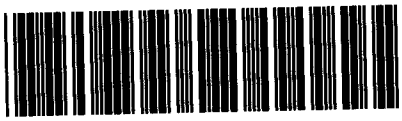

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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014

SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-0706-UCR

APPLICATION OF TAPATIO SPRINGS SERVICE COMPANY, INC., TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY NOS. 12122 AND 20698 IN KENDALL COUNTY, TEXAS	§ § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

RATEPAYERS CLOSING ARGUMENT BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Ratepayers request the Court consider the following in arriving at a decision concerning the Application to Amend a Water and Sewer Certificate of Convenience and Necessity for Tapatio Springs Services Company, Inc. (herein referred to as "Application").

I. INTRODUCTION

As referred to in this brief, "Applicant" is Tapatio Springs Services Company, Inc., "TCEQ" is the Texas Commission on Environmental Quality issued the governmental authority over the granting of Certificates of Convenience and Necessity (herein referred to as "CCN") by the State of Texas; "Ratepayers" are designated in this Court's Order No. 1. The parties participated in a trial on July 6, 2006 before this Court. As established, the Applicant currently serves approximately 200 water and sewer customers and in this proceeding seeks certification over 5,000 acres with 1,700 water and sewer connections.[1] Ratepayers request the Court deny the certification for reasons set forth in this brief.

[1] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1, p. 7; Parker, p. 22, ll. 7-11.

II. AUTHORITY FOR ISSUANCE OF A CCN

As provided by law, the TCEQ is the agency which administers the granting of a CCN. In this matter, the TCEQ recommends the approval of a CCN[2] without requiring the Applicant to comply with the commission's rules,[3] the TEXAS WATER CODE provisions, [4] and despite the Applicant filing an incomplete and inaccurate Application.[5] If the Application is approved, as submitted, the TCEQ will exceed their authority as set forth by the legislature.

A. CONSTITUTIONAL LIMITATIONS

Any power exercised by the TCEQ must adhere to Constitutional law requirements. The Texas Constitution vests in the legislative branch the power to make laws and create agencies to carry out those laws but the legislative authority may not be delegated without any limits.[6] The Texas Supreme Court established that the legislature may delegate powers to an administrative commission if reasonably clear standards are provided to allow fulfillment of legislative purpose and policy.[7] Regarding the granting of a CCN, the Austin Court of Appeals has held "[t]hat the legislature intended certificates of convenience and necessity to be creatures of statute is clear"[8] and therefore the constitutional limitations on delegation of authority apply to the TCEQ.[9] Since the

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[2] Id., Exh. ED 5, p. 3; Exh. ED 7, p. 5.
[3] TEXAS ADMIN. CODE §291.
[4] TEX. WATER CODE § 13.241(setting forth legislative standards).
[5] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1.
[6] TEX. CONST. art. II, § 1.
[7] *Edgewood Indep. Sch. Dist. v. Meno,* 917 S.W.2d 717, 740 (Tex. 1995)(quoting *Railroad Comm'n v. Lone Star Gas Co.*, 844 S.W.2d 679, 689 (Tex.1992)).
[8] *City of Carrollton v. Texas Com'n on Environmental Quality*, 170 S.W.3d 204, 209 (Tex.App.-Austin, 2005)
[9] See generally, *Railroad Comm'n v. Lone Star Gas Co.*, 844 S.W.2d 679, 689 (Tex.1992) (quoting *State v. Texas Mun. Power Agency*, 565 S.W.2d 258, 273 (Tex.Civ.App.-Houston [1st Dist.] 1978, writ dism'd)) (stating that "[a]lthough the 'legislature has the authority to delegate its powers to agencies established to carry-out legislative purposes ··· [,] it must establish reasonable standards to guide the entity to which the powers are delegated.'").

CCN are created under the legislature's statutory authority, its direction to the TCEQ in granting a CCN as found in the TEXAS WATER CODE must be followed.[10] However, in this case, the Applicant is attempting to secure a CCN from the TCEQ without qualifying as required under the standards and guidelines provided by legislature.

B. LEGISLATIVE PURPOSE AND POLICY

The Austin Court of Appeals provides an interpretation of the legislative purpose and policy concerning the issuance of a CCN stating that;

> Finding that retail public utilities are "by definition monopolies in the areas they serve," that "normal forces of competition" do not operate, and that regulation will serve as a "substitute for competition," the legislature passed Chapter 13 of the water code to govern retail public utilities with the stated purpose to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities.[11]

The Court further explains that chapter 13 of the water code was "adopted to protect the public interest inherent in the rates and services of retail public utilities."[12] To achieve its' stated policies the legislature issued requirements Within Chapter 13 of the TEXAS WATER CODE for the issuance of a CCN.[13] The legislature set forth these requirements as the certificates create monopolies for retail public utilities and therefore as not subject to competition.[14] Therefore in the evaluation and issuance of a CCN, the TCEQ must follow the legislature's direction to allow the achievement of its stated purpose and policy.

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[10] Id.
[11] *City of Carrollton*, 170 S.W.3d at 210 (citing TEX. WATER CODE § 13.001(a)(West 2000)).
[12] Id.
[13] TEX. WATER CODE § 13.241 (West 2000).
[14] TEX. WATER CODE § 13.001 (West 2000).

C. AUTHORITY CONVEYED TO TCEQ BY THE LEGISLATURE

The Texas Supreme Court has determined that agencies "may exercise only those powers the law, in clear and express statutory language, confers upon them."[15] The Court further stated "[c]ourts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers."[16] In this matter, the TCEQ is attempting to create excess power by certifying a water company under an "amendment" Application not subject to the controlling rules and statutes.[17] In fact, prior to the last legislative session there was no provision for approval of a CCN under an "amendment" except in limited circumstances.

Prior to the Enactment of House Bill No. 2876 by the 79th Legislature effective September 1, 2005 (applicable only to applications filed on or after January 1, 2006), an amendment to a CCN was authorized only under TEXAS WATER CODE § 13.254. Therefore for applications filed before January 2006, such as the Applicant's, the TCEQ could issue a CCN over a new area only under TEXAS WATER CODE §§ 13.241 and 13.242 except in limited circumstances discussed in a subsequent section, but not applicable in this case. The TCEQ does not have the authority to grant this CCN under an amendment application for a CCN filed prior to January 1, 2006.

D. NO SERVICE ALLOWED WITHOUT A CNN

As the Austin Court of Appeals states "[u]nless otherwise specified, then, no public utility may render service without first obtaining from the Commission a

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[15] *Subaru of America, Inc. v. David McDavid Nissan, Inc.*,84 S.W.3d 212, 220 (Tex. 2002)(citing *Key Western Life Ins. Co. v. State Bd. of Ins.*, 163 Tex. 11, 350 S.W.2d 839, 848 (1961); *Railroad Comm'n v. Rowan Oil Co.*, 152 Tex. 439, 259 S.W.2d 173, 176 (1953).

[16] Id. (citing *Key Western Life Ins.*, 350 S.W.2d at 848; *Rowan Oil*, 259 S.W.2d at 176).

[17] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. ED 5, p. 3; Exh. ED 7 p. 5 (recommending the approval of Applicant's Application by Mr. Adhikari and Mr. Smith).

certificate that the present or future public convenience and necessity require or will require the installation, operation, or extension of such services."[18] Under the law applicable to this case, utilities are required to obtain certificates from the TCEQ to operate a water supply or sewer company.[19] TEXAS WATER CODE § 13.242 clearly states that a utility may not provide water supply or sewer service without a certificate of convenience and necessity.[20] Thus utility companies, such as the Applicant, must secure a CCN to serve an area. As evidenced by the testimony[21] and Application[22] on record in this matter, the Applicant seeks to serve a new area and must receive a certification from the TCEQ. The TCEQ may grant a CCN under the statute to authorize service but the commission must follow the legislature's developed standards to ascertain whether an applicant for a certificate is qualified.[23]

E. LEGISLATURE'S "REASONABLY CLEAR STANDARDS" FOR ISSUING A CCN

In the TEXAS WATER CODE § 13.241, the legislature provided "reasonably clear standards" to the TCEQ as to the criteria required of applicants to receive a Certificate of Convenience and Necessity. Reinforcing the need to use the standards in issuance of a CCN, the Austin Court of Appeals stated "[t]he factors the Commission must consider in determining whether to award a certificate are expressions of 'legislative standards' guiding the Commission in its administration of the certification process."[24] Included within the criteria, the legislature mandated that the TCEQ "shall ensure that the

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[18] *City of Carrollton*, 170 S.W.3d at 210 (citing TEX. WATER CODE § 13.242(a)(West 2000)).
[19] TEX. WATER CODE § 13.242 (West 2000).
[20] TEX. WATER CODE § 13.242(a)(West 2000).
[21] SOAH DOCKET NO. 582-06-0425, Evid. Hearing,Parker, p. 26, ll. 3-11 (establishing that the new water and sewer system is to be construct over the 5,000 acres).
[22] Id., Exh. A1, exh. 1.
[23] TEX. WATER CODE § 13.241 (West 2000).
[24] *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref'd n.r.e.)).

applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service" and "access to an adequate supply of water".[25] However, the Applicant and the TCEQ are proceeding as if these requirements do not apply to a CCN "Amendment Application."[26] Thus by calling the proposed expansion an amendment, the Applicant seeks to avoid complying with the legislature's requirement as put forth in the TEXAS WATER CODE and under the TEXAS ADMINSTRATIVE CODE containing TCEQ requirements for granting a CCN.[27] As discussed, the TCEQ is not allowed to issue a CCN without adhering to the legislature's standards for the certificates or else it exceeds the authority granted by the legislature.

F. LEGISLATIVE AUTHORITY TO EXTEND SERVICE WITHOUT ISSUANCE OF A CCN

Anticipating situations whereby a water and/or sewer CCN should be allowed without qualifying under the requirements of TEXAS WATER CODE §§ 13.241, 13.242, the legislature provided for circumstances in which a utility could expand its area without applying for a CCN. The only exception is found at TEXAS WATER CODE § 13.243. This section allows for an extension of service by a company into a contiguous area within one-quarter mile of the utility's certified area or an extension into an area already covered

[25] TEX. WATER CODE § 13.241(a), (b)(2) (West 2000).
[26] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 120, ll. 5-7 (testifying the Applicant satisfied TCEQ technical requirements); Adhikari, p. 141, ll. 8-12 (testifying all information had been received from Applicant to recommend approval of the CCN); Adhikari, p. 123, ll. 20 – p.124, ll. 16 (testifying he was unable to determine if the maps submitted were sufficient); Adhikari, p.126, ll. 9-18 (testifying the Applicant had not provided plans and specifications that must be approved by the TCEQ); Adhikari, p. 126 l. 19 – p. 127 l. 17 (testifying that the Applicant submitted a contract in response to application question G. that did not pertain to the 5,000 acre proposed service area).
[27] Id., Exh. A1, exh. 1(submitting only a portion of the information requested by the TCEQ form); Exh, P8 (responding to the TCEQ request for information by merely stating the developer would be providing all infrastructure).

by its CCN or served by the utility.[28] Those facts do not exist in this case therefore the Applicant is not exempt from satisfying the legislative standards.

G. EVADING CCN REQUIREMENTS BY USING "AMENDMENT"

The Applicant filed an amendment application but such application, considering the facts of this case, is improper. The only provision for an amendment of a CCN for this Applicant is provided under TEXAS WATER CODE § 13.254. This section clearly allows amendment of a CCN when a utility is unable to service an area.[29] Under this section an amendment is not allowed to expand service into an area unless the area is already under a CCN.[30] This provision allows for the amendment of an area already covered by a CCN whether the amendment is for reduction of the area served or substitution of service by another utility company.[31] Neither is the situation in this case. Therefore the amendment application cannot stand to support the issuance of a certificate over the proposed area. Of course since submission of this application, the statute has been amended to allow for amendment of a CCN but this applies only to Applications filed on or after January 1, 2006.

Whether the Applicant and TCEQ call this application an Amendment Application or a CCN Application, the parties must comply with the reasonably clear standards set forth in TEXAS WATER CODE § 13.241 effective as of the Applicant's filing date.[32] Even if the TCEQ is granted broad power by the legislature to administrate over the granting of a CCN, a CCN issued under an "Amendment Application" must conform

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[28] TEX. WATER CODE § 13.243 (West 2000).
[29] TEX. WATER CODE § 13.254. (West 2000).
[30] Id.
[31] Id.
[32] See *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref'd n.r.e.).

to the stated legislative policy, purpose and standards. As previously stated, the Austin Court of Appeals has held the TCEQ must consider TEXAS WATER CODE factors as these "are expressions of 'legislative standards' guiding the Commission in its administration of the certification process."[33] The TCEQ cannot evade the legislature's specific requirements under the statutes[34] to grant these certificates by merely calling it an "amendment." Arguably, the use of an "Amendment Application" by the TCEQ could be allowed, but not to the extent that use of "Amendment" allows ignoring the legislative requirements for a CCN found in TEXAS WATER CODE § 13.241.

H. BURDEN OF PROOF

In the TEXAS WATER CODE § 13.241, the legislature provided "reasonably clear standards" to the TCEQ as to the criteria required to issue a Certificate of Convenience and Necessity.[35] Included within these criteria the legislature mandated the TCEQ "shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service."[36] The legislature also required that the Applicant have "access to an adequate supply of water."[37] The Applicant bears the burden proof on these elements in order to warrant the issuance of a CCN.

SUMMARY

The Applicant in the matter before the Court is requesting Certificate of Neccessity and Convenience over five-thousand (5,000) acres with a proposed one-

[33] See *City of Carrollton*, 170 S.W.3d at 210 (citing *Public Util. Comm'n v. Texland Elec. Co.,* 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref'd n.r.e.).
[34] TEX. WATER CODE 13.241 (West 2000).
[35] See generally, *City of Carrollton*, 170 S.W.3d at 210 (stating the commission must consider the legislative standards in issuing a CCN).
[36] TEX. WATER CODE § 13.241 (a)(West 2000)
[37] TEX. WATER CODE § 13.241 (b)(West 2000)

thousand seven hundred (1,700) connections.[38] In an attempt to secure TCEQ approval, the Applicant has filed an amendment application prior to the effective date of the laws now allowing for amendments in these type cases.[39] Regardless of the title, the application submitted must comply with the legislative and TCEQ requirements for issuance of a CCN.[40] Furthermore, the Applicant does not qualify for exemptions allowing for the expansion of its service area without receiving a CCN from the TCEQ.[41] Similarly, there is no statutory authority in the TEXAS WATER CODE to allow an amendment of a CCN under the facts of this case. As provided in the statute, the Applicant must obtain a CCN to serve the proposed service area.[42] In arriving at the decision whether to issue a CCN, the TCEQ must follow the established legislative standards.[43] Therefore the Applicant must carry its burden of proof to show the financial, managerial, and technical capability to serve the area.[44] The Applicant must also prove it has access to an adequate supply of water to serve the proposed area.[45] While the TCEQ has broad powers to administrate over water and sewer utilities, it must comply with the legislature's mandate to ensure the Applicant has adequate water, as well as financial, managerial and technical capabilities to serve the CCN area.[46] If the TCEQ grants a CCN certificate without ascertaining those elements, it exceeds its powers granted by the legislature.

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[38] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1.
[39] House Bill No. 2876, Acts 2005, 79th Leg., ch. 1145, § 9, 13(1), eff. Sept. 1, 2005 (applicable to applications filed on or after Jan. 1, 2006).
[40] TEX. WATER CODE § 13.241 (West 2000); *City of Carrollton*, 170 S.W.3d at 210.
[41] TEX. WATER CODE § 13.243 (West 2000).
[42] TEX. WATER CODE § 13.242 (West 2000).
[43] TEX. WATER CODE § 13.241 (West 2000) (setting forth the requirements); *City of Carrollton*, 170 S.W.3d at 210 (stating the commission must consider the legislative standards in issuing a CCN).
[44] Id.
[45] Id.
[46] Id.

III. BURDEN OF PROOF

1. WATER

A. ADEQUATE SUPPLY OF WATER

The TEXAS WATER CODE §13.241 and TEXAS ADMINSTRATIVE CODE §291.102 provide that the TCEQ shall ensure an applicant has access to an adequate supply of water before issuing a CCN. The question then becomes, what is an adequate supply of water? The Application and all of the submitted documents including the development plat for the expansion area, prove that the Applicant is requesting expansion to serve 5,000 acres with 1,700 water and sewer customers.[47] In determining an adequate supply of water for this expansion the TCEQ rules require that a water supply company have peaking capacity of 0.6 gallons per minute or 1.0 acre ft capability for each unit.[48] While Applicant's consulting engineer avoided testifying as to the total water estimates required for this proposed project,[49] he did establish that for base demand, the TCEQ rules require 0.50 acre feet per connection.[50] While the engineering consultant would not calculate the base demand for the proposed expansion, 0.5 acre feet multiplied by 1,700 units indicates the Applicant must have access to 850 acre feet of water just to satisfy the base demand. The burden of proof is upon the Applicant to show evidence that it is able to supply access to an adequate supply of water.[51] The Applicant did not carry its burden of proof and in fact clearly showed the water available for the project is inadequate.

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[47] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1.
[48] Id., Matkin, p. 70, l. 20 – p. 71, l. 4 (establishing that the peaking requirement is 0.6 gpm or 1 acre ft. per year); Exh. A2, exh. 1, p. 3 (stating "TCEQ requires .6 GPM/ Connection for Peak Demand.").
[49] Id., Matkin, p. 71, l. 8 – p. 72, l. 17 (avoiding estimating the peaking requirement for a 1,400 unit development).
[50] Id., Matkin, p. 81, l. 20 – p. 82, l. 2 (agreeing that 250 acre feet is base demand for 500 units).
[51] TEX. WATER CODE §13.241; TEX. ADMIN. CODE §291.102 (stating requirements to receive a CCN).

As discussed in the following sections, the Applicant's own Application, pre-filed testimony, pre-filed exhibits and testimony established that Applicant will only supply the proposed expansion area of 5,000 acres with 250 acre feet of water from a supplemental contract with GBRA. This is less than 30% of the base demand for the number of connections submitted in their Application.

B. Applicant to Provide Only 250 Acre Feet of Water

According to the Non-Standard Service Agreement provided by Applicant to Question 2.B. of the Application, the property owner requested Applicant to provide water service over 5,000 acres and 1,700 customers.[52] However, it is established that the Applicant will only provide 250 acre feet to the proposed expansion area. Applicant's Vice President, Mr. Parker, stated in his pre-filed testimony and hearing testimony, only 250 acre feet of surface water from GBRA will be used for this expansion.[53] He specifically stated that the 250 acre feet supply will be used for base and peaking if the Developer cannot drill wells to increase their supply.[54] Mr. Nichols and Mr. Matkin verify that the Applicant will only supply 250 acre feet of surface water from GBRA to be used as the water supply.[55] This is well short of the required 1,649 peaking requirement as well as the 850 acre feet required just for the base demand of the project. Mr. Nichols further states that the Developer will be responsible for developing wells to meet the peak demand.[56] Mr. Nichols' testimony establishes that the Applicant will not supply or intend to supply the additional water required for the proposed expansion that will require 850 acre feet base demand and 1,649 peak demand. Thus evidence before

[52] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1, p. 7.
[53] Id., Parker, p. 25, ll. 6-9; Exh. A3, p. 5, l. 5-11.
[54] Id., Exh. A3, p. 5, ll. 14-22.
[55] Id., Exh. A1, p. 5, l. 10-20; Matkin, p. 81, ll. 20-24.
[56] Id., Exh. A1, p. 5, ll. 10-20.

the Court establishes that the Applicant does not have adequate water to receive a grant of this amendment under the TEXAS WATER CODE and TEXAS ADMINISTRATIVE CODE requirements previously cited.[57]

While the Applicant might allude that additional water is available, the burden is to prove the company has actual access to adequate water. In cross examination the Executive Director asked Mr. Parker if there was a provision in Applicant's GBRA supply contract allowing for an increase in the amount of water purchased.[58] Mr. Parker said yes.[59] However there is no agreement, no letter of intent or other evidence, other than an alleged verbal agreement that the Applicant's Vice President even has doubts about.[60] There is no evidence of additional water from the GBRA or any other source despite Applicant's commitment in 2004 to provide water for 1700 connections.[61]

C. WATER SUPPLY ANALYSIS IS MISLEADING

After requests by the TCEQ representatives, the consulting engineer for this project, John-Mark Matkin, wrote a Water Supply Analysis for this project which was submitted by Mr. Darrell Nichols.[62] Despite the previously cited statements that the Applicant would only provide 250 acre feet to the expansion, this Water Supply Analysis used water production showing the use of Applicant's existing wells and the original 500 acre feet from the GBRA to provide water for the expansion.[63] This report represents that the total amount of 750 acre feet of purchased GBRA water, the total amount, and the

[57] TEX. WATER CODE §13.241; TEX. ADMIN. CODE §291.102.
[58] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 23, ll. 6-9.
[59] Id., Parker, p. 23, l. 10.
[60] Id., Parker, p. 24, l. 24 (stating no contract had been signed); Parker, p. 25, ll. 10-14 (stating "I believe we have a verbal agreement as far as GBRA will stand behind a verbal agreement.").
[61] Id., Exh. A1, exh. 1, Attach. B, p.1.
[62] Id., Exh. P8; Exh. A2, exh. 1.
[63] Id., Exh. A2, exh. 1, p. 2 (stating the existing well production "will allow 1020 Ac-ft/ Year for water service by existing well Production.").

existing wells could be used by the expansion.[64] However, according to Mr. Matkin's understanding, the Applicant will only supply 250 acre feet of water to the proposed expansion area.[65] He further stated that based on the TCEQ regulations total supply of water from the Applicant would only support the base requirements for 500 units.[66] Therefore the Water Supply Analysis does not show any additional supply of water other than the 250 acre feet previously discussed.

D. Lack of Adequate Water Supply

All of Applicant's management, representative and consultants testify that the Applicant will only have access to 250 acre feet of water for the proposed expansion area. This amount of water is insufficient to meet the needs of the expansion and fails to meet the requirements of Texas Water Code § 13.241 and Texas Adminstrative Code §291.102. The Applicant has failed to carry their burden of proof with regard to this element.

2. SEWER SERVICE

A. Lack of Adequate Sewer Service

First of all, Mr. Adhikari of the TCEQ, recommends a centralized system for the proposed service area rather that the extensive septic system submitted by the Applicant.[67] As for adequate and continuous service over the proposed service area, the Applicant submitted no plans or specifications for the new sewer system.[68] The current sewer customers for the applicant as established by its' 2005 Annual Report filed with the

[64] Id. p. 2-4.
[65] Id., Matkin, p. 81, l. 20 – p. 82, l. 2.
[66] Id.
[67] Id., Adhikari, p. 131, l. 10 – p. 132, l. 3.
[68] Id., Adhikari, p. 129, ll. 2-13, (stating the Applicant had submitted no construction plans for the proposed expansion).

TCEQ[69] and their filed Application[70] indicates that there are approximately 184 connections served by the waste water facilities. Mr. Parker testified that the waste water system was approximately at 50% to 60% of capacity.[71] He also identified that the Applicant had expanded its service area to include an additional 135 units.[72] Considering the current 184 customers utilize 50-60% of the current capacity and that an additional 135 will be coming on line, the assumption the proposed area will be using the existing sewer capacity is unrealistic and impossible. In fact, such a representation that current capacity will be used for the proposed expansion area of 5,000 acres to is a direct threat to the current customers' ability to receive adequate and continuous sewer service from the Applicant. The Applicant has not proven it is capable of providing continuous and adequate service to its existing and proposed customers.

3. FINANCIAL CAPABILITY

Under the TEXAS WATER CODE § 13.241, the Applicant must show financial capability to provide adequate and continuous service.[73] As discussed below, the Applicant's own financial statements fail to provide evidence of financial stability. Then review of the faxed letter from the Developer's Bank shows the preliminary costs cannot be satisfied. Therefore, the Applicant, even with the help of the Developer, will not be able to install and maintain a system sufficient to service the proposed area.

[69] Id., Exh. P5, p. 4 (showing at year end 2005 there were 184 sewer customers).
[70] Id., Exh. A1, exh. 1, pg. 7. C. (showing existing sewer customers of 173).
[71] Id., Parker, p. 22, l. 17 – p. 23, l. 5.
[72] Id., Parker, p. 56, l. 18 – p. 57, 10.
[73] TEX. WATER CODE § 13.241 (a); see also TEX. ADMIN. CODE §291.102.

A. APPLICANT'S FINANCIAL CAPABILITY

The TCEQ considers the proposed project to be ambitious[74] thus the agency informed the Applicant that the "financial capability information required for approval will be comprehensive."[75] However, the Applicant presented only partial information and according to Mr. Smith, the TCEQ financial analyst, the checklist on this information is not completed.[76] In fact, the Applicant has not submitted phasing data, capital requirement information, cash flow information, annual connection projections, or any financial documents except for year end 2004.[77] The information Applicant did not provide clearly shows it is not financially capable of serving the proposed expansion area.

The Applicant submitted financial statements with their Application.[78] In fact, Mr. Smith, witness for the TCEQ, verified that the Applicant has "substantial amount of term debt against a small amount of equity."[79] Reviewing the Balance Sheet of the Applicant reveals that the debt to equity ratio is 1.4 which indicates a significant negative equity position and a lack of financial ability to service the proposed expansion area.[80] Apparently recognizing the Applicant's unsatisfactory debt situation, Mr. Parker testified that the long term debt was paid off, but Mr. Parker, Treasurer of the Applicant, had no knowledge of the new debt-to-equity ratio[81] Despite its' negative financial condition, the Applicant did not offer any proof as to whether the debt was in fact paid off or whether

[74] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 97, ll. 1-5.
[75] Id.
[76] Id., Smith, p. 98, ll. 9-19.
[77] Id., Smith, p. 98, l. 15 – p. 99, l. 12.
[78] Id., Exh. A1, exh. 1, Attach. G (Applicant's 2004 Year End Income Statement and Balance Sheet).
[79] Id., Smith, p. 91, ll. 3-5.
[80] Id., Exh. A1, exh. 1, Attach G (showing 861,309.51 Total Liabilities and 616,500.29 Capital on the Balance Sheet).
[81] Id., Parker, p. 20, l. 20 – pg. 21, l. 2; , pg. 21, ll. 8-10.

the obligation to Clyde B. Smith was just replaced with new debt.[82] In fact the only evidence of the Applicant's financial capability before the Court at this time is the Applicant's financial statements filed with the application[83] and Applicant's 2005 Annual Report filed with the TCEQ signed on March 28, 2006.[84] Both of these filings show no reduction of the debt and there is no other evidence submitted, other than uncorroborated testimony.

Additional information in the financial statements indicate other problems with the Applicant's financial capability. The submitted Balance Sheet shows the Applicant's current Assets to be $23,474.58 with the largest account receivable owed by an affiliated company Tapatio Springs Golf Resort.[85] Also, the Income Statement shows that the interest expense for the company is 24.26% of expenses paid[86] which Mr. Smith testifies is higher-than-usual percentage of total expenses.[87] Additionally according to its Treasurer, the Applicant has been paying a monthly water reservation fee for the original 500 acre feet somewhere just south of $20,000.[88] However, the income statement submitted by the Applicant shows no such expense.[89] Also the Applicant avoided revealing the actual expense amount, by submitting their GBRA contract without its' Exhibit 3, which sets forth the amount of the water reservation fee.[90] The financial information in evidence is incomplete. Furthermore, Mr. Smith agreed that the Applicant would not be able to fund an expansion over the proposed area based on the submitted

[82] Id., Smith, p. 91, ll. 4-11.
[83] Id., Exh. A1, Exh. 1, Attach. G, Tapatio Springs Service Co. Balance Sheet, Dec. 31, 2004 (showing Long Term Liability to Clyde B. Smith $905,146.35).
[84] Id., Exh. P5, pg. 3 (showing a principal balance on outstanding debt of $891,809).
[85] Id., Exh. A1, Exh. 1, Attach. G, p. 1 of Balance Sheet.
[86] Id. p. 1 of Income Statement.
[87] Id., Smith, p. 93, l. 17 – p. 94, l. 5.
[88] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 42, l. 6 – p. 43, l. 6.
[89] Id., Exh. A1, exh. 1, Attach. G (Applicant's Income Statement).
[90] Id., Exh. A1, exh. 1, Attachment F, p. 11, sec. 3.1; Exh A3, exh.1, p.11, sec. 3.1.

financial statements.[91] As submitted, the Applicant's financial statements clearly show its' inability to provide the financial requirements associated to developing the systems required for serving 1700 units over 5,000 acres of land. The evidence before the Court shows that the Applicant does not possess the financial capability warranting the grant of the requested CCN.

B. FINANCIAL CAPABILITY OF DEVELOPER

Due to the obvious inability of the Applicant to satisfy the financial capability requirement to receive a CCN over the large proposed area, the Applicant offers the Developer's financial capability as a substitute.[92] The Developer must show the financial capability required of the Applicant[93] and the Applicant must show it exercises control over this financial capability. The Austin Court of Appeals has held that where a third party is to be relied upon to satisfy an element required for receiving a CCN, the applicant must have control over the element.[94] The Court further refined its interpretation to find that "control" means "the direct or indirect power to direct the management and policies of a person or entity, whether . . . by contract, or otherwise."[95] But first the Developer must show evidence of financial capability.

The only evidence submitted to prove financial capability has been a letter from the Developer's Bank.[96] The TCEQ has not verified that the letter, dated August 12, 2005, was issued by the bank or if the representations are still valid.[97] Even if this letter had been issued for the Applicant, the amount dedicated to developing the water and

[91] Id., Smith, p. 92, l. 19 – p. 93, l. 4.
[92] Id., Smith, p. 99, l. 13 – p. 100, l. 17.
[93] TEX. WATER CODE § 13.241 (a).
[94] *Bexar Metropolitan Water Dist. v. Texas Com'n on Environmental Quality*, 185 S.W.3d 546, 552 (Tex. App. – Austin 2006)(interpreting "possess" as found in the statute).
[95] Id. (citing Black's Law Dictionary 1201 (8th ed.2004)).
[96] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 4.
[97] Id., Smith, p. 99, l. 13 – p. 100, l. 17; p. 102, ll. 4-6.

sewer systems would be insufficient. The letter states the Developer has "unrestricted funds in the low seven figure amount."[98] This indicates an approximate range of $5,000,000 or less for the construction and infrastructure improvements. However the costs for the proposed expansion will far exceed that amount. Mr. Matkin the consulting engineer has estimated that the extention to receive the GBRA water will cost $2,154,983.[99] However the Developer is only to contribute $1,500,000 of the $2,154,983 therefore the Applicant must still pay for $654,983.[100] Also Mr. Matkin has developed preliminary cost estimates for the water supply system ranging from $7,000,000 to $8,000,000.[101] Additionally Mr. Matkin has estimated that the costs for the sewer system will be $1,500,000 for the lift stations and force mains, as well as $3,000,000 for the gravity mains.[102] Therefore the engineer's current total for the cost estimates ranges from at least $13,654,983 to $14,654,983. These costs are in the low to mid eight figure amount and nearly 3 times the mid seven figure amount of $5,000,000. The letter is insufficient to satisfy the statutory requirement as it shows no indication of whether the line of credit extends over the Developer's numerous other projects, what period the line of credit is to be phased over or what the required repayment terms are. Considering the Applicant bears the burden of proof, one unverified faxed letter is hardly insufficient to establish financial capability for a CCN to be granted over 5,000 acres.

Additionally, the Applicant must show that it exercises control over the Developer's financial capability.[103] However, any financial guarantee given on the

[98] Id., Exh. A1, exh. 4.
[99] Id., Exh. A2, p. 3, ll. 40-44.
[100] Id., Matkin, p. 69, ll. 18-23.
[101] Id., Matkin, p. 84, ll. 7-11.
[102] Id., Matkin, p. 84, ll. 12–22.
[103] *Bexar Metropolitan Water Dist.*, 185 S.W.3d at 552.

behalf of the Applicant by the Developer can in fact be revoked for various conditions.[104] In the Non-Standard Service Agreement, the Developer has the right to unilaterally give "notice of termination of this Agreement" after reviewing the plans for the extension.[105] In such a case the Developer has no obligation to fund the expansion but the Applicant would still have the duty to serve the area as it developed.[106] The letter provided as evidence of financial ability is insufficient as it is clearly not in the "control" of the Applicant that will receive the CCN.

Besides the lack of Applicant's control over the Developer's financial capability, the inadequacy of the unqualified lender letter and the weakness of the Applicant's financial information, other issues have not been addressed relating to the required financial capability. The TCEQ indicated that review of the Developer's standing with the State Comptroller would be done,[107] review of the Applicant's tariff was warranted,[108] and that the Applicant's cash flows, staging estimates and construction cost estimates would be required prior to recommendation.[109] The Applicant has not demonstrated financial capability as required by TEXAS WATER CODE § 13.241.

4. MANAGERIAL CAPABILITY

The legislature also required the TCEQ to ensure the applicant possesses managerial capability to provide continuous and adequate service.[110] However the evidence indicates the Applicant lacks the managerial ability for the proposed service area.

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[104] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker p. 53, ll. 3-9.
[105] Id., Exh. A1, exh. 1, Attach. F; Parker, p. 53, ll. 12-20.
[106] TEX. WATER CODE 13.250(a) (West 2000) (stating the "certificate obligates its holder to provide continuous and adequate service to every customer and every qualified applicant within its area").
[107] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 103, ll. 11-20.
[108] Id., Smith, p. 105, ll. 1-9.
[109] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Smith, p. 109, ll. 5-9.
[110] TEX. WATER CODE 13.241(a) (West 2000).

A. LACK OF ADEQUATE PLANNING

The Applicant's current customers have been subjected to numerous periods of drought restrictions.[111] The Vice President testified that GBRA water was needed to alleviate the Applicant's dependence on well water.[112] Therefore, the Applicant reserved 500 acre feet of water from the GBRA in 2002[113] for its current customers.[114] But over the last four (4) years, the Applicant has not even purchased one foot of easement to arrange the delivery of the water.[115] In fact, the GBRA completed its facilities to the delivery point with the Applicant[116] but Applicant failed to construct the pipeline to access the water despite continuous drought conditions[117] the current customers are experiencing. Construction of the pipeline to access the GBRA water has not even begun but the Applicant has committed to service another 135 units south of its current CCN area.[118] Despite access to the needed additional water, with current customers on frequent drought restrictions, the Applicant is increasing the number of customers it is serving without proceeding to receive delivery of water it is paying for. This shows clear evidence of the lack of managerial capability on behalf of the Applicant.

B. LACK OF MANAGERIAL COMPETENCY

There are numerous issues of competency as evidenced by Mr. Parker, first alleging to be the President of the Applicant, then correcting himself to being the Vice

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[111] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 28 l. 23 – p.16 (stating the customers have been on drought restrictions three times in the last 10 months).
[112] Id., Parker, p. 30, ll. 10-16.
[113] Id., Exh. A1, exh. 1, Attach. F, p. 3 of Agreement between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and Guadalupe-Blanco River Authority (establishing the agreement was made and entered into as of the 18 day of March, 2002).
[114] Id., Parker p. 25 ll. 1-5; Parker, p. 26, ll. 12-25.
[115] Id., Parker p. 41, l. 20 – p.42, l. 5.
[116] Id., Parker, p. 58, 11. 13-20 (relating the GBRA water was available in May for its customers).
[117] Id., Parker, p. 28, l. 23 – p. 29, l. 24 (providing dates of drought restrictions).
[118] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Parker, p. 56, l. 14 – p. 57, l. 10.

President, Secretary, and Treasurer of the Applicant.[119] However, he has filed Annual Reports in 2004 and 2005 with the TCEQ under a Sworn Statement and signed as President.[120] The explanation given by the Vice President, Secretary, Treasurer for his misrepresentation to the TCEQ, the Court and the parties was "I put president sometimes because my dad is president,...."[121] The officers of a company should know their positions within a company and must not misrepresent their position in filings with the State of Texas. Despite his representation that he had been running the Applicant's operations since 1991,[122] Mr. Parker was confused and could not tell the TCEQ Counsel what the water capacity of the Applicant's system.[123] Additionally, he did not even know what the well capacity of the system was.[124] Furthermore, even though Mr. Parker claims to be the Treasurer for the Applicant, he testified that he has not been responsible for the oversight of the preparation of the Applicant's financial statements.[125] Finally, he testified that he does not even know what percentage he owns of the Applicant for which he is Vice President, Secretary, and Treasurer.[126] The testimony clearly shows the Applicant does not have the requisite managerial capability for the proposed expansion area.

[119] Id., Parker, p. 17, ll. 25 – p.18, ll. 1-2. (correcting his prefiled testimony that stated he was president).
[120] Id., Parker, p. 32, ll. 7-19, Exh. A3, Affidavit of John J. Parker; Exh. P4, pg. 6; Exh. P5, pg. 6. (comparing signatures and titles).
[121] Id., Parker, p. 19, ll. 17-18.
[122] Id., Parker, p. 19, ll.17-20.
[123] Id., Parker, p. 21, l. 25 – p. 22, l. 3.
[124] Id., Parker, p. 22, ll. 4-6.
[125] Id., Parker, p. 19, ll 21-25.
[126] Id., Parker, p. 20, ll. 1-14.

5. TECHNICAL CAPABILITY

The legislature also required the TCEQ to ensure the applicant possesses technical capability to provide continuous and adequate service.[127] However, the Applicant in this case has submitted no evidence of its technical capability.

The TCEQ requested engineering report to show continuous adequate water and sewer service, existing system capacity, capacities in reserve, descriptions of the development phases, number of estimated connections on each phase, distance between existing system and the new development from the Applicant.[128] The Applicant did not submitted these to the TCEQ,[129] and it has not submitted any construction plans.[130] Furthermore, despite receiving additional time to supply information to the TCEQ,[131] the Applicant only submitted a letter from the utility consultant and a 4 page water supply analysis[132] to show its technical capability for the proposed water and sewer systems that are to serve 1,700 units over a 5,000 acre expansion. The Applicant has submitted no evidence of any consequence to prove its technical capability which would warrant issuance of a CCN over the proposed service area.

[127] TEX. WATER CODE § 13.241(a) (West 2000).
[128] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. P9, p. 2.
[129] Id., Adhikari, p. 128, ll. 17-19.
[130] Id., Adhikari,p. 129, ll. 7-16.
[131] Id., Adhikari, p. 139, ll. 7-13.
[132] Id., Exh. P8.

SUMMARY

As established in the preceding sections, the Applicant has not carried its burden of proof on the following elements. First, the Applicant must show access to an adequate supply of water for the proposed expansion area but in fact all of the evidence proves that the current customers do not even have an adequate supply of water . Second, the sewer service information is similarly inadequate to justify issuance of a CCN over the proposed area. Third, considering the required financial capability, neither the Applicant or the Developer has adequate proof and the Applicant does not have control of the Developer's financial capability as needed. Fourth, the evidence concerning the Applicant's managerial capability proves it is not capable of managing the proposed expansion project. Fifth, the Applicant provided no plans, no specifications, no estimates of phasing, no distance between the existing system and the proposed new development as requested by the TCEQ to evaluate its technical capability. There is no evidence to support finding the Applicant submitted sufficient evidence to show compliance with the required statutory criteria. The Applicant failed to carry its burden on all of these elements.

IV. CCN APPLICATION

TEXAS WATER CODE § 13.244 requires that an applicant submit an application to obtain a CCN.[133] As discussed in the following sections, the Applicant submitted an application that is incomplete and inaccurate. There is no written description in the record of the area requested to be served, the water agreement submitted as evidence of water supply does not pertain to the proposed area nor is all of the agreement included with the application. Additionally, there is no proof in the record that the Application is

[133] TEX. WATER CODE § 13.244 (West 2000).

administratively complete. Mr. Adhikari and Mr. Smith for the TCEQ did not make the decision the application was administratively complete.[134] Additionally, there is no letter in evidence finding the application administratively complete.[135] This is relevant in that the Application does not contain the information requested by the TCEQ. The Application is legally insufficient and administratively incomplete as established by the record.

A. Area Requested to be Serviced

The area to be served is not described by the information submitted with the Application. TCEQ asks whether there has been a request for service over the proposed area at 2.B. of the Applicant's Application.[136] The response to the inquiry is See Attachment B which is the Non-Standard Service Agreement.[137] Page 1 of the agreement states the land covered by this agreement is legally described by Exhibit 1 with an Exhibit 2 providing a map of the area.[138] However, there is no Exhibit 1 or Exhibit 2 attached or submitted with this agreement.[139] Furthermore, the Applicant has not submitted any copy of the Non-Standard Service Agreement in discovery or to the TCEQ which contains a legal description or map as designated. Thus the area over which service has been allegedly requested is not in evidence. Additionally, the Application specifies that the "service area boundaries should be shown with such exactness that they can be located on the ground" for the maps submitted.[140] However, the maps in evidence

[134] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 120. ll. 8-12; Smith 112, p. 16-20.
[135] See Id., Smith p. 113, ll. 1-4 (stating a letter is issued when an application is found administratively complete).
[136] Id., Exh. A1, exh. 1, p. 3 of Application.
[137] Id., Exh. A1, exh. 1, Attach. B.
[138] Id., (p.1, para. 2).
[139] Id., (reviewing the complete exhibit no Exhibit 1 or 2 exists).
[140] Id., Exh. A1, exh. 1, p. 3-5, E.

do not conform with this instruction.[141] These maps do not even show the county roads or streets in the area.[142] Considering that there is no legal description and no reference to any other instrument describing said land, and the submitted maps do not comply with the instructions, this response to inquiry 2.B. of the Application is therefore insufficient.

B. PURCHASED WATER

At 5.G. of the Application, TCEQ asks for a certified copy of the most recent water capacity purchase.[143] Applicant responded with the indication that Attachment F answered this request.[144] However the contract at Attachment F between GBRA and the Applicant is not even relevant to this Application as established by the Applicant's utility consultant, Mr. Nichols, in his trial testimony[145] and in the Non-Standard Service Agreement.[146] Thus there is no certified copy of the water capacity purchase to be used for the development of the proposed expansion area and the Application is therefore incomplete. At the evidentiary hearing, the utility consultant for the applicant verified that the contract submitted to the TCEQ, to show the applicant had sufficient water, was not relevant for the proposed expansion area.[147]

C. EXISTING SYSTEM

The classification of the proposed service area as an "existing system" is important as the Applicant avoids providing important data required of new systems.[148]

[141] Id., Exh. A1, exh. 1, Attach. C; Exh. A4.
[142] Id.
[143] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A1, exh. 1, p. 7.
[144] Id.
[145] Id., Nichols, p. 15, ll. 2-21.
[146] Id., Exh. A1, exh. 1, Attachment F.
[147] Id., Nichols, p. 15, ll. 2-21.
[148] Id., Adhikari, p. 125, ll. 18-21 (testifying that if this was a new system additional information would be required such as construction and phasing).

The TCEQ representative evaluating the technical aspects of the application[149] classifies the proposed system as an existing system.[150] However, the Applicant's Vice President the pipeline to receive the water from GBRA is yet to be constructed, and he states a new water and sewer system will be constructed on the proposed 5,000 acre expansion area.[151] Mr. Nichols, Applicant's utility consultant, wrote to Mr. Adhikari that "[e]xisting sewer capacity will not be utilized to serve the proposed development."[152] Mr. Nichols, while obviously reluctant to state the proposed water and sewer system will be a stand alone system, testified "There's no system out there at this time."[153] As previously discussed, the Vice President also testified that Proposed expansion to the south of the Applicant will utilized all of the existing excess capacity of the Applicant.[154] Furthermore, the Applicant repeatedly states that the Developer is responsible for constructing a completely new water and sewer systems.[155] Thus the evidence conclusively proves this will be a new stand alone system. Considering the sewer supply CCN application, the applicant's utitlity consultant wrote to TCEQ personel stating the "existing system will not be utilized."[156] However, the TCEQ classifies this proposed sewer system as an existing system.

There is overwhelming and substantial evidence proving both the water supply system and the sewer service system are new stand alone systems. Even Mr. Adhikari

[149] Id., Adhikari, p. 118, ll. 24 – p. 119, l. 2 (stating he determined whether an applicant had technical capability to service the proposed area).
[150] Id., Adhikari, p. 124, ll. 17-19; p. 125, ll. 11 -13 (testifying it was his decision this was not a new stand alone system but an existing system).
[151] Id., Parker, p. 26, ll. 3-15.
[152] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. P8, para. 2.
[153] Id., Nichols, p. 16, ll. 2-11.
[154] Id., Exh. A1, exh. 1, pg. 7. C. (showing existing sewer customers of 173); Parker, p. 22, l. 17 – p. 23, l. 5; p. 56, l. 14 – p. 57, l. 1.
[155] Id., Exh. P8, para. 2.
[156] Id., Adhikari, p. l33 l. 23 – p.134 l. 1;Exh. P8, p. 1.

testified that final engineering plans and specifications would need to be reviewed to determine if the sewer system was a new stand-alone system.[157] The TCEQ cannot recommend approval of the sewer CCN without any of the required engineering plans and specifications showing impact on the existing customers.[158] The Application cannot be deemed complete without this relevant information.

D. GBRA CONTRACT INCOMPLETE

Even the GBRA Contract for the original 500 acre feet of water is incomplete. This is relevant because the additional 250 acre feet is an amendment to the original contract thus the provisions not amended are controlling on the supplemental contract.[159] The original contract between the Applicant and the GBRA incorporates Exhibit 2 "Customer's System" and Exhibit 3 that is a schedule of fees[160] but none of these contracts are submitted in the application or with their pre-filed testimony Exhibits. Therefore the actual costs cannot be ascertained by the TCEQ in their analysis. This contract is crucial to the proposed development and the failure to submit a complete copy is additional proof the application is insufficient.

SUMMARY

The Application submitted is incomplete and inaccurate therefore any decision to issue a CCN is unwarranted. There is no legal description or map attached to the Non-Standard Service Agreement which provides is the contract with the developer and the basis for the Applicant's assertion that service over a specific are has been requested.[161]

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[157] Id., Adhikari, p. 134 ll. 2-10.
[158] TEX. WATER CODE § 13.246 (c) (allowing that a certificate shall be granted after consideration by the commission of the probable improvement of service or lowering of cost to consumers).
[159] SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Exh. A3, exh. 3 (setting forth the amendments to the original contract).
[160] Id., Exh A1, exh. 1, Attachment F, p. 11, sec. 3.1; Exh. A3, exh. 2, p. 11, sec. 3.1.
[161] Id., Exh. A1, exh. 1.

The document submitted as evidence of water supply capacity is not certified, as requested in the application, and does not even pertain to the proposed expansion area.[162] The classification of the proposed systems as existing is incorrect therefore fails to ascertain all of the factors necessary to consider the impact on the current customers.[163] Additionally, the Applicant did not submit the complete contract with the GBRA. The Application is incomplete and inaccurate providing no reliable basis for the TCEQ to grant a water supply CCN or a sewer supply CCN as requested by the Applicant.

[162] Id., Exh. A1, exh. 1, Attach. F; Nichols, p. 15, ll. 2-21.
[163] TEX. WATER CODE § 13.246 (c); SOAH DOCKET NO. 582-06-0425, Evid. Hearing, Adhikari, p. 134 ll. 2-10.

CONCLUSION

As established, the Applicant must comply with the rules and laws governing the issuance of a CCN.[164] Therefore, the Applicant bears the burden of proof to show it possesses the financial, managerial and technical capability to provide adequate and continuous service as well as proving it has access to an adequate supply of water.[165] Additionally, the Applicant must submit a legally sufficient application to secure approval from the TCEQ.[166] Considering the Applicant has failed to carry its burden in proving its qualifications, the request for certification should be denied.

Prayer

For these reasons, Ratepayers ask the Court to deny granting of the CCN as the Court finds the Applicant must qualify for the certification under the statute criteria, it has failed to carry the burden of proof on these elements, and that the Application submitted by Applicant is incomplete thus legally insufficient.

Respectfully submitted,
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[164] TEX. CONST. art. II § 1; TEX. WATER CODE, Chap. 13; TEX. ADMIN. CODE Title. 30.
[165] TEX. WATER CODE § 13.241 (West 2000).
[166] TEX. WATER CODE § 13.246 (West 2000).

CERTIFICATE OF SERVICE

I certify that on July 26, 2006, a true and correct copy of Ratepayers Closing Argument Brief was served via Fax Transmission to all parties on the following mailing list.

ELIZABETH R. MARTIN

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SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC

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July 26, 2006

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Via Fax Transmission and First Class Mail

Ref: **SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-~~1515~~-URC** 2005-1516-UCR

Dear Ms. Castañuela,

Please file the enclosed Ratepayers Closing Argument Brief concerning the above referenced matter.

Thanks in advance for your assistance.

Sincerely yours,

Elizabeth R. Martin

erm/dw
cc: Mailing List

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	§ § § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

RATEPAYERS CLOSING ARGUMENT BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Ratepayers request the Court consider the following in arriving at a decision concerning the Application to Amend a Water and Sewer Certificate of Convenience and Necessity for Tapatio Springs Services Company, Inc. (herein referred to as "Application").

I. INTRODUCTION

As referred to in this brief, "Applicant" is Tapatio Springs Services Company, Inc., "TCEQ" is the Texas Commission on Environmental Quality issued the governmental authority over the granting of Certificates of Convenience and Necessity (herein referred to as "CCN") by the State of Texas; "Ratepayers" are designated in this Court's Order No. 1. The parties participated in a trial on July 6, 2006 before this Court. As established, the Applicant currently serves approximately 200 water and sewer customers and in this proceeding seeks certification over 5,000 acres with 1,700 water and sewer connections.[1] Ratepayers request the Court deny the certification for reasons set forth in this brief.

[1] SOAH DOCKET NO 582-06-0425, Evid. Hearing, Exh. A1, exh 1, p 7, Parker, p 22, ll 7-11.

CERTIFICATE OF SERVICE

I certify that on July 26, 2006, a true and correct copy of Ratepayers Closing Argument Brief was served via Fax Transmission to all parties on the following mailing list.

ELIZABETH R. MARTIN

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Re: Ratepayers Closing Argument Brief

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July 26, 2006

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Via Fax Transmission and First Class Mail.

Ref: **SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. ~~2005-1515-URC~~ 2005-1516-UCR**

Dear Ms. Castañuela;

Please file the enclosed Ratepayers Closing Argument Brief concerning the above referenced matter.

Thanks in advance for your assistance.

Sincerely yours,

Elizabeth R. Martin

erm/dw
cc: Mailing List