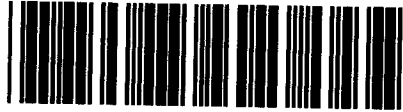




Control Number: 43990



Item Number: 32

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

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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COMMISSION ON
CERTIFICATES OF
CONVENIENCE AND
NECESSITY

APPLICANT'S CLOSING ARGUMENTS

Tapatio Springs Service Company, Inc. ("Applicant") files these closing arguments in support of its application to amend its Certificates of Convenience and Necessity ("CCN") Nos. 12122 and 20698.

I. INTRODUCTION¹

The developer of a tract of land adjacent to Applicant's existing service area wants service from Applicant. Applicant has been providing continuous and adequate service within its existing service area for more than sixteen years and is willing and able to provide service to the property if the developer satisfies the conditions of the service agreement. The service agreement requires the developer to furnish all the infrastructure and additional water supply required by Applicant to furnish service. No other utility seeks to serve the area. Granting the application benefits the Applicant's ratepayers for several reasons, as illustrated in part by the large group of Applicant's ratepayers withdrawing as parties and stating their support for the application. Granting the application promotes the state policy favoring consolidation of retail utilities, implements the Water Plan for the region, and avoids the proliferation of individual water wells.

The few ratepayers opposed to the application cannot seem to see the forest for the trees. If the application is approved, the Applicant and ultimately the Applicant's ratepayers, get a

¹ Citations to the record are provided in the detailed presentation that follows the introduction.

subsidy in the form of a \$1.5 million contribution in aid of construction from the developer towards the cost of a water line for the delivery of treated surface water supply from GBRA. Ignoring this real, substantial benefit, the Opposing Ratepayers focus on minor details.

II. PROCEDURAL BACKGROUND

Applicant filed an application to amend its CCN Nos. 12122 (water) and 20698 (sewer) with the Texas Commission on Environmental Quality ("TCEQ") on April 20, 2005.² The application seeks to amend the CCNs to add, at the request of the landowner, a tract of land containing approximately 5,000 acres located adjacent to Applicant's existing service area (the "Requested Area"). The Requested Area located approximately four miles west of downtown Boerne, Texas, and is generally bounded on the North by Ranger Creek Road; on the East by Johns Road; on the South by Tapatio Springs subdivision; and on the West by Bear Creek. (See Pre-Filed Testimony of Darrell Nichols, Exhibit No. 1)³

A preliminary hearing was held at the State Office of Administrative Hearings on January 24, 2006. At the preliminary hearing, a group of approximately sixty ratepayers of the Applicant intervened and were admitted as parties, but this group subsequently withdrew as parties stating that they supported the application (See Motion to Withdraw and Order thereon, dated February 17, 2006). The Ranger Creek Homeowners Association, comprised of ratepayers of another utility company affiliated with the Applicant, sought party status and their request was tentatively denied, but the association subsequently withdrew its request for party status. Also at the preliminary hearing, ten ratepayers opposed to the application were designated as parties (the "Opposing Ratepayers").

² The application was admitted into evidence as Exhibit No. 1 to the pre-filed testimony of Darrell Nichols. Darrell Nichols prepared the application and testified as to the answers stated in the application. (See Pre-filed testimony of Darrell Nichols, pg. 3).

³ The pre-filed testimony of Darrell Nichols was admitted as Applicant Exhibit No. 1.

The hearing of the merits was held on July 6, 2006. By agreement of the parties, all direct testimony was required to be pre-filed. The Opposing Ratepayers did not file any direct testimony. All of the witnesses were in favor of the application and testified that the application should be approved. During the hearing on the merits, the Opposing Ratepayers failed to offer any evidence into the record demonstrating how any of them have “a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing.” Theoretical possibilities alone do not demonstrate a justiciable interest. *See Prescott v. Lone Star Life Ins. Co.*, 586 S.W. 2d 703 (Tex. Civ. App. Waco 1979, no writ).

II. STATUTORY CRITERIA

The Commission is to consider the following statutory criteria when determining whether a CCN or CCN amendment should be granted to an applicant:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area.

Texas Water Code § 13.246(c) and 30 TAC § 291.102(d).

Section 13.241 of the Texas Water Code provides that the commission, in determining whether to grant a certificate of public convenience and necessity, shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate

service.

A. Need for Additional Service

CDS owns the Requested Area which it is seeking to develop. CDS requested Applicant to provide the utility services as evidenced by the written service extension agreement with Applicant. (See Pre-Filed Testimony of Jay Parker, pg. 8, Darrell Nichols, pg. 3, John-Mark Matkin, pg. 2)⁴. The written service extension agreement, captioned "Non-Standard Service Agreement", is admitted in evidence as part of the application (See Pre-Filed Testimony of Darrell Nichols, Exhibit No 1, attachment C and Pre-Filed Testimony of Jay Parker, Exhibit No. 1).

CDS wants to have its property served by an existing utility serving the adjacent property, rather than create a new utility. This application is consistent with state policy encouraging the regionalization or consolidation of retail public utilities as expressed in Texas Water Code, section 13.241(d), among other citations. Granting the application avoids a proliferation of retail public utilities that would contradict to the intent of this stated policy. (See Pre-Filed Testimony of Darrell Nichols, pg. 4).

B. Adequacy of Current Service

The Requested Area is not now receiving utility service and CDS requested Applicant to provide the utility services to the Requested Area. (Id.) Pursuant to Applicant's tariff, the Applicant and CDS entered into a Non-Standard Service Agreement for Applicant to provide the utility service to the Requested Area if CDS satisfied certain conditions specified in the agreement. (See Pre-Filed Testimony of Jay Parker, pg. 7). The application is a result of that agreement. (See Pre-Filed Testimony of Darrell Nichols, pg. 3).

As to the service currently provided by the Applicant within its existing CCN, the

⁴ The pre-filed testimony of Jay Parker was admitted as Applicant Exhibit No. 3 and the pre-filed testimony of John-Mark Matkin, P.E., was admitted as Applicant's Exhibit No. 2.

Applicant has been providing utility service for more than sixteen years. (See Pre-Filed Testimony of Jay Parker, pg. 6; Pre-Filed Testimony of Darrell Nichols, pgs. 6-7). As one of the many indicators of whether an applicant is capable of providing continuous and adequate service, the Applicant has satisfactorily addressed all issues raised in the latest TCEQ inspection of the Applicant's facilities on August 10, 2004. (See Pre-Filed Testimony of Darrell Nichols, pg. 4). Applicant's water supply and wastewater treatment capacity have adequate reserve capacity for growth because both systems are below the threshold of the TCEQ "85% rule." (See Pre-Filed Testimony of Darrell Nichols, pg. 3 and Nichols Exhibit No. 1 at page 6).

The Opposing Ratepayers offered no evidence, either through direct or cross-examination testimony, that service by Applicant within its existing service area is not adequate.

C. Effect on Applicant and other Utilities

If the application is granted, Applicant will be authorized by law to serve the Requested Area, and if CDS satisfies its obligation under the Non-Standard Service Agreement, Applicant will serve the Requested Area. Under the Non-Standard Service Agreement, Applicant will not incur any capital costs of extending service to the Requested Area and is not obligated to use any of its excess water supply capacity or sewage treatment capacity to serve the Requested Area. (See Pre-Filed Testimony of Darrell Nichols, pg. 5). As CDS develops the Requested Area, the number of customers served by Applicant will increase and the increased number of customers allows Applicant to allocate the fixed costs of operating and maintaining the utility systems over a greater number of customers. (Id. at pg. 8; see Pre-Filed Testimony of Jay Parker, pgs. 4-5).

By contrast, if the application is denied, CDS will cancel the Non-Standard Service Agreement and not pay \$1.5 million towards the cost of a joint benefit water approach main and Applicant will not be able to increase its customer base by serving the Requested Area. (See Pre-Filed Testimony of Jay Parker, pgs. 4-5). If this scenario occurs, Applicant will be forced to

recover the fixed costs of operating its utility over a fewer number of customers and will not enjoy the benefits of reduced economies of scale. (Id.)

If the application is denied, CDS can develop the Requested Area with lots served by a private water well on each lot, rather than using surface water supplied by Applicant to satisfy base demand, with water wells owned and controlled by Applicant to satisfy peak demand. (See Pre-Filed Testimony of Darrell Nichols, pgs. 7-8). The proliferation of individual water wells could adversely impact the volume of water available to Applicant from its existing water wells because these individual water wells must satisfy the entire demand of the homeowner (surface water supplied by Applicant will not be available to satisfy the base demand of the homeowner). (Id.) In addition, the production of water from individual water wells is much more difficult for the local groundwater district to regulate or to ration, if necessary; compared to a few public water supply wells subject to almost complete regulatory control of the local groundwater district. (Id.) Last but not least, the proliferation of individual water supply wells on lots served by on-site private sewage facilities also increases the risk of contamination of the common-to-all groundwater supply source; compared to the drilling and maintenance of a few public water supply wells completed in accordance with TCEQ design criteria for public water supply wells, and within the sanitary control easement required for such wells. (Id.)

Granting the Application does not adversely affect any other utility. (See Pre-Filed Testimony of Darrell Nichols, pgs. 3-4; See Pre-Filed Testimony of Kamal Adhikari, pg 5). No other utility is serving the area, was requested by CDS to serve the area, or protested the application in order to serve the area. (Id.)

D. Applicant's Ability to Serve

CDS is the owner of the Requested Area and CDS obviously thinks Applicant can provide adequate service. CDS has the most at risk if Applicant is not able to serve and CDS wants

service from the Applicant, as shown by its signing of the Non-Standard Service Agreement. This type of agreement is typical and favored by the TCEQ. (See Pre-Filed Testimony of Darrell Nichols, pg. 5).

Pursuant to the Non-Standard Service Agreement, CDS is required to pay all costs associated with designing and constructing the infrastructure required to service the Requested Area. (See Pre-Filed Testimony of Darrell Nichols, pg. 5; Pre-Filed Testimony of Jay Parker, Exhibit No. 1). This infrastructure includes wells, storage facilities, pressure maintenance facilities, disinfection equipment, distribution system, collection system, and wastewater treatment facilities. (Id.) In addition, CDS is obligated to acquire the water supply allocations needed to supply the Requested Area, preferably using a combination of treated surface water and groundwater, and obtain the required discharge permit, whether for new plant or an expansion of the Applicant's existing plant. (Id.) The Applicant is not required to provide, and will not provide, utility service until such time that CDS has properly completed the construction of the infrastructure with final inspection and testing by the Applicant and all regulatory approvals obtained. (See Id.)

Applicant operates existing wells that have been adequate to meet the service demands experienced to date with some excess capacity. (See Pre-Filed Testimony of Darrell Nichols, pg. 4). To ensure sufficient water resources for years to come and as recommended by the Water Plan approved by the Water Planning Group for the Region, the Applicant secured a supplemental source of treated surface water from the Guadalupe Blanco River Authority (GBRA).⁵ (See Pre-Filed Testimony of Darrell Nichols, pgs. 4-5 and his Exhibit Nos. 2 and 3). The 500 acre-feet of water per year is intended to meet normal demand while the existing groundwater supplies will still be available to meet peak demands. (Id.) Using groundwater to

meet peak demands reduces Applicant's "take or pay" amount under the GBRA contract because the GBRA contract states that the GBRA water is supplied at a constant rate of flow throughout the year. In accordance with the agreement with CDS, the Applicant, at CDS' expense, amended its contract with the GBRA to increase Applicant's reserved capacity by an additional 250 acre-feet, or a total of 750 acre-feet. (Id.) The 2006 Regional Water Plan approved by the Texas Water Development Board recommends that utilities in Kendall County purchase and implement surface water from the GBRA prior to year 2010. (See Pre-Filed Testimony of Darrell Nichols, pgs. 4-5). Applicant has demonstrated its commitment to providing service to its customers by securing sufficient water resources for years to come. (See Pre-Filed Testimony of Darrell Nichols, pg. 4).

Applicant has sufficient water capacity to meet the standards established by the TCEQ to serve the additional development and its existing CCN. (See Pre-Filed Testimony of John-Mark Matkin, pg. 4). Darrell Nichols testified that Applicant will be utilizing surface water to serve its existing customers as previously described and has required CDS to obtain additional surface water capacity from the Guadalupe Blanco River Authority for the proposed area. (See Pre-Filed Testimony of Darrell Nichols, pg. 5). CDS has paid and will continue to pay the costs of acquiring the additional 250 acre-feet of water from the GBRA to serve the base demand within the proposed area. (Id.) CDS is also responsible for providing the necessary infrastructure to service the area including developing wells to be used to meet peak demands. (See Pre-Filed Testimony of Darrell Nichols, pg. 5).

Applicant operates a wastewater treatment facility pursuant to permit Number 12404-001, and this facility has adequately met the wastewater demands of its customers. All treated

⁵ The initial contract between Applicant and GBRA for 500 acre-feet of water was admitted as Exhibit No. 2 to the pre-filed testimony of Jay Parker and the first amendment to the contract, increasing the volume an addition 250 acre feet for a total of 750 acre-feet was admitted as Exhibit No. 3 to the pre-filed testimony of Jay Parker.

wastewater from this facility is irrigated on a golf course and not discharged. (See Pre-Filed Testimony of Darrell Nichols, pg. 4). The existing wastewater treatment plant has a capacity of 0.15 million gallon per day (MGD); and as per the Non Standard Service Agreement between CDS and Applicant, CDS will be required to construct all the necessary infrastructure to provide sewer service in the proposed area. (See Executive Director's Direct Testimony of Kamal Adhikari, pg. 5). The CDS Agreement allows Applicant to use excess capacity in the existing wastewater treatment plant to provide service within the Requested Area while CDS is constructing facilities needed by Applicant to serve the Requested Area. (See Pre-Filed Testimony of Darrell Nichols, pg. 5).

E. Feasibility of Service from Adjacent Utilities

Kamal Adhikari testified that the City of Boerne is the only utility that is near to the proposed area. Initially the City of Boerne protested the application but later withdrew its protest and request for public hearing. (See Pre-Filed Testimony of Darrell Nichols, pg. 3). However, the City of Boerne did not show any intention to provide the service in the proposed area. (See Applicant's Direct Testimony of Darrell Nichols, pgs. 3-4; See Executive Director's Direct Testimony of Kamal Adhikari, pg. 6).

John-Mark Matkin, consulting engineer for CDS and the Applicant, testified that the City of Boerne would be the only possible utility purveyor, but it is not economically feasible for CDS to obtain service from the City of Boerne. (See Pre-Filed Testimony of John-Mark Matkin, pg. 2).

F. Financial Stability

Applicant has demonstrated the necessary financial capability to provide continuous and adequate service as provided in Texas Water Code 13.241(a). (See Pre-Filed Testimony of

Darrell Nichols, pg. 7). Applicant is not required to finance the improvements needed to provide service to the proposed area. (Id.; See Pre-Filed Testimony of Jay Parker, Exhibit 1).

Under the Non-Standard Service Agreement, as a condition to receiving utility service from Applicant should the CCN amendment be approved, CDS must provide all the infrastructure, water supply, and permits and approvals required by Applicant to serve the Requested Area, at CDS' exclusive cost without reimbursement by Applicant. (See Pre-Filed Testimony of Darrell Nichols, pg. 5). This condition renders moot the financial stability of the Applicant. Since CDS must tender these required improvements and permits to Applicant as a condition to obtaining service, if CDS is not able to finance the improvements, then Applicant is not required to serve the Requested Area. This makes the financial stability of CDS moot. While the ratepayers opposed to the application questioned the TCEQ staff about the letter from CDS' bank, the ratepayers offered no evidence that suggests that CDS is not financially able to proceed with the project. On the contrary, CDS has fully complied with its obligations under the contract to pay Applicant for the costs of acquiring the additional 250 acre-feet of water from GBRA.

G. Environmental Integrity

If the application is approved, water service to the Requested Area will be satisfied by the conjunctive use of surface water and groundwater, with surface water being used to satisfy the base demand and groundwater used to satisfy the peak demand. (See Pre-Filed Testimony of Darrell Nichols, pg. 5). The Applicant's proposed conjunctive use of surface from GBRA and groundwater implements the 2006 Regional Water Plan. (See Pre-Filed Testimony of Darrell Nichols, pgs. 7-8). The use of public water supply wells regulated by the TCEQ and the local groundwater district offers greater protection of the groundwater resources than the proliferation of individual water supply wells. (Id.)

By comparison, if the application is denied, CDS will be able to develop the Requested Area using an individual well on each lot. (See Pre-Filed Testimony of Darrell Nichols, pgs. 7-8). The proliferation of individual wells increases the risk of contamination and depletion of the groundwater resources with little regulation. (Id.) Approving the CCN Amendment, stated Darrell Nichols, will provide greater control and management of the groundwater resources in the area with greater regulation and monitoring. (Id.) Not approving the CCN Amendment will have a negative effect on the groundwater resources. (Id.)

H. Improvement in Service and Lowering of Cost

There is currently no service in the proposed service area so having a centralized utility will result in improvement in service. (See Pre-Filed Testimony of Darrell Nichols, pg. 8). There are no current customers in the proposed area, but any new customers will pay the same TCEQ-approved rates as all other customers of Applicant. (Id.) Further, Applicant will be constructing a transmission main to bring the surface water from the GBRA near Cascade Caverns to the utility's water plant on John's Road and as part of the Non-Standard Service Agreement, CDS will contribute up to \$1,500,000 towards the cost of that project. (See Pre-Filed Testimony of Darrell Nichols, pg. 8). If the CCN Amendment is not granted, the existing customers will ultimately be responsible for the entire cost of constructing that surface water transmission main through their monthly rates. (See Pre-Filed Testimony of Darrell Nichols, pg. 8). Applicant's existing rate schedule is attached to the application and the Opposing Ratepayers did not present any evidence that Applicant's rates are unreasonable, whether to its existing customers or to the customers located within the Requested Area. If the application is approved, the Applicant will be able to substantially increase its base without incurring capital costs for the required infrastructure. (Id.) By increasing its customer base, the Applicant will be able to take

advantage of the economies of scale and be able to allocate its fixed operating costs over more customers. (Id.)

IV. FINANCIAL, MANAGERIAL, AND TECHNICAL CAPABILITY

Based on foregoing testimony, Applicant has demonstrated that it has the financial, managerial, and technical capability to provide continuous and adequate service to its existing area and the proposed service area. Applicant has been providing continuous and adequate service within its existing service area more than sixteen years. The ratepayers did not offer any evidence that service by Applicant within its existing area is not adequate. The ratepayers did not offer any testimony that suggests that if the application is approved, that Applicant would not be able to continue to provide continuous and adequate service within its existing service area and the Requested Area.

V. NECESSITY OF CCN

CDS, the owner of the Requested Area, wants and needs service from the Applicant. (See Pre-Filed Testimony of Darrell Nichols, pg. 3). The Applicant agrees with Executive Director's expert witness, Kamal Adhikari that, there is a need for service in the requested area. (See the Executive Director's Direct Testimony of Kamal Adhikari, E.I.T., pg. 4).

VI. CONCLUSION

Based on the foregoing, Applicant submits that it meets all the statutory criteria to amend its CCNNos. 12122 and 20698 and the application should be approved as requested.

Attached hereto is a Draft Proposal for Decision and Draft Order for your convenience. Electronic versions of all or any of these documents will be provided upon request.

Respectfully submitted,

Davidson Troilo, P.C.
7550 West IH-10, Suite 800
San Antonio, Texas 78229
Telephone: (210) 349-6484
Facsimile: (210) 349-0041

By: Patrick Lindner w/p by [Signature] SB# 00793732
Patrick Lindner
State Bar No. 12367850

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July 2006, a true and correct copy of the foregoing document and all attachments were forwarded to each of the parties listed below via facsimile and first-class mail.

Elizabeth R. Martin Attorney at Law P. O. Box 1764 Boerne, TX 78006 830/816-8282 (fax) Representing Ratepayers	Ms. LaDonna Castanuela, Chief Clerk Office of the Chief Clerk MC-105 P.O. Box 13087 Austin, TX 78711-3087 ✓ 512/239-3311
Garrett Arthur Staff Attorney TCEQ Office of Public Interest Counsel PO Box 13087 MC-175 Austin, Texas 78711-3087 512/239-6377 – facsimile Representing TCEQ Public Interest Council	State Office of Administrative Hearings Administrative Law Judge Mike Rogan William P. Clements Building 300 West Fifteenth Street Austin, TX 78701 512/475-4994
Kathy H. Brown Staff Attorney TCEQ Environmental Law Division PO Box 13087 MC-173 Austin, TX 78711-3087 512/239-0606 – facsimile Representing Texas Commission on Environmental Quality	Eric Sherer Attorney at Law 11124 Wurzbach Rd., Ste. San Antonio, TX 78230 210/696-9730 210/696-9675 (fax) Representing Ranger Creek HOA



Dalby Fleming

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**

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COMMISSION ON
ENVIRONMENTAL
QUALITY
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PROPOSAL FOR DECISION

I. INTRODUCTION

TAPATIO SPRINGS SERVICE COMPANY, INC. ("Applicant") has filed an application pursuant to TEX. WATER CODE ANN. ("the Code") Ch. 13, seeking to amend its Certificate of Convenience and Necessity ("CCN") Nos. 12122 and 20698, in order to expand the extent of its water and sewer utility service area within Kendall County, Texas.

II. RECOMMENDATIONS

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") concluded that the Applicant had satisfied all the statutory criteria governing the evaluation of its application. The ED therefore recommended that the application be granted.

As set out in detail below, the Administrative Law Judge ("ALJ") agrees with the ED's recommendation.

III. PROCEDURAL HISTORY

The Applicant filed its application with the Commission on April 20, 2005. On January 24, 2006, a preliminary hearing on the matter was conducted in Austin, Texas, by ALJ Mike Rogan with the State Office of Administrative Hearings ("SOAH"). The following were designated as parties: Applicant Tapatio Springs Service Company (represented by Patrick Lindner and Maria Sanchez,

Attorneys), The Executive Director of TCEQ (represented by Kathy H. Brown), the TCEQ's Public Interest Counsel (represented by represented by Mary Alice Boehm-McKaughan), Andrew Calvert, Richard Haas, Carey McWilliams, Shel McWilliams, Carl D. Portz, Paulett Porz, Pat Wilson, David Rutherford, Thurman R. Williams, and Myrna L. Williams (represented by Elizabeth Martin, attorney). Approximately fifty (50) ratepayers (represented by Al Hamilton, attorney, including Mr. Hamilton), were designated parties at the preliminary hearing, but these ratepayers withdrew from the proceedings on February 17, 2006 and at the same time declared their support for the Applicant and the application. At the preliminary hearing, the request for party status by the Ranger Creek Home Owners Association (represented by Eric Sherer, attorney) was provisionally denied, but the Association withdrew its Request for Party Status on February 23, 2006.

During a recess in the preliminary hearing, the parties conferred and agreed to a procedural schedule, which included the filing of all testimony in written form prior to the final evidentiary hearing. The ALJ adopted the agreed schedule and scheduled a hearing date. The Ratepayers who opposed the application, did not submit pre-filed testimony in accordance with the schedule, thus waiving their presentation of any direct evidence at the hearing on the merits.

The hearing on the merits was held on July 6, 2006, in Austin, Texas.

IV. BACKGROUND

The proposed utility service area is located approximately four (4) miles west of downtown Boerne, Texas, and is generally bounded on the North by Ranger Creek Road; on the East by Johns Road; on the South by Tapatio Springs; and on the West by Bear Creek. The total area being requested includes approximately five thousand (5000) acres and no current customers. Applicant is currently certificated to provide water and sewer services in the area adjacent to the proposed area. CDS International, Inc. (CDS) owns land that is adjacent and contiguous to the existing CCN area

of Applicant. CDS is seeking to develop this land and in such capacity requested Applicant to provide the utility services. Pursuant to Applicant's TCEQ-approved Tariff, Applicant and the developer entered into a Non-Standard Service Agreement for Applicant to provide the utility services. The application is a result of that agreement. The Applicant and its affiliate, Kendall County Utility Company, are the only two entities providing service to the proximate area and are interconnected. Ratepayers represented by Elizabeth Martin contest the application of Applicant as legally insufficient, alleging that Applicant failed to provide proof of financial ability; that Applicant's application did not contain a capital improvements plan with a budget and an estimated timeline for construction of all facilities necessary; that the application did not contain a description of the proposed service area by either a metes and bounds survey, Texas State Plane Coordinate System, verifiable landmarks or by lot and block; that the application did not contain a certified copy of the most recent water capacity purchase; that the application did not contain a statement of affiliated interests; and that Applicant lacks a sufficient water supply to provide for the proposed expansion area. However, these requirements forming the basis of Ratepayers' objections are based upon statutory amendments applicable to applications filed after January 1, 2006; and as previously stated, the application in this proceeding was filed prior to December 31, 2005.

V. ISSUES PRESENTED

- 1. Does the Applicant satisfy the criteria set out in § 13.246(c) of the Code for determining whether a CCN application should be granted?**

Under § 13.246(b) of the Code, the Commission may grant an applications relating to a CCN only if it finds that the action is "necessary for the service, accommodation, convenience, or safety of the public." Section 13.246(c) of the Code sets out the following criteria for determining whether to grant a specific CCN application:

Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of [a] the adequacy of service currently provided to the requested area, [b] the need for additional service in the requested area, [c] the effect of the granting of a certificate on the recipient of the certificate [d] the ability of the applicant to provide adequate service, [e] the feasibility of obtaining service from an adjacent retail public utility, [f] the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio, [g] environmental integrity, and [h] the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.

The same criteria are also enumerated in § 291.102(d) of the TCEQ Rules. The immediately following analysis addresses how each of these criteria apply to the circumstances of this case.

a. Adequacy of service currently provided to the area

The ALJ recommends a finding that the requested area is not now receiving utility service. As to the service currently provided by the Applicant near the requested area, the record indicates that the Applicant has satisfactorily addressed all issues raised in the latest TCEQ inspection of the Applicant's facilities on August 10, 2004.

b. Need for additional service in the requested area

The ALJ recommends a finding that sufficient need for additional service exists to justify the proposed amendment. The Applicant submitted evidence through John-Mark Matkin, Engineer for Applicant and Developer, that CDS is seeking to develop this land and in such capacity requested Applicant to provide the utility services. Pursuant to Applicant's TCEQ-approved Tariff, Applicant and the developer entered into a Non-Standard Service Agreement for Applicant to provide the utility services. The application is a result of that agreement.

c. Effect of granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area

The ED has testified, by Kamal Adhikari, E.I.T., that currently no water utility service is provided in the proposed area. Granting the requested amendment to CCN, testified Mr. Adhikari,

will increase the area that it is obligated to provide continuous and adequate water and sewer service and to respond to requests for service in an appropriate time frame within the certificated area. No other retail public utility will be affected by granting the amendment of the Application.

d. Ability of the applicant to provide adequate service

The ALJ recommends a finding that the Applicant has the ability to provide adequate service to the area in question.

Testimony for both the Applicant and the ED concluded that the Applicant can provide adequate service. Applicant operates existing wells that have been adequate to meet the service demands experienced to date. However, to ensure sufficient water resources for years to come Applicant secured a supplemental source of treated surface water from the Guadalupe Blanco River Authority (GBRA). The 500 acre-feet of water per year is intended to meet normal demand while the existing groundwater supplies will still be required to meet peak demands. In accordance with the agreement with CDS, the Applicant amended its contract with the GBRA to increase its reserved capacity by an additional 250 acre-feet, for a total of 750 acre-feet. The 2006 Regional Water Plan also recommends that utilities in Kendall County purchase and implement surface water from the GBRA prior to year 2010. Applicant has demonstrated its commitment to providing service to its customers by securing sufficient water resources for years to come.

According to the TCEQ Comprehensive Compliance Inspection Letter dated August 10, 2004, the utility provided compliance documentation that corrective actions were taken for any alleged water system violations and that no other action or submittal was necessary.

Applicant operates a TCEQ Permitted wastewater treatment facility that has adequately met the wastewater demands of its customers. All treated wastewater is irrigated on a golf course and not discharged. According to the TCEQ Compliance Inspection Letter dated January 12, 2004, the

utility provided compliance documentation that corrective actions were taken for any alleged wastewater system violations and that no other action or submittal was necessary.

Consulting Engineer John-Mark Matkin testified that, according to the water analysis he prepared, Applicant has sufficient water capacity to meet the standards established by the TCEQ to serve the additional development and its existing CCN.

Kamal Adhikari, E.I.T. testified that Applicant is operating a wastewater treatment plant with the Texas Land Application Permit Number 12404-001. The existing wastewater treatment plant has a capacity of 0.15 million gallon per day (MGD). Also, as per the Non Standard Service Agreement between CDS Holdings (Developer) and Applicant, Developer will be required to put all the necessary infrastructures to provide service in the proposed area.

e. Feasibility of obtaining service from an adjacent retail public utility

The ALJ recommends a finding that service to the requested area from other public utilities would not be as feasible as extending service from the Applicant's adjacent facilities. No other utilities service has proposed providing service to this area. Kamal Adhikari, E.I.T. testified that the City of Boerne is the only utility that is adjacent to the proposed area. Initially the City of Boerne protested the Application of Tapatio Springs Service Company, Inc., but later withdrew its protest and request for public hearing. The City of Boerne did not show any intention to provide the service in the proposed area.

Darrell Nichols has testified that Applicant will be utilizing surface water to serve its existing customers as previously described and has required the Developer to obtain additional surface water capacity from the Guadalupe Blanco River Authority for the proposed area. The developer has paid and will continue to pay the costs of acquiring the additional 250 acre-feet of water from the GBRA to serve the base demand within the proposed area. The developer is also responsible for providing

the necessary infrastructure to service the area including developing wells to be used to meet peak demands.

Pursuant to the Non-Standard Service Agreement, the developer is required to pay all costs associated with designing and constructing the infrastructure within the development including engineering and design, easements or right-of-ways acquisition, construction, inspection, government or regulatory approvals required to lawfully provide service, and procurement of water allotments from GBRA. This infrastructure includes wells, storage facilities, pressure maintenance facilities, disinfection equipment, distribution system, collection system, and wastewater treatment facilities. The Applicant will not provide utility service until such time that the developer has properly completed the construction of the infrastructure with final inspection and testing by the Applicant and all regulatory approvals obtained.

John-Mark Matkin, Consulting Engineer for the developer of the service area and Consulting Engineer for Applicant has testified The City of Boerne would be the only possible utility purveyor, however, the distance of the prospective service area's five thousand (5000) acres from the City of Boerne does not make it economically feasible.

The ALJ notes that the prospective service area in this case is adjacent to the existing service area and distribution lines of the Applicant. Other utilities in the area would face the difficulty of having to extend lines across these zones and facilities to serve the requested area. None are presently seeking to do so.

f. Financial stability of the Applicant

The ALJ recommends a finding that the Applicant has adequate financial stability. Bank of America provided a letter indicating its long-standing relationship with CDS and that all accounts are satisfactory. The letter indicated that CDS has unrestricted funds available to be used to comply

with the Non-Standard Service Agreement.

Darrell Nichols has testified that Applicant is not required to finance the improvements needed to provide service to the proposed area. All the improvements required to provide service to the proposed area are to be financed, designed, and constructed by the Developer pursuant to the Non-Standard Service Agreement previously described. Furthermore, the Developer is also obligated to pay the raw water component of the monthly charges paid by Applicant to the GBRA until such time as there are at least 500 active connections (homes occupied by the end-use) within the proposed area. Because the Developer is financially responsible for designing and installing the infrastructure, the Applicant will not have any debt related to that infrastructure within the proposed area that will need to be paid with revenues. The largest initial operational expense will be the reservation payment to the GBRA for the additional 250 acre-feet per year that will be paid by the Developer.

Daniel K. Smith testified that in his opinion, Applicant has demonstrated financial and managerial capability to warrant approval of the CCN amendment.

g. Environmental integrity

The ALJ recommends a finding that the granting of the applications would have no significant effect upon environmental integrity.

Darrell Nichols has testified that the owner of the land, the Developer, would be receiving utility service from the Applicant, its provider of choice to develop the land as it intends. CDS will not be forced to develop at low densities and large lots that enable homeowners to drill an individual well on each lot. The proliferation of individual wells increases the risk of contamination and depletion of the groundwater resources with little regulation. Approving the CCN Amendment will provide greater control and management of the groundwater resources in the

area with greater regulation and monitoring. Not approving the CCN Amendment will have a negative effect on the groundwater resources. Utilizing surface water from the GBRA follows the recommendations set forth in the 2006 Regional Water Plan and protects the groundwater resources.

Darrell Nichols testified that a properly designed and constructed centralized sanitary sewer system is superior to on-site facilities. However, on-site facilities are an effective and approved method for disposition of wastewater. In future more dense phases of the development, a wastewater collection and treatment system will be utilized.

Kamal Adhikari, E.I.T. testified that the environmental integrity will be temporarily disturbed due to the construction of water distribution lines, sewage collection lines and the construction of additional pumping and storage facilities, treatment facilities by whomever provides service to the area; however, a properly constructed and operated central sewer collection system is better than individual on-site sewage facilities.

Consulting Engineer John-Mark Matkin has also testified that by granting the CCN amendment it will allow for a proper use of the water resources that are available to Kendall County. By using GBRA water for base demand, it limits the burden of residential wells on the Cow Creek Aquifer. This will provide for fire protection, stages of water consumption, rationing and monitoring. By not granting the CCN, the property would be allowed to drill 850 residential connections with no regulation or control of water usage.

h. Probable improvement in service or lowering of costs to consumers in the area resulting from granting of the certificate

The ALJ recommends findings that granting the application would result in improvement of service as there is currently no service in the proposed service area.

Darrell Nichols has testified that Applicant has no outstanding deficiencies in its most recent Compliance Inspection by the TCEQ. There are no current customers in the proposed area but any new customers will pay the same TCEQ approved rates as all other customers of Applicant.

Further, Darrell Nichols testified that Applicant will be constructing a transmission main to bring the surface water from the GBRA near Cascade Caverns to the utility's water plant on John's Road. As part of the Non-Standard Service Agreement, the Developer will contribute up to \$1,500,000.00 towards the cost of that project. If the CCN Amendment is not granted, the existing customers will ultimately be responsible for the entire cost of constructing that surface water transmission main through their monthly rates.

Kamal Adhikari, E.I.T. testified that current customers of Applicant will not be affected by the Application. Further, since the Applicant already has a CCN, its current water and sewer rate/tariff will not be changed as a result of the (amendment) and should continue to charge the existing rates to its customers in the proposed area.

i. Summary of ALJ's evaluation under criteria in Section 13.246(c).

After evaluating all the criteria set out in § 13.246(c) of the Code, as they apply to the circumstances of this case, the ALJ concludes that none specifically weighs against the granting of the pending application. Evidence on several of the criteria — including the Applicant's ability to provide service, the Applicant's financial stability, and the effect of granting the application upon the Applicant — strongly supports the Applicant's case. Moreover, the evidence of the Applicant's satisfaction of the relevant criteria is essentially uncontroverted.

ii. Would granting the application further the TCEQ's policy of regionalization?

Darrell Nichols has testified that before CDS, the Developer, could construct, own and operate its own utility and obtain its own CCN, the TCEQ would require the Developer to request

service from all adjacent utilities and demonstrate why regionalization and consolidation is not feasible. Applicant and its affiliate KCUC are the only adjacent utilities.

VI. ADDITIONAL FACTS

In addition to the facts addressed in the preceding discussion of the major issues, the Findings of Fact contained in the attached Order include other facts, as established during the proceeding, that are necessary to show compliance with regulatory requirements applicable to these proceedings. These additional facts are incorporated by reference into this Proposal for Decision.

VII. CONCLUSION

After a review of the record and for the reasons given above, the ALJ recommends that the Commission adopt the attached Order approving the amendment of Applicant's Certificate of Convenience and Necessity to encompass the additional requested area.

SIGNED July _____, 2006.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN **ORDER** granting application by Tapatio Springs Service Company, Inc.
for an amendment to its Certificate of Convenience and Necessity Nos.
12122 and 20698; TCEQ Docket No. 2005-1516-UCR;
SOAH Docket No. 582-06-0425

On _____, 2006, the Texas Commission on Environmental Quality (Commission) considered the Application of Tapatio Springs Service Company, Inc. (Applicant) for an amendment to its existing Certificate of Convenience and Necessity (CCN) Nos. 12122 and 20698, relating to the provision of water and sewer utility service within Kendall County, Texas.

An Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) conducted hearings upon the Application on July 6, 2006. The following were designated as parties to the proceeding: the Applicant, The Executive Director of TCEQ, the TCEQ's Public Interest Counsel, and Andrew Calvert, Richard Haas, Carey McWilliams, Shel McWilliams, Carl D. Portz, Paulett Portz, Pat Wilson, David Rutherford, Thurman R. Williams, and Myrna L. Williams (represented by Elizabeth Martin, attorney).

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Texas Commission on Environmental Quality makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Applicant is an investor-owned utility operating a water and sewer utility system serving connections within Kendall County, Texas.
2. The Applicant holds CCN Nos. 12122 and 20698, issued by the Commission, for water and sewer utility service within Kendall County, Texas.
3. On April 20, 2005, the Applicant filed an application with the Commission for an amendment to its CCN, seeking to expand its authorized service area to encompass an additional area ("the requested area") of approximately 5,000 acres located in Kendall County, Texas.
4. The requested area is located approximately four (4) miles west of downtown Boerne, Texas, and is generally bounded on the North by Ranger Creek Road; on the East by Johns Road; on the South by Tapatio Springs; and on the West by Bear Creek.
5. The Applicant mailed notice of its application to neighboring utilities and affected parties on April 20, 2005.
6. The Applicant published notice of its application for a CCN amendment in the Boerne Star a newspaper regularly published and generally circulated in Kendall County, Texas.
7. As the result of requests for hearings, the application was subsequently referred to SOAH and set for hearing.
8. A preliminary hearing on the application was held before SOAH in Austin, Texas, on January 24, 2006.

9. An evidentiary hearing in the proceeding was conducted at the same location on July 6, 2006.

Adequacy of Service

10. No water or sewer utility service currently is provided to the requested area. The Applicant has provided continuous and adequate service to its existing service area located adjacent to the requested area.

Need for Additional Service

11. The requested area is owned by one person, CDS International (CDS), who is seeking to develop this land. CDS requested Applicant to provide the utility services. Pursuant to Applicant's TCEQ-approved Tariff, the Applicant and CDS entered into a service agreement for Applicant to provide the utility services, subject to certain conditions being satisfied. The application is a result of that agreement.

Effect of Granting Certificate on Applicant and Other Utilities

12. There is currently no water or sewer utility service being provided in the requested area. Granting the application benefits the Applicant and its ratepayers. No other retail public utility will be affected by granting the amendment of the Application.

Ability of Applicant to Provide Adequate Service

13. The Applicant can provide adequate service to the requested area.
- a. Applicant operates existing wells that have been adequate to meet the service demands experienced to date. However, to ensure sufficient water resources for years to come Applicant secured a supplemental source of treated surface water from the Guadalupe Blanco River Authority (GBRA). The secured 500 acre-feet

of water per year is intended to meet normal demand while the existing groundwater supplies will still be required to meet peak demands. In accordance with the agreement with CDS, the Applicant amended its contract with the GBRA to increase its reserved capacity by an additional 250 acre-feet, for a total of 750 acre-feet. The 2006 Regional Water Plan also recommends that utilities in Kendall County purchase and implement surface water from the GBRA prior to year 2010.

- b. Applicant operates a TCEQ Permitted wastewater treatment facility that has adequately met the wastewater demands of its customers.

Feasibility of Obtaining Service From An Adjacent Retail Public Utility

- 14. Obtaining service from an adjacent retail public utility would not be as feasible as extending service from the Applicant's adjacent facilities. No other utilities service has proposed providing service to this area.

Financial Stability

- 15. Applicant has adequate financial stability. Applicant is not obligated to serve the requested area unless CDS provides Applicant the infrastructure, additional water supply, and permits required for Applicant to serve the requested area. Bank of America provided a letter indicating its long-standing relationship with CDS and that all accounts are satisfactory. The letter indicated that CDS has unrestricted funds available to be used to comply with the Non-Standard Service Agreement. Applicant is not required to finance the improvements needed to provide service to the proposed area. All the improvements required to provide service to the proposed area are to be financed, designed, and

constructed by the Developer pursuant to the Non-Standard Service Agreement previously described. Furthermore, the Developer is also obligated to pay the raw water component of the monthly charges paid by Applicant to the GBRA until such time as there are at least 500 active connections (homes occupied by the end-use) within the proposed area. Because the Developer is financially responsible for designing and installing the infrastructure, the Applicant will not have any debt related to that infrastructure within the requested area that will need to be paid with revenues. The largest initial operational expense will be the reservation payment to the GBRA for the additional 250 acre-feet per year that will be paid by the Developer.

Environmental Integrity

16. Provision of service in the area by the Applicant would pose no discernible long-term risk to environmental integrity. Approving the application avoids the proliferation of individual water supply wells and on-site private sewage facilities.

Probable Improvement in Service

17. Provision of service in the area would result in improvement of service as there is currently no service in the requested area.

Probable Lowering of Costs to Consumers

18. There are no current customers in the proposed area but any new customers will pay the same TCEQ approved rates as all other customers of Applicant. Because the Applicant already has a CCN, its current water and sewer rate/tariff will not be changed as a result of the amendment and should continue to charge the existing rates to its customers in the requested area.

CONCLUSIONS OF LAW

1. The public hearings on the application were held under the authority of Chapter 13 of the Water Code, the Commission's rules (TEX. ADMINISTRATIVE CODE, Title 30), SOAH's procedural rules (TEX. ADMINISTRATIVE CODE, Title 1, Chap. 155), and TEX. GOV'T CODE ANN. § 2003.47.
2. Proper notice of these matters was given as required by the Water Code and by Commission rules.
3. The Commission has jurisdiction to consider the application, pursuant to Water Code § 13.246.
4. Based on Findings of Fact Nos. 10 through 18, a consideration of the criteria enumerated in Water Code § 13.246(c) results in a conclusion that the requested area should be included within the service area for the Applicant's CCN.
5. Granting the Applicant's application would further TCEQ's policy of encouraging regionalization in the delivery of water utility services.
6. In accordance with Water Code § 13.246(b), it is necessary for the overall best service, accommodation, convenience, or safety of the public to grant the application of the Applicant to amend its CCN by extending its service area to encompass the requested area.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY THAT:**

1. The pending application of Tapatio Springs Service Company, Inc. to amend its Certificates of Convenience and Necessity Nos. 12122 and 20698, is GRANTED.

2. The Executive Director of the Texas Commission on Environmental Quality shall amend the official maps for Kendall County to reflect this decision.
3. The chief clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties.
4. If any provisions, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

ISSUED:

TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY

Kathleen Hartnett White, Chairman

JUL 26-2006 WED 03:24 PM

FAX NO.

P. 02/34

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July 26, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

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

CHIEF CLERK'S OFFICE

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY

JUL 26 PM 3:49

Re: 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 Numbers 12122 and 20698 in
 Kendall County, Texas

Dear Ms. Castañuela,

Enclosed for filing is the following:

- 1) Applicant's Closing Arguments; and
- 2) Applicant's Draft Proposal for Decision and attached Draft Order approving the amendment of Applicant's Certificate of Convenience and Necessity.

Sincerely,


 Dalby Fleming
 For the Firm

cc: Mailing List (fax to counsel for all parties)

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****APPLICANT'S CLOSING ARGUMENTS**

Tapatio Springs Service Company, Inc. ("Applicant") files these closing arguments in support of its application to amend its Certificates of Convenience and Necessity ("CCN") Nos. 12122 and 20698.

CHIEF CLERK'S OFFICE

2006 JUL 26 PM 3:49

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY**I. INTRODUCTION¹**

The developer of a tract of land adjacent to Applicant's existing service area wants service from Applicant. Applicant has been providing continuous and adequate service within its existing service area for more than sixteen years and is willing and able to provide service to the property if the developer satisfies the conditions of the service agreement. The service agreement requires the developer to furnish all the infrastructure and additional water supply required by Applicant to furnish service. No other utility seeks to serve the area. Granting the application benefits the Applicant's ratepayers for several reasons, as illustrated in part by the large group of Applicant's ratepayers withdrawing as parties and stating their support for the application. Granting the application promotes the state policy favoring consolidation of retail utilities, implements the Water Plan for the region, and avoids the proliferation of individual water wells.

The few ratepayers opposed to the application cannot seem to see the forest for the trees. If the application is approved, the Applicant and ultimately the Applicant's ratepayers, get a

¹ Citations to the record are provided in the detailed presentation that follows the introduction.

JUL-26-2006 WED 03:23 PM

FAX NO.

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TO:

Elizabeth R. Martin
Garrett Arthur
Kathy Brown
Ms. LaDonna Castañuela
Administrative Law Judge Mike Rogan
Eric Sherer

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CHIEF CLERK'S OFFICE

234 JUL 26 PM 3:49

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FROM: Patrick Lindner
DATE: July 26, 2006
CLIENT #: 4153/7
SUBJECT:

Applicant's Closing Arguments
Applicant's Draft Proposal for Decision
Draft Order

SOAH Docket No. 582-06-0425
TCEQ Docket No. 2005-1516-UCR

If you do not receive all 32 pages, or if any difficulty in transmission occurs, please contact
Elizabeth Paul at (210) 349-6484, ext. 556.

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July 26, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

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P.O. Box 13087
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TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY
JUL 27 2 11 PM
CHIEF CLERK'S OFFICE


Re: 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 Numbers 12122 and 20698 in
Kendall County, Texas.

Dear Ms. Castañuela:

Enclosed for filing is the following:

- 1) Applicant's Closing Arguments; and
- 2) Applicant's Draft Proposal for Decision and attached Draft Order approving the amendment of Applicant's Certificate of Convenience and Necessity.

Sincerely,


Dalby Fleming
For the Firm

cc: Mailing List (fax to counsel for all parties)