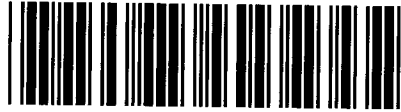


Control Number: 43732



Item Number: 11

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

BN

## LAW OFFICES OF MARK H. ZEPPA, P.C.

4833 Spicewood Springs Road, Suite 202  
Austin, Texas 78759-8436  
(512) 346-4011 Fax (512) 346-6847  
[markzeppa@austin.rr.com](mailto:markzeppa@austin.rr.com)

November 6, 2009

Honorable William Newchurch  
State Office of Administrative Hearings  
P O Box 13025  
Austin, Texas 78711-3025

7/19/10 - 9 PM 2:13

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850

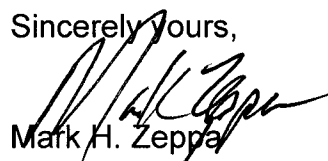
Re: SOAH DOCKET NO. 582-10-0350; TCEQ DOCKET NO. 2009-1381-UCR;  
Application of Tall Timbers Utility Company, Inc. for a Sewer Rate/Tariff Change  
in Smith County

Dear Judge Newchurch:

Enclosed please find a copy of Tall Timbers Utility Company, Inc.'s replies to the motion to intervene by the City of Tyler. This pleading is being filed pursuant to your directive at the first prehearing conference.

Also enclosed is a copy of Tall Timbers Utility Company, Inc.'s response to Tyler's hearing request which was filed with the TCEQ before the docket was transferred to SOAH. You requested a copy of this pleading to complete your master file.

Sincerely yours,



Mark H. Zeppa

Encl. (2)

cc: As indicated on the service list

**Tall Timbers Utility Company**  
**Application for Sewer Rate/Tariff Change**  
**TCEQ DOCKET NO. 2009-1381-UCR**  
**SOAH DOCKET NO. 582-10-0350**  
**Mailing List**

<b>Representative</b>	<b>Party</b>
ALJ William Newchurch	State Office of Administrative Hearings 300 West 15 <sup>th</sup> Street, Suite 502 Austin TX 78701 Phone (512) 475-4993 Fax (512) 475-4994
James Aldredge	Executive Director Texas Commission on Environmental Quality Office of Legal Service – MC 173 PO Box 13087 Austin TX 78711-3087 Phone: (512) 239-0750 Fax: (512) 239-0606 jaldredge@tceq.state.tx.us
Vic McWerter	Office of Public Interest Counsel – MC 105 Texas Commission on Environmental Quality PO Box 13087 Austin TX 78711-3087 Phone: (512) 239-6363 Fax: (512) 239-6377
Joe Freeland	City of Tyler Mathews & Freeland LLP PO Box 1568 Austin TX 78768-1568 Phone (512) 404-7800 Fax (512) 703-2785 jfreeland@mandf.com
Brian Dickey	Texas Commission on Environmental Quality Utilities and Districts – MC 153 PO Box 13087 Austin TX 78711-3087
La Donna Castañuela	Office of the Chief Clerk MC 103 Texas Commission on Environmental Quality PO Box 13087 Austin TX 78711-3087

87-10-0350  
AD-10-0350

10-10-13

SOAH DOCKET NO. 582-10-0350  
TCEQ DOCKET NO. 2009-1381-UCR

APPLICATION OF TALL TIMBERS	§	BEFORE THE STATE
UTILITY COMPANY, INC. FOR A	§	OFFICE OF
SEWER RATE/TARIFF CHANGE IN	§	ADMINISTRATIVE
SMITH COUNTY	§	HEARINGS

TALL TIMBERS UTILITY COMPANY, INC.'S REPLY TO MOTION TO  
INTERVENE OF THE CITY OF TYLER

Tall Timbers Utility Company, Inc. (TTUC) submits that the City of Tyler (Tyler) does not have a unique justiciable interest in this outside city rate case and thus lacks standing to be made a party. There is no inside city rate case before either Tyler or the Texas Commission on Environmental Quality (TCEQ).

TTUC is a certificated sewer utility providing service inside and outside the Tyler corporate limits pursuant to a TCEQ-issued certificate of convenience and necessity (CCN). Service is provided through a single integrated collection and treatment system.

1. INSIDE AND OUTSIDE REGULATORY JURISDICTION

Tyler is the "regulatory authority" having exclusive original jurisdiction over TTUC rates and services inside the City pursuant to Texas Water Code §13.042(a).<sup>1</sup>

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<sup>1</sup> Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable

Tyler has historically elected to regulate TTUC's in-city rates and has never surrendered that jurisdiction to the TCEQ. The TCEQ is the "regulatory authority" having exclusive original jurisdiction over TTUC rates and services outside the City pursuant to Texas Water Code §13.042(e).<sup>2</sup>

Tyler argues that it has standing in this outside city rate case because TTUC has an integrated sewer system. There is nothing in Water Code §13.042 which supports this proposition. The statute clearly delineates Tyler's and the TCEQ's jurisdiction as the Tyler city limits. In fact, the Legislature considered this divided service area situation when it enacted Water Code §13.082(b).<sup>3</sup> The Legislature also addressed this issue in Water Code §13.082(c) when setting rates for inside and outside city customers.<sup>4</sup>

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and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

<sup>2</sup> (e) The commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

<sup>3</sup> (b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission or other standards and rules not inconsistent with them. The commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

<sup>4</sup> (c) Notwithstanding any election, the commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

Tyler claims that, because it is a regulatory authority over part of an integrated sewer system, it has a unique justiciable interest in this rate case. Surprisingly, Tyler cites 30 TAC §55.29 in support of this argument. Tyler overlooks the requirement of Rule 55.29(c)(6) that a governmental entity have regulatory jurisdiction over the issues relevant to the application. Since Tyler has no jurisdiction over rates outside the city, it does not have standing to be a party under Rule 55.39.

## 2. POSSIBLE PURCHASER

Tyler has filed a condemnation action against TTUC and seeks to acquire the sewer system. At Tyler's request, this suit has been abated in Smith County. Tyler claims that the fact that it might one day own the TTUC sewer utility facilities gives it standing in the current outside city rate case. No legal nexus is given to support this argument. Assuming, *in arguendo*, Tyler is successful in acquiring the TTUC system, the Tyler City Council will set the rates. No TCEQ rate order is binding on a municipality in future ratemaking for a municipally-owned sewer utility. Raw speculation of future events does not create standing in a pending rate case.

## 3. SHAM SERVICE APPLICATION

To boot strap its claims of having a justiciable interest in this rate case, Tyler's Director of Public Works, Greg Morgan, PE, tendered a sewer service application

to TTUC. The application was in Tyler's name, not Mr. Morgan's name. It claimed Tyler was the tenant of an unidentified individual. No lease or other evidence of leasehold was presented. The house was occupied by someone other than Mr. Morgan at the time he made application for service.

No evidentiary demonstration has been made that the property for which service has been requested is outside the Tyler corporate limits and subject to this rate change. The fact that Tyler claims the service address is "in the environs area" demonstrates that Tyler's claims regarding an integrated sewer system bestowing a justiciable interest are invalid.

Despite Tyler's claims, the mere act of submitting a written service application does not create a customer-utility relationship under the TCEQ's rules. The applicant must be a "qualified service applicant."<sup>5</sup> TTUC determined that Mr. Morgan's application was not submitted by a "qualified service applicant" and it was therefore rejected.<sup>6</sup> Tyler is not a customer of TTUC. If Tyler disagrees with TTUC's action, it may file a refusal to serve appeal to either the Tyler City Council or TCEQ [depending on where this house is located] and seek to have the matter adjudicated in another proceeding.

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<sup>5</sup> 30 TAC §291.85(a)

<sup>6</sup> Attachment "A" hereto – November 5, 2009 letter from Mark H. Zeppa to Greg Morgan, PE

#### 4. SUMMARY

Tyler is not a regulatory authority over outside city rates so it has no regulatory interest in this case. The possible purchase of the TTUC sewer system at some future date does not create a legal or regulatory interest in Tyler today. Tyler's sham application for service has been rejected and the city is not a customer of TTUC. Tyler has no standing in this outside city rate case so its intervention request must be denied.

Respectfully submitted,

By: 

Mark H. Zeppa

State Bar No. 22260100

Law Offices of Mark H. Zeppa, PC

4833 Spicewood Springs Road #202

Austin, Texas 78759-8435

(512) 346-4011, Fax (512) 346-6847

ATTORNEY FOR TALL TIMBERS  
UTILITY COMPANY, INC.



## **LAW OFFICES OF MARK H. ZEPPA, P.C.**

**4833 Spicewood Springs Road, Suite 202  
Austin, Texas 78759-8436  
(512) 346-4011 Fax (512) 346-6847  
[markzeppa@austin.rr.com](mailto:markzeppa@austin.rr.com)**

November 5, 2009

*via email and certified USPS mail*

Greg Morgan, PE  
Tyler Water Utilities  
P O Box 2039  
Tyler, TX 75710-2039

Re: Sewer service from Tall Timbers Utility Company to 12040 CR 167, Tyler,  
Texas 75703 aka Acadia Place Unit II, Blk 3, Lot 3


Dear Mr. Morgan:

I am writing to inform you that the November 2, 2009 application you submitted to Tall Timbers Utility Company (TTUC) for sewer utility service to 12040 CR 167, Tyler, Texas 75703 aka Acadia Place Unit II, Blk 3, Lot 3 is not being accepted. Tyler is not a bona fide "qualified service applicant" under 30 TAC §291.85(a). It is quite apparent from the City of Tyler's (Tyler) motion to intervene in the TTUC rate case that your application was not submitted in an honest attempt to obtain service. While you claimed in your application that Tyler is to be a tenant occupying the property, you candidly informed Joe Wilkins that you had not intention of occupying the premises. Nevertheless, when Mr. Wilkins inspected the property he found that it was occupied with displayed Halloween decorations. Halloween was two days before you made your application.

The TTUC service application forms a personal contract between the utility and the qualified service applicant. That contract and TTUC's approved tariff impose certain obligations on the qualified service applicant. Tyler, as an intangible body politic, with no possession or control over these premises cannot, and apparently never intended to, fulfill those obligations.

TTUC will be refunding the money you posted at the time of application.

Sincerely yours,

  
Mark H. Zeppa

Attachment "A"

Greg Morgan, PE  
November 5, 2009  
Page 2

Encl. (1) Tyler sewer service application

cc: Joe Freeland  
Sean Lonergan  
Joe Wilkins  
Bob Dodds

TALL TIMBERS UTILITY COMPANY, INC.  
P.O. Box 2584  
Litchfield Park, AZ 85340  
(800) 525-9547

CONTRACT / APPLICATION FOR RESIDENTIAL SEWER UTILITY SERVICE

1. Name of applicant: CITY OF TYLER  
Spouse's name: \_\_\_\_\_  
Work phone number: 903.531.1234  
Home phone number: 903.521.9880  
Applicant is: Landowner \_\_\_\_\_ Tenant X
2. Address or location of requested service: 12040 CR 1167  
Tyler, TX 75703  
Subdivision: Acadia Place Unit II  
Lot: 3 Block: 3
3. Name of person responsible for utility service bills: GREG MORGAN  
Relationship: DIRECTOR, UTILITIES & PUBLIC WORKS
4. Billing address if different from #2: P.O. Box 2039  
TYLER, TEXAS 75710
5. Type of service:  
Permanent X  
Temporary \_\_\_\_\_ Approximate termination date, if temporary service \_\_\_\_\_
6. Date of application: 11/2/09  
Date service to start: 11/2/09
7. Fees required as a condition of service: \$1,100.00 Tap fee \_\_\_\_\_  
\$ 35.00 Inspection fee \_\_\_\_\_  
\$ 25.00 Transfer fee X  
\$ 50.00 Deposit fee X  
\$ \_\_\_\_\_ Other \_\_\_\_\_

Total fees due \$ 75.00 *pd cash*

**SERVICE INFORMATION:** A schedule of utility rates and service fees is available from the utility at the time of application and thereafter upon request. Sewer bills will be mailed at the end of each month. Payment must be received in the utility's business office, at P.O. Box 2584, Litchfield Park, AZ 85340, by 5:00 p.m. on the 16<sup>th</sup> day after issuance. Service may be terminated (after mailed or hand delivered notice) on or after the 11<sup>th</sup> day following the due date. Service is provided under the terms and conditions of the utility's tariff, Chapter 13 of the Texas Water Code, and the Chapter 291 rules of the Texas Commission on Environmental Quality. These regulations are available for inspection during normal business hours at the utility's field office located at 14933 Highway 155 South, in Tyler, Texas.

**CUSTOMER AGREEMENT:**

By signing this application for public utility service, I agree to comply with the utility's tariff and all rules and regulations of the Texas Commission on Environmental Quality and other applicable regulatory agencies. I have had an opportunity to review the utility's tariff and the TCEQ's rules. I guarantee prompt payment of all utility

bills for the service address printed above. I agree to remain responsible for utility bills for this service address from the date service is started until the date service is terminated.

By executing this application, I grant the utility an easement to install, maintain, and inspect utility facilities on the real property described above. I acknowledge that utility company personnel shall have the right to enter my property for the purposes of inspecting, maintaining, and repairing utility-owned facilities and inspecting any customer-owned plumbing or utility-related facilities which may impact the utility's facilities, its personnel, or its customers.

I agree to put no unusual, non-domestic service demands on the utility system without notice to and permission from the utility. I am requesting sewer utility service to a single-family residential building. I acknowledge that I may not modify my service to commercial or other type of service without notice to and permission from the utility. A change in the nature of service shall obligate me to reapply for service of the appropriate type being requested.

I acknowledge that I may not resell or give sewer service to another nor extend sewer service from my premises or service line to another person or property. I acknowledge that I may not divert water or waste from or connect my service to any downspout, swimming pool, outside drains, kennels, or any other facility which is not part of my premises' customary interior plumbing fixtures and piping. I acknowledge that I am responsible for installing and maintaining the service line from my premises and the utility's collection system in good operating condition.

**LANDLORD GUARANTEE:** Applications by tenants must be countersigned by the owner of the property. By signing the application, the landlord grants all required easements. The landlord guarantees payment for all utility service charges and fees incurred by or compensable damages caused by their tenant if the landlord designated above as the person responsible for the bill.

**LIMITATION ON SERVICE LIABILITY:** The utility will not accept liability for any injury or damage to individuals or their property occurring on the customer's side of the interconnection between the customer's service line and the utility's collection system. The utility is not responsible for blockages in the customer's service line or liable for damages arising from such blockage. Nor will the utility accept any responsibility for pumps or equipment belonging to the homeowner. The utility will only accept liability for injury or damage to individuals or their property directly caused by defective utility facilities or by the construction of or repair to the utility's facilities by authorized utility personnel.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Guarantor or Landlord

\_\_\_\_\_  
Utility Representative

11.7.09  
\_\_\_\_\_  
Date Application Accepted

New Account No. \_\_\_\_\_

All new accounts must be set up at Tall Timbers Utility Company's field office, located at 14933 Hwy. 155 South, in Tyler, Texas. If you need assistance, you may contact Wilkins Contracting, Inc., at this location, at (903) 581-5930.

7/2/08 11:2:13

Application No. 36385-R

APPLICATION OF TALL TIMBERS	§	BEFORE THE TEXAS
UTILITY COMPANY, INC. FOR A	§	COMMISSION ON
SEWER RATE INCREASE IN SMITH	§	ENVIRONMENTAL
COUNTY	§	QUALITY

REPLY OF TALL TIMBERS UTILITY COMPANY, INC. TO CITY OF TYLER'S  
REQUEST FOR A HEARING

Tall Timbers Utility Company, Inc. (TTUC) has filed a rate/tariff change application with the TCEQ affecting only those TTUC customers subject to the TCEQ's original ratemaking jurisdiction.

The City of Tyler has filed a motion for a hearing on said application and the suspension of the proposed rates. Tyler does not purport to be a customer of TTUC or otherwise directly affected by the rate increase. Tyler only claims that it is an affected municipality even though the application does not fall within its scope of original ratemaking jurisdiction.

Tyler filed a similar motion in TTUC's last environ rate change application and it was appropriately ignored. No set of facts or legal authority have changed since then. TTUC submits that the motion was filed for harassment purposes only since Tyler has given notice of its intent to condemn TTUC's assets.

Tyler has no standing in this cause to seek any relief. Tyler motion must be dismissed.

Respectfully submitted,

By: 

Mark H. Zeppa

State Bar No. 22260100

Law Offices of Mark H. Zeppa, PC

4833 Spicewood Springs Road #202

Austin, Texas 78759-8435

(512) 346-4011, Fax (512) 346-6847

ATTORNEY FOR TALL TIMBERS  
UTILITY COMPANY, INC.

## CERTIFICATE OF SERVICE

I, Mark H. Zeppa, certify that a true and correct copy of the foregoing pleading was served on the following by fax and 1<sup>st</sup> class USPS mail on May 6, 2009:

1. Todd Galiga, Sr. Staff Attorney  
TCEQ Environmental Law Division  
P O Box 13087, MC 173  
Austin, Texas 78711-3087  
Fax (512) 239-0606
2. Blas Coy, Jr., Public Interest Counsel  
TCEQ Office of Public Interest Counsel  
P O Box 13087, MC 103  
Austin, Texas 78711-3087  
Fax (512) 239-6377
3. Doug Holcomb, PE, Manager  
TCEQ Utilities & Districts Section  
P O Box 13087, MC 153  
Austin, Texas 78711-3087  
Fax (512) 239-6972
4. TCEQ Docket Clerk  
Office of Chief Clerk  
P O Box 13087, MC 105  
Austin, Texas 78711-3087  
Fax (512) 239-3311
5. Joe Freeland  
Matthews and Freeland, LLP  
327 Congress, Suite 300  
Austin, Texas 78701  
Fax (512) 703-2785

  
Mark H. Zeppa