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SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO SPRINGS §  
SERVICE COMPANY, INC., §  
TO AMEND CERTIFICATES §  
OF CONVENIENCE AND NECESSITY §  
NOS. 12122 AND 20698 IN KENDALL §  
COUNTY, TEXAS §

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**RATEPAYERS MOTION TO REOPEN THE RECORD**

**TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

Ratepayers request the Commissioners of Texas Commission on Environmental Quality (TCEQ) reopen the record for this matter. Ratepayers argue that Findings of Facts and Conclusions of Law submitted by the Administrative Law Judge (ALJ) are incorrect. In Ratepayers Brief Filed In Response To SOAH Proposal For Decision and Exceptions, sworn affidavits were attached and arguments were made regarding TCEQ's designation of Priority Groundwater Management Areas. The ALJ, via a letter to TCEQ General Counsel, urges that the information be struck from the record and no consideration be given to those facts. Sworn affidavits and TCEQ actions should be a part of this record. The exclusion of this information has a detrimental effect on the Ratepayers and are integral to the Commission's decision on the amendment application. Ratepayers recommend the record be reopened.

TEXAS ADMINISTRATIVE CODE

The Commission may order the judge to reopen the record in accordance with RULE §80.265 TEX. ADMIN. CODE. As the evidence sought to be recognized is critical to

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the decision at hand, the Ratepayers urge the Commission to reopen the record to admit the following.

#### GBRA AFFIDAVITS

The Ratepayers urge the Commission to reopen the record to admit the Affidavits of Guadalupe Blanco River Authority (GBRA) General Manager, W.E. West, Jr., and GBRA Director of Project Development, David Welsch W.E. West, Jr. These affidavits prove the Applicant does not have any agreement for additional water beyond their written contracts and that no additional water is available.<sup>1</sup> False testimony was given by the Applicant when TCEQ Executive Director asked about adequate water availability. The Executive Director specifically asked if the Applicant could increase the amount of water from the GBRA, the Applicant falsely testified that it could receive additional water and in fact had a verbal agreement with GBRA.<sup>2</sup> The offered affidavits establish that no additional water was available and in fact the Applicant, this very witness, had been directly informed that additional water was not available.<sup>3</sup> This is critical to the evaluation of the application, weighing of the evidence presented and the proposed impact on the Ratepayers. The Applicant had prefiled testimony stating only 250 acre feet would be provided to the area.<sup>4</sup> Ratepayers were unaware that Applicant would allege it had additional water availability. These affidavits must be included in the record.

#### PRIORITY GROUNDWATER MANAGEMENT AREA (PGMA)

After the evidentiary record was closed, the ALJ took official notice of the Applicant's tariff "pursuant to Texas Gov't Code § 2001.090.... Because the tariff was

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<sup>1</sup> See Attached Exhibit A.

<sup>2</sup> Tr. 23-25.

<sup>3</sup> Attached Exhibit A.

<sup>4</sup> Tr. Ex. A-3, Prefiled Test. J. Parker, p. 5, ll. 5-22.

approved by the Commission, which is presumed to know of its own actions, taking official notice is appropriate.”<sup>5</sup> Therefore it is similarly correct to take official notice that Kendall County is within the Hill County PGMA, as the TCEQ designates the PGMA.<sup>6</sup> Furthermore, TEXAS ADMINISTRATIVE CODE RULE §80.127(e)(1) provides that “[t]he judge may take official notice of all facts judicially cognizable. In addition, the judge may take official notice of any generally recognized facts within the specialized knowledge of the commission.” It is proper to take official notice of this fact and to take notice of Cow Creek Groundwater Districts concern with this application.

As the ALJ recommends not taking notice of these facts, the Ratepayers request the record be reopened to offer evidence that Kendall County is in the Hill County PGMA. The Ratepayers argue that the Cow Creek Groundwater District letter sent to the TCEQ presents the concerns of the District. Directly referring to this matter the Groundwater District stated “It is questionable that groundwater production in the amount identified is available within the proposed expanded CCN service area or that the requested groundwater could or would be permitted.”<sup>7</sup> This letter further requests that the TCEQ recognize the potential impact to the groundwater district from approval of this application.<sup>8</sup> All of the citizens in the area will be impacted by the proposed withdraw of groundwater. This is evidenced by the PGMA information included in the Ratepayers’ Exceptions as was submitted by the Applicant’s witness in his exhibits,<sup>9</sup> and the Cow

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<sup>5</sup> Order No. 10, Sept. 13, 2006, Wm. G. Newchurch, ALJ, SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR.

<sup>6</sup> Priority Groundwater Management Areas and Groundwater Conservation Districts, Report to 79<sup>th</sup> Legislature; TCEQ, January 2005, Table 1. (found at [http://www.tceq.state.tx.us/assets/public/comm\\_exec/pubs/sfr/053\\_04.pdf](http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/sfr/053_04.pdf)).

<sup>7</sup> Attached Exh. B.

<sup>8</sup> Id.


<sup>9</sup> TR. Ex. A-1, subex. 2.

Creek Groundwater District letter.<sup>10</sup> As shown by that data, there is a shortage of groundwater in Kendall County.<sup>11</sup> This shortage is critical to the decision to be made by the Commission. The fact that Kendall County is in a PGMA and the limitation of the groundwater situation should be considered by the TCEQ.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Movants pray that the record be reopened to admit the previously discussed evidence as requested hereinabove and for such and further relief that may be awarded at law or in equity.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I certify that on November 15, 2006, a true and correct copy of Ratepayers Motion to Reopen the Record was served via fax transmission and regular mail to all parties on the following mailing list.

  
ELIZABETH R. MARTIN

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<sup>10</sup> Attached Exh. B; Tr. Ex. P-6;

<sup>11</sup> Id.

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## **Exhibit “A”**