily Record, a newspaper generally circulated in Hays County, Texas; and September 26, and October 3, 2001, in the Williamson County Sun, a newspaper generally circulated in Williamson County, Texas.

The notices of the City of Austin's applications to obtain water and sewer CCNs complied with the notice requirements of 30 Texas Administrative Code (TAC) Section 291.106 and were sufficient to place affected persons on notice of the applications. The Commission received requests for a contested case hearing on the City of Austin's applications from the following entities: Lower

Colorado River Authority, Creedmoor-Maha Water Supply Corporation, Capital Pacific Holdings, L.L.C., AquaSource Utility, Inc., AquaSource Development Company, City of Mustang Ridge, Manville Water Supply Corporation, City of Round Rock, Mr. Kent Taylor (Taylor Commercial), Mr. Ed Wolf, Dessau Utilities, Inc., Ms. H. C. Caruthers, Onion Creek Wastewater Corporation, Hornsby Bend Utility Company, Inc., and Mr. Jack Condon (Legends Way).

Hornsby Bend filed four applications with the Commission: (1) Application No. 32800-C to amend sewer CCN No. 20650, filed October 15, 1999, declared administratively complete on November 23, 1999, and accepted for filing on November 29, 1999; (2) Application No. 33738-C to amend water CCN No. 11978, filed December 31, 2001, declared administratively complete on January 16, 2002, and accepted for filing on January 30, 2002; (3) Application No. 33988-C to amend water CCN No. 11978, filed June 25, 2002, declared administratively complete on July 18, 2002, and accepted for filing on August 1, 2002; and (4) Application No. 33989-C to amend sewer CCN No. 20650, filed June 25, 2002, declared administratively complete on July 18, 2002, and accepted for filing on August 1, 2002.

Hornsby Bend mailed notice of Application No. 32800-C, seeking to amend sewer CCN No. 20650, to neighboring utilities and affected persons on December 3, 1999. Notice of Application No. 32800-C was published on December 7, and 4, 1999, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

Hornsby Bend mailed notice of Application No. 33738-C, seeking to amend water CCN No. 11978, to neighboring utilities and affected persons on February 11, 2002. Notice of Application No. 33738-C was published on February 18, and 25, 2002, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

Hornsby Bend mailed notice of Application Nos. 33988-C and 33989-C, seeking to amend water CCN No. 11978 and sewer CCN No. 20650, to neighboring utilities and affected persons on

August 15, 2002. Notice of Application Nos. 33988-C and 33989-C was published on August 16, and 23, 2002, in the Austin American-Statesman, a newspaper generally circulated in Travis County, Texas.

The notices of Hornsby Bend's applications to amend water CCN No. 11978 and sewer CCN No. 20650 complied with the notice requirements of 30 TAC Section 291.106 and were sufficient to place affected persons on notice of the applications. The Commission received requests from the City of Austin for a contested case hearing on all four Hornsby Bend applications.

On July 9, 2002, the Honorable Kerry Sullivan, an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH), held a preliminary hearing on the City of Austin's water and sewer CCN applications and Hornsby Bend's Application No. 32800-C to amend sewer CCN No. 20650. Judge Sullivan established jurisdiction and designated the following parties: the City of Austin (City), represented by Ken Ramirez and Monica Jacobs of Bracewell & Patterson, L.L.P.; the Executive Director (ED), represented by John Deering and Geoffrey Kirshbaum; the Public Interest Counsel (PIC), represented by Scott Humphrey; the "Aligned Parties," consisting of AquaSource Development, AquaSource Utility, City of Mustang Ridge, and Creedmoor-Maha Water Supply Corporation, represented by Mark Zeppa; Capital Pacific Holdings, L.L.C. (Capital) represented by Gary Bradley; Hornsby Bend Utility Company, Inc. (Hornsby Bend) represented by John Carlton of Armbrust & Brown, L.L.P.; and the Lower Colorado River Authority (LCRA) represented by Ronald Freeman and Madison Jechow.

On July 16, 2002, Judge Sullivan issued Order No. 1 granting a motion to consolidate the dockets for the City of Austin's Application Nos. 33562-C and 33563-C and Hornsby Bend's Application No. 32800-C (seeking to amend sewer CCN No. 20650) into one docket number, SOAH Docket No. 582-02-3056. On July 16, 2002, the ALJ issued Order No. 2 confirming the action taken during the July 9, 2002, preliminary hearing on those applications and establishing a procedural

schedule. The order established a discovery schedule and control plan, relevant substantive and procedural rules, requirements for pre-filed testimony and exhibits, hearing and pre-hearing dates and locations, the order of presentation for the hearing on the merits, and addressed procedure for the resolution of other pending motions. Discovery commenced in August 2002.

On September 3, 2002, the ALJ held a preliminary hearing on Hornsby Bend's Application No. 33738-C to amend water CCN No. 11978. The ALJ established jurisdiction and consolidated the application with the City of Austin and other Hornsby Bend applications already pending in SOAH Docket No. 582-02-3056.

On December 12, 2002, the ALJ held a preliminary hearing on Hornsby Bend's Application No. 33988-C to amend water CCN No. 11978 and Application No. 33989-C to amend sewer CCN No. 20650. The ALJ established jurisdiction and consolidated the applications with the City of Austin and other Hornsby Bend applications already pending in SOAH Docket No. 582-02-3056.

All parties were eventually dismissed as parties to the contested case hearing on the City of Austin and Hornsby Bend's CCN applications except for the City of Austin, Hornsby Bend, the ED, and the TCEQ PIC (who did not participate in the contested case hearing on these applications). Capital Pacific Holdings, L.L.C.'s request to withdraw party status was granted on October 1, 2002. AquaSource Utility, Inc. and AquaSource Development Company's motion to withdraw party status was granted on February 3, 2003. LCRA was formally dismissed as a party on June 13, 2003. Finally, Creedmoor-Maha Water Supply Corporation and the City of Mustang Ridge were dismissed as parties on July 14, 2003.

On July 14, 2003, the ALJ extended the deadline for filing prefiled testimony and exhibits to August 8, 2003. On July 25, 2003, pursuant to 30 TAC Section 80.101, the ALJ partially granted the City of Austin's motion to sever and remand the portions of City of Austin's water and sewer CCN applications seeking service area south of the Colorado River to the ED as a severed

proceeding involving an uncontested item. The action was taken based on Hornsby Bend's admission that it would not be negatively affected if TCEQ granted the City of Austin water and sewer CCNs for that area. The ALJ dismissed Hornsby Bend as a party to the severed proceeding. The ALJ denied the City of Austin's motion to sever and remand the portions of the City of Austin's water and sewer CCN applications seeking service area north of the Colorado River.

On August 1, 2003, August 22, 2003, and September 17, 2003, the ALJ granted joint motions by the parties to extend the time for filing prefiled testimony and an agreed motion to abate in order to accommodate settlement negotiations. On October 21, 2003, the City of Austin and Hornsby Bend filed a Joint Motion to Remand their applications, supported by the ED, stating that a comprehensive Settlement Agreement had been reached and that no facts or issues remained controverted. The Settlement Agreement is included as "Attachment A" to the Joint Motion to Remand. The motion requested remand to the ED of the remaining portions of City of Austin's CCN applications and Hornsby Bend's applications pursuant to 30 TAC Section 80.101. The ALJ granted the Joint Motion to Remand on November 7, 2003, dismissed the proceeding from the SOAH docket, and remanded the proceeding to the TCEQ ED pursuant to 30 TAC Section 80.101.

As part of the City of Austin and Hornsby Bend's Settlement Agreement, executed on October 20, 2003, maps depicting revised, but not expanded, proposed service areas were agreed upon. Subsequently, those maps were submitted to the ED amending the water and sewer CCN applications originally submitted to the Commission by the City of Austin and Hornsby Bend.

On October 8, 2004, a letter requesting a further amendment to City of Austin's applications was submitted to the Commission. In the letter, the City of Austin requested that its existing CCN numbers be used for the new CCN areas requested in its applications. Effectively, City of Austin's applications to obtain new water and sewer CCNs were revised to request amendments to existing City of Austin water CCN number 11322 and to existing sewer City of Austin CCN number 20636.

The City of Austin possesses the financial, managerial and technical capability to provide continuous and adequate water and sewer utility service to every customer in the area proposed to

be included in amended water CCN No. 11322 and amended sewer CCN No. 20636, and the certification of the City of Austin is necessary for the service, accommodation, convenience, or safety of the public. Hornsby Bend possesses the financial, managerial and technical capability to provide continuous and adequate water and sewer utility service to every customer in the area proposed to be included in amended water CCN No. 11978 and amended sewer CCN No. 20650, and the certification of Hornsby Bend is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The applications by the City of Austin to amend water and sewer Certificates of Convenience and Necessity Nos. 11322 and 20636 in Hays, Williamson, and Travis Counties, Texas, as reflected in the attached copies of the Commission's official water and sewer service area maps, are hereby approved.

The applications by Hornsby Bend Utility Company, Inc. to amend water and sewer Certificates of Convenience and Necessity Nos. 11978 and 20650 in Travis County, Texas, as reflected in the attached copies of the Commission's official water and sewer service area maps, are hereby approved.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties. The Commission shall issue amended water and sewer Certificates of Convenience and Necessity to the City of Austin and Hornsby Bend Utility Company, Inc.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **NOV 16 2004**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY



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For the Commission





# **Texas Commission on Environmental Quality**

**By These Presents Be It Known To All That**

**City of Austin**

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 11322**

to provide continuous and adequate water utility service to those service areas in Hays, Williamson, and Travis Counties as by final Order duly entered by this Commission, which Order resulting from Application No. 33562-C is on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Austin to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this NOV 16 2004

A handwritten signature in dark ink, appearing to be "D. B. White", written over a horizontal line.

For the Commission

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# **Texas Commission on Environmental Quality**

**By These Presents Be It Known To All That**

**City of Austin**

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 20636**

to provide continuous and adequate sewer utility service to those service areas in Hays, Williamson, and Travis Counties as by final Order duly entered by this Commission, which Order resulting from Application No. 33563-C is on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of City of Austin to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this NOV 16 2004

A handwritten signature in dark ink, appearing to be "D. B. White", written over a horizontal line.

For the Commission