



Control Number: 43891



Item Number: 8

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

3723

SOAH DOCKET NO. 582-03-3275
TCEQ DOCKET NO. 2003-0664-UCR

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2014 DEC -5 PM 1:22
PUBLIC UTILITY COMMISSION
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IN RE:
THE 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
HEARING

**BSR WATER COMPANY'S REPLY IN OPPOSITION TO BEXAR
METROPOLITAN WATER DISTRICT'S MOTION TO SET ASIDE ORDER NO.
7, TO LIFT ABATEMENT, AND TO ENTER SCHEDULING ORDER SETTING
HEARING ON THE MERITS**

Now comes BSR Water Company ("BSR"), and files this its opposition in reply to the above motions filed by Bexar Metropolitan Water District ("Bexar Met") on or about May 11, 2005, and in support of said reply respectfully shows as follows:

I. BSR Relief Requested

Bexar Met's motion is totally in bad faith, frivolous, and without good cause. The motion is a flagrant effort to deny BSR its pre-trial discovery in a pending State Court action, and to also circumvent such State Court jurisdiction by making TCEQ an unwitting party to support Bexar Met's fraudulent conduct.

The Honorable ALJ has appropriately entered the correct Order No. 7 extending abatement in this cause until September 1, 2005. Bexar Met improperly seeks to shorten all such time limits in its effort to obtain a CCN before the District Court in Bexar County can try the pending State Court action.

Accordingly, BSR respectfully moves the Honorable ALJ to deny Bexar Met's motion.

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**II. No New Material Development Has Been
Demonstrated by Bexar Met to Affect the Current Status**

On January 31, 2005, BSR's counsel appropriately requested abatement of the contested case hearing on Bexar Met's CCN application due to the currently pending State Court action. (*Exhibit "1"*)

On February 16, 2005, the Honorable ALJ, Cassandra J. Church, appropriately consulted with the Executive Director of TCEQ and the Office of Public Interest Counsel of TCEQ, neither of whom opposed BSR's request. (*Exhibit "2"*)

The ALJ correctly found that the State Court action had issues "related to contested case issues".

These reasons constituted good cause to grant the abatement and these reasons still constitute good cause to keep Order No. 7 in place.

III. Brief Background

1. On February 15, 2000, San Antonio Water System ("SAWS") entered into a written contract with BSR which, in part, expressly provided that if BSR would withdraw its pending protest to SAWS' pending application for a CCN to 12,000± acres in Northern Bexar County, and write a letter in support of SAWS' CCN application, that in return SAWS agreed SAWS would pursue its pending application and would "support the transfer to BSR" of approximately 880± acres of SAWS' new CCN area, such 880± acres defined as the Expansion Area. SAWS further agreed it "shall take all necessary and reasonable actions and make any necessary and reasonable filings with any State

agency in order to effectuate said expansion or transfer upon written request of BSR.”
(See February 15, 2000 agreement attached as *Exhibit “3”* hereto, Section 4.02 thereof¹.)

2. In flagrant violation of the February 15, 2000 agreement with BSR, and while said agreement was still in effect, on September 22, 2000, seven months later, SAWS made a directly contradictory agreement with Bexar Met and “ceded” to Bexar Met all land in SAWS’ pending application West of U.S. Highway 281 in Bexar County, Texas, consisting of approximately 5,543 acres, which 5,543 acres contained the same 880± acres that SAWS had agreed to pursue on SAWS’ CCN application and support a transfer to BSR. As a result of SAWS fraudulent acts, SAWS never pursued that portion of its then pending 12,000± acres application and as a result of the illicit Bexar Met agreement made it impossible for BSR to enjoy its contractual benefits, even though BSR had previously and faithfully withdrawn its protest to SAWS’ application and even wrote a letter in support to TCEQ. (Copy of the September 22, 2000 SAWS/Bexar Met agreement attached hereto as *Exhibit “4”*. See ¶ 5.)

3. On February 13, 2004, BSR sued SAWS for fraud, breach of contract, and conversion in Cause No. 2004-CI-02288, filed in the 225th District Court of Bexar County. In pursuit of pre-trial discovery, BSR recently discovered on November 15, 2004 that, at the time Bexar Met signed the illicit contract with SAWS, Bexar Met was aware of the pre-existing and contrary agreement between SAWS and BSR. (See sworn testimony of SAWS’ employee Chris Powers, p. 72 lines 24-25, p. 73 lines 1-3, attached hereto as *Exhibit “5”*.) As a consequence, BSR became aware that Bexar Met may have serious liability to BSR for tortuous interference with BSR’s existing contract with

¹ Inclusive of its related Exhibits A-C and the First Amendment to the Water Supply Contract and Service Area Settlement Agreement

SAWS and also for tortuous interference with BSR's future relations with potential customers.

4. On March 14, 2005, BSR wrote a demand letter to Bexar Met to attempt to peaceably settle BSR's claim against Bexar Met, but on April 28, 2005 Bexar Met refused to recognize any claim by BSR. Accordingly, BSR issued a deposition notice for Bexar Met's former general manager, Tom Moreno. Bexar Met, in an attempt to prevent BSR's right to pre-trial discovery, has filed a motion in District Court attempting wrongfully to deny BSR's right to pursue its suit and discover evidence, even though Bexar Met is not even a party to the suit. The motion is totally without merit from a non-party but represents Bexar Met's continuing effort to run rough shod over BSR.

5. TCEQ would, if it restarted this contested case hearing of Bexar Met's void application, be interfering with the District Court's jurisdiction to first determine all of the facts relevant to Bexar Met's conduct and whether Bexar Met's pursuit of its current CCN is based on fraud. Further, judicial economy would strongly support the correctness of the ALJ's current Order.

6. Thus, it should be clear that Bexar Met, now on notice that it may be sued for its wrongful acts, is attempting to wrongfully use TCEQ to hurry up the administrative process and hopefully grant Bexar Met a CCN before the state court action can be tried and, in the process, to wrongfully attempt to prevent BSR from even deposing its fired former general manager for telling what happened. Surely such less-than-subtle attempts by Bexar Met will not be honored by the State and TCEQ will let the Court determine the respective rights and liabilities.

**IV. Order No. 7 Was Proper to Enter,
And Should Not be Set Aside**

Bexar Met cites cases related to the exclusive jurisdiction of certain state agencies. None of the cases hold, nor are we aware of any case that holds, TCEQ has primary jurisdiction to decide if an applicant, such as Bexar Met, is fraudulently pursuing an application for a CCN based on a wrongfully obtained contract from another pending applicant. Furthermore, since the February 16, 2005 abatement Order No. 7 was issued, Bexar Met has made absolutely no effort to complain about the abatement until Bexar Met recently became aware of a serious potential claim against it, and now seeks to improperly expedite the process to deny the District Court the jurisdiction to hear whether Bexar Met properly holds any contract from SAWS to proceed.

**V. Bexar Met is in Financial Difficulties and
a State of Extreme Disarray**

Bexar Met's move to expedite the administrative process for a CCN flies in the face of irrefutable evidence that Bexar Met, as an apparent responsible public water utility, is actually in a state of serious instability and is in no present position to even be qualified for a CCN for 5,543 acres of additional proposed service area. Only a sampling of news articles from the San Antonio Express-News proves the point:

1. June 13, 2004

- Bexar Met's "unprecedented rate increases" and "cut-off fees" create serious "financial hardship" to its customers.
- Ratepayers are "angry". (*Exhibit "6"*)

2. August 8, 2004

- Bexar Met violates Federal Voting Rights Act of 1965 by disenfranchising 27,000 voters.
- Bexar Met violated state law each time it raised water rates in the past six years. (*Exhibit "7"*)

3. September 5, 2004

- Legislature limits Bexar Met boundaries to current boundaries to develop, transport, deliver, distribute, store, and treat water only within existing district lines.
- Bexar Met continues illegal purchase of water systems outside its jurisdiction.
- Bexar Met has no long term, firm water supply to properly service areas outside its boundaries.
- Bulverde and GBRA sue Bexar Met in Comal County to stop illegal practices. (*Exhibit "8"*)

4. September 15, 2004

- Bexar Met spent \$8.2 million more than it budgeted last year.
- Audit shows 24% over budget.
- Bexar Met revenues had 83% jump in customer penalties and fees collected.
- No physical inventory of capital assets in last five years.
- Property purchased without appraisals.
- Profit is 80% below projections.

- Debt of \$213 million. (*Exhibit "9"*)
5. September 23, 2004
- Bexar Met “gone from bad to dreadful or dreadful to horrid or horrid to unspeakably rotten” and “the abuse of ratepayers goes on”. (*Exhibit "10"*)
6. October 6, 2004
- Bexar Met’s “misguided” attempts to draw new voting districts for the second time in less than a year has backfired.
 - Federal court rejects plan. (*Exhibit "11"*)
7. December 19, 2004
- Bexar Met “plagued by turmoil”
 - General manager, Tom Moreno, returns after 30 day suspension.
 - “Poor management at every level.” (*Exhibit "12"*)
8. December 28, 2004
- Bexar Met has “staggering chaos” “hampering the agency”.
 - Bexar Met’s HR department “entirely dysfunctional” says expert.
 - Bexar Met “has created a culture of fear and intimidation within the organization”. (*Exhibit "13"*)
9. January 9, 2005
- Bexar Met “soaring to new heights of chaos”.
 - Bexar Met extends Tom Moreno’s contract for one year after having suspended him.

- Moreno's contract extension "follows a thoroughly disastrous year for Bexar Met".
 - Bexar Met "like a train out of control". (*Exhibit "14"*)
10. January 9, 2005
- Bexar Met audit reveals "dumbfounding mismanagement and staggering financial prodigality". (*Exhibit "15"*)
11. February 18, 2005
- Bexar Met suspends 20 year general manager for unpaid 60 day leave.
 - Audit found \$155,000 in questionable spending. (*Exhibit "16"*)
12. April 9, 2005
- Bexar Met fires current lobbyists – hires new ones. (*Exhibit "17"*)
13. April 19, 2005
- Bexar Met fires General Manager, Tom Moreno. (*Exhibit "18"*)
14. April 22, 2005
- Bill introduced to relegate Bexar Met to Special Utility District with limited powers.
 - Bexar Met has continuing problems delivering "water at a reasonable rate and in a quality condition". (*Exhibit "19"*)
15. April 29, 2005
- Board member walks out and resigns out of conscience. (*Exhibit "20"*)

16. May 7, 2005

- Second Bexar Met board member resigns.
- Bexar Met target of three bills in Austin to limit activities, HB 3565, HB 2445, HB 2046. (*Exhibit "21"*)

And, finally, Bexar Met fired its long-time attorney North O. West and on information BSR believes Bexar Met also fired its other attorney Mark Zeppa.

The picture is clear, Bexar Met is in chaos, its power may be severely limited by the State, and it is in a financial crisis.

For TCEQ to expedite anything for Bexar Met except its immediate demise, would be irresponsible and without any factual basis warranting such action. To be sure, Bexar Met has a crisis, but it is not of BSR's making.

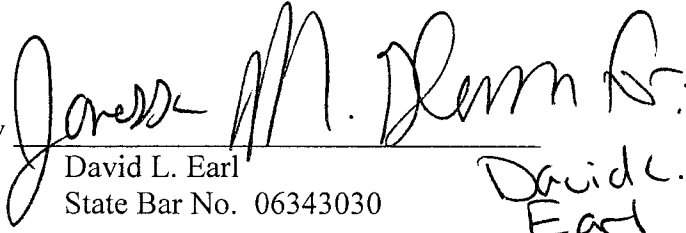
Prayer

Bexar Met's motion should promptly be denied.

Respectfully submitted,

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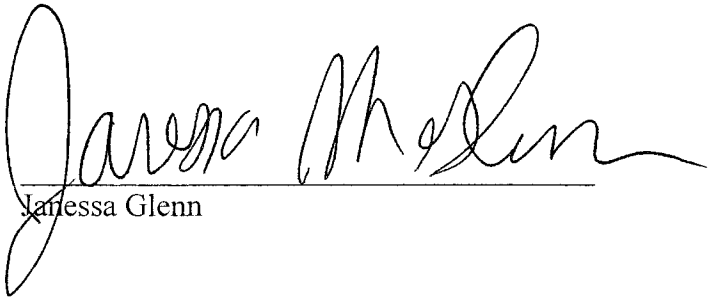

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Attorney for BSR Water Company

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing instrument has been served on this 17th day of May, 2005, in accordance with the rules of SOAH, to the attached Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.


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STYLE/CASE: IN THE APPLICATION OF BEXAR METROPOLITAN WATER
DISTRICT TO AMEND WATER CCN NO. 10675 IN BEXAR
COUNTY

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

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