



Control Number: 43805



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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

S.O.A.H. DOCKET NO. 582-95-1629 and 582-96-1133

Application of West Houston Airport Corporation for Water and Sewer Certificate of Convenience and Necessity and Rates/Tariffs  
T.N.R.C.C. No. 96-0949-UCR  
Application No. 30847-C and 30848-C

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Before the State Office  
of  
Administrative Hearings

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2014 DEC 16 PM 3:33  
PUBLIC UTILITY COMMISSION  
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PREFILED TESTIMONY OF JAMES L. DUNN, JR.

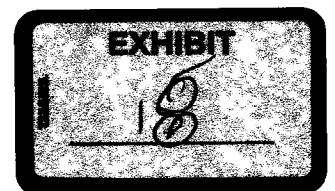
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Q. What is your name and background?

A. My name is James L. Dunn, Jr.. I am the attorney of record for James L. Dunn & Assoc., Inc., who is an interested party/intervenor in this matter. My curriculum vitae is attached as Exhibit "A" to this testimony. In brief, I am an attorney and Certified Public Accountant in the State of Texas. My legal practice is a general practice but is focused primarily in the areas of litigation, estate planning and qualified retirement plan qualification and administration [401(k)'s, E.S.O.P.'s etc.]. My C.P.A. practice focuses primarily in the areas of I.R.S. tax controversy, financial statement presentation (compilations and reviews) and tax return preparation.

Q. Is Mr. Zeppa correct in his assertion that the intervenors have "abused" the process ?

A. No. I have endeavored to be courteous, professional and cooperative. I have endeavored, to keep costs down and minimize the efforts of the parties. As an example, we agreed to take the depositions of West Houston Airport Corporation's (the "Airport") experts at their offices because that was the most efficient. I withdrew my client's Motion for Interim Rates as soon as possible so that no one would waste time on the Motion, but was amazed at the time spent by the T.N.R.C.C. and Mr. Zeppa after knowing that the Motion was moot.



1 Q. Was your client's participation in the process required ?

2 A. Yes. Mr. Lesikar threatened, on several occasions to cut off my client's water because we  
3 cancelled our License Agreement. Even after I indicated to his attorneys that doing so would be a  
4 violation of the Water Code and T.N.R.C.C. rules, they continued to assert that they had the right  
5 to cut off the water. Even Mr. Zeppa maintained as his initial position, that the T.N.R.C.C. had  
6 no authority to set, change or establish rates in this case, since the Airport had been involved in a  
7 Chapter 11 bankruptcy. My client regrettably is at the mercy of the Airport. Unlike many other  
8 business decisions, it cannot choose not to drink water or flush the toilet. My client felt it had no  
9 choice but to involve the T.N.R.C.C. in the process and to the extent necessary, the assistance of  
10 an administrative law judge.

11 My client does not gain any advantage in any other lawsuit by participating in this costly  
12 and frustrating process. The only "advantage" sought by my client is to have the laws enforced  
13 and the intimidation stopped. Contrary to Mr. Zeppa's mistaken belief, Mr. Lesikar, Mr. Dunn,  
14 Sr. and I have always gotten along and do not "dislike the management".

15 Q. Are you a tenant in the hangar ?

16 A. Yes. I have maintained an office in the hangar since 1987 and have been involved in my  
17 family's business at the airport since its construction.

18 Q. Have you ever seen anyone put anything in the septic system which is inappropriate ?

19 A. No. I drink from the water fountain, prepare lunch and use the toilet facilities. The only  
20 chemical which is ever put into the septic system is hand and dish washing soap and toilet bowl  
21 cleaner.

22 Q. Do you believe that the amount charged by Mr. Zeppa is reasonable and necessary ?

1 A. No. I keep time records based upon the actual time spent. I do not estimate or round to  
2 the nearest hour like many attorneys. Other than the preparation of the initial rate application  
3 (which was done mostly by Mr. Degeyter and his staff), I have performed the same or similar  
4 actions as Mr. Zeppa. I will present an itemized bill of my services and a comparison of my  
5 charges to that of Mr. Zeppa at the hearing.

6 Q. Should the Airport be able to collect its attorney's fees from the customers ?

7 A. No. Because my client's participation was caused by the unlawful conduct of the Airport,  
8 I believe that the attorney's fees incurred by the Airport should be borne by the Airport and not its  
9 customers. The water and sewer rates should not include any of Mr. Zeppa's attorney's fees or  
10 costs since they are not "in the public interest", and are unreasonable given the facts and  
11 circumstances of this case. Mr. Lesikar chose to violate the Water Code by failing to obtain a  
12 CCN and Rate Approval over fifteen (15) years ago. The Airport chose to ignore the Water  
13 Code and charged 18% interest, charged some and not others, failed to read all meters, and  
14 unlawfully threatened to discontinue service. Since it was the utility's unlawful acts, and its  
15 refusal to voluntarily follow the law, which required that its customers participate in this process  
16 to this extent, then the utility's attorney's fees should be excluded from the "cost of service" as  
17 permitted by Rule 291.31(b)(2)(I).

18 Q. If the attorney's fees are included how should they be included in the rate ?

19 A. Contrary to Mr. Zeppa's assertion, all of the customers have benefited by the participation  
20 of the intervenors in the process. The rates are likely to be lower than if we had all just gone  
21 along and not protested the rate application. Furthermore, there will likely be changes to the rate  
22 base and the cost of service, as well as the allocation of the cost between fixed and variable as a

1 result of the intervenors efforts. For example, the Airport's own expert has changed the allocation  
2 of expenses to weight them more heavily toward the variable portion of the rate. This was done  
3 presumably as a result of the persistent questioning of the experts in this case of the fairness of  
4 doing otherwise. As a result, a low volume customer, like Mr. Jackson, is going to receive a  
5 fairer bill than if the intervenors had not participated in the process. Therefore, since all of the  
6 customers of the Airport have benefited, then the costs of participation in the process should be  
7 borne by all who benefit.

8 Furthermore, since this application was complicated by acts of the Airport, and since this  
9 application requests such a large increase, to mitigate the effect the rate case and legal expenses  
10 included should be amortized over a five (5) year period.

11 Q. Mr. Zeppa asserts that the intervenors have required actions which normally would have  
12 not been required, since most cases like this are "settled by negotiation". Has the utility ever  
13 offered to settle this case ?

14 A. No. The only settlement offers made concerned interim rates at the preliminary hearing.  
15 Beyond that, the Airport and Mr. Zeppa have not tried to settle this case by negotiation. Perhaps  
16 the biases expressed in his testimony from at page 7, line 25 through page 9, line 7, explain why  
17 he did not even try. The expenses incurred and the steps taken were necessary to protect the right  
18 of the customers. Mr. Zeppa has not attempted to settle this matter and obviously has some  
19 biases and prejudices which are clouding his judgment. He has asserted that the intervenors are  
20 "attacking" the Airport and Mr. Lesikar. He has asserted that we are all acting malicious and are  
21 attempting to gain some advantage in another lawsuit without ever having the benefit of talking to  
22 my client or suggesting a settlement. It appears that Mr. Zeppa is trying to justify his request that

1 the customers who assert their rights be punished for doing so, or perhaps justifying his fee. His  
2 comments and opinion are not only false and malicious but will, contrary to his assertion, have a  
3 chilling effect on any other customer's attempts to assert their rights.

4 Q. Should the tariff require the customers to install the test well ?

5 A. No. Mr. Mahon testified that the problems experienced were resolved.

6 Q. Does this conclude your prefiled direct testimony ?

7 A. Yes. I have tried to keep it brief and concise. Therefore, I reserve the right to correct,  
8 add, modify, and supplement my testimony at or before the hearing.

# **James L. Dunn, Jr.**

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## **WORK EXPERIENCE:**

### **J. L. Dunn & Associates, P.C.**

#### **Attorneys and Counselors**

Shareholder and principal attorney of a general practice law firm who's main focus is in the areas of estate planning, retirement plan qualification and compliance; business & consumer litigation; and business and professional practice sales & valuations.

Estate Planning & Probate: Obtained and consulted with clients concerning their estate planning needs. Drafted and implemented tax planned wills with trusts to minimize estate tax and provide non-tax benefits. Provisions included utilization of the marital deduction and by-pass trust to reduce and eliminate estate tax. Drafted and implemented living trusts with estate tax planning as well as planning for the contingencies of incapacity, second marriages and step children. Drafted insurance trust with Crummy powers, as well as qualified principal residence trusts, charitable lead and annuity trusts. Drafted G.S.T. trusts with provisions for disclaimers by surviving spouses. Drafted limited partnership agreements (family limited partnerships) for large estates and coordinated assets contribution and the transfer of limited partnership interests to heirs to minimize estate tax and utilized G.S.T. exemption. Prepared estate tax returns giving advise to clients on the proper selection and allocation of assets among tax planned trusts. Probated wills and advised surviving spouse on general probate matters. Represented heirs defending threatened fiduciary litigation. Appointed as attorney ad litem for absent heirs. Gave advice to clients concerning Medicare spend down and qualification issues and drafted trusts and partnership agreements to avoid inclusion of assets in available Medicare resources.

Trial Experience: Prosecuted and defended business and commercial litigation lawsuits with claims of tortious interference, deceptive trade (D.T.P.A.), breach of contract, fraud in real estate, unfair trade practices. Obtained pre-trial relief by injunction and sought declaratory judgments. Managed all aspects of a 30 case trial docket including the preparation of petitions, propounding and responding to discovery, responded to motions to compel and motions for summary judgment, handling oral and written depositions, and preparing witnesses for testimony at depositions and at trial. Obtained monetary awards from juries as attorney for the

plaintiff as well as take nothing judgments as attorney for the defendant. Prosecuted trials as short as a day and as long as two weeks. Prepared and argued motions in limine, jury charges and motion for entry of judgment. Enforced judgments by writs of execution, turnover orders and garnishments. Prosecuted appeals to the Texas Court of Appeals (1st & 14th). Prosecuted and defended lawsuits Justice, County and District Courts, as well as Federal District Court and Bankruptcy Courts.

Retirement Plan Qualification and Annual Administration (E.R.I.S.A.): Drafted, submitted, and obtained approval (I.R.S. Determination Letter) of defined contribution retirement plans, including profit sharing plans (regular and age weighted), Employee Stock Ownership Plans, and 401(k) plans. Drafted and obtained approval of amendments required by law changes by amendment and restatement of the entire document. Performed annual administration and maintenance of defined contribution retirement plans with reporting to client and IRS, including discrimination testing, plan allocations, trust fund accounting, I.R.S. returns and reporting to participants. Performed Company valuations for E.S.O.P. stock purchases with financial statement analysis and management reporting. Consultation and advice to clients regarding welfare benefit plans, and other non-qualified plan alternatives for owner/employees. Client consultation concerning prudency standards and prohibited transaction law relating to parties in interest, participant loans, and employer stock purchases.

Business and Professional Practice Sales: Represented small business owners and professionals (medical doctors, dentists and optometrists) in valuation of their businesses and practices for purposes of their sale to potential buyers. Represented dental professionals as an expert witness concerning valuation issues in bankruptcy and divorce proceedings. Negotiated terms of the sale, as well as prepared the transactional documents necessary for conveyance, including Contract for Sale of Assets, Notes, Bills of Sale, Security Agreements, Covenants Not to Compete, and Guaranty Agreements. Consulted with clients concerning the proper structure of the transaction from a tax and non-tax prospective.

**Dunn & Company, P.C., Certified Public Accountants  
(formerly Cunningham & Dunn, Certified Public Accountants)**

Dunn & Company is a C.P.A. firm who's primary focus is in tax return preparation, I.R.S. tax controversy, and estate tax return preparation, with a small base of clients needing compiled and reviewed financial statements.

**Dunn Advisory Service, Inc.**

Managed stock and bond portfolios by performing and supervising stock and mutual fund position trades for client's portfolios. Performed and supervised accounting functions related to client portfolios. Processed quarterly reporting to clients including dividend, interest, realized, and unrealized equity positions. Performed and supervised all internal accounting



functions of the firm. Officer in charge of all compliance with, and reporting to, the Securities and Exchange Commission and Texas State Securities Board.

## **ORGANIZATIONS & MEMBERSHIPS:**

- Texas Bar Association and local Houston Bar Association
- Texas Society of Certified Public Accountants and local Houston Chapter; member of the Litigation Support Committee.
- Board Member of the Texas Medical Disclosure Panel, Texas Department of Health.
- American Society of Pension Actuaries - Associate Professional Member
- American Society of Appraisers - Candidate Member
- West Houston Rotary Club  
(President 1991-92)

## **PRESENTATIONS AND PUBLICATIONS:**

*Associate Agreements - Pitfalls & Pearls*, Texas Dental Association Annual Session, May, 1996.

*Malpractice and Informed Consent*, Greater Houston Dental Meeting, April, 1995.

*To Sue or Not To Sue . . . Collection Efforts That Result in Malpractice Lawsuits*, I D Consultants seminar, 1994.

*Malpractice, Informed Consent and The Texas Deceptive Trade Practices Consumer Protection Act.*, Greater Houston Dental Meeting, 1994.

*Independent Contract vs. Employee and Protecting Your Patient Base*, Surviving the 90's by Trahan Horizons Consulting, 1993.

*The Texas Deceptive Trade Practices Consumer Protection Act - Friend or Foe*, Featured Speaker at 33 Rotary Clubs in and around Houston, Texas, 1992-93.

*Estate Planning for the Small Business Owner*, Cy-Fair Rotary Club and Wharton Rotary Club, 1992.

"Anatomy of An Associate Agreement", *DDR Dental Trust Newsletter*, Third Quarter, 1993, James L. Dunn, Jr."

"Should I Incorporate?", *DDR Dental Trust Newsletter*, Second Quarter, 1994, James, L. Dunn, Jr.

Editor of the West Houston Rotary Club newsletter, *The Pipeline*, 1992-1994.

**EDUCATION:**

**Southern Methodist University School of Law**  
Juris Doctor, May 1987

**Texas A & M University**  
Bachelor of Business Administration - Accounting, May 1984

**LICENSES & ADMISSIONS:**

- ★ Texas State Board of Certified Public Accountants
- ★ State Bar of Texas
- ★ Executive Officer License - Life, Health and Accident Insurance, November, 1980
- ★ Principle's Securities License, S.E.C. and State Securities Board, April, 1980
- ★ Private Pilot Certificate - Single Engine (Land), June, 1979
- ★ Admitted to Practice before the United States Tax Court; United States District Court - Southern District of Texas; United States Court of Appeals - 5th Circuit; Texas State Justice, County and District Courts and Court of Appeals.