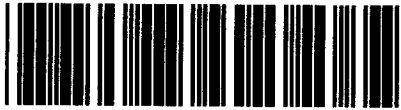


Control Number: 43990



Item Number: 33

Addendum StartPage: 0

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

43990

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

2014 DEC 19 AM 8:19

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

RECEIVED  
PUBLIC UTILITY COMMISSION  
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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
CHIEF CLERK'S OFFICE  
2014 JUL 23 PM 3:09

# THE OFFICE OF PUBLIC INTEREST COUNSEL'S CLOSING ARGUMENT

**To the Honorable Administrative Law Judge:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or "Commission") submits this Closing Argument and would respectfully show the following:

## **I. Introduction**

On July 6, 2006, the State Office of Administrative Hearings (SOAH) conducted an evidentiary hearing concerning the application made by Tapatio Springs Service Company, Inc. ("Tapatio" or "Applicant") to amend Certificates of Convenience and Necessity (CCN) Nos. 12122 and 20698. The ratepayers, represented by Elizabeth Martin, allege that the amendment of these CCN's could result in a rate increase for existing customers and will create a significant financial and water quality risk to the ratepayers, with little or no benefit to them. The Executive Director (ED) supports approval of the application. The OPIC finds that Tapatio's application should be denied.

## **II. Discussion**

To structure this discussion of Tapatio's application, the OPIC will use the criteria set out in 30 Texas Administrative Code (TAC) § 291.102. This rule was recently amended to be

effective January 5, 2006. However, Tapatio's application was declared administratively complete on April 29, 2005, and the OPIC will therefore use the rule language which was in effect on that date. Section 291.102(d) states that in considering whether to amend a CCN, the Commission shall consider:

- (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 utility 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.

**A. Adequacy of service currently provided to the requested area**

The application is seeking to expand the current water and sewer CCN's to include approximately 5,000 acres which are adjacent to the current certificated area. The 5,000 acres are intended for residential development, but there are currently no customers in the requested area, and therefore, this criterion is not applicable to the situation.

**B. Need for additional service in the requested area**

Presently, there are no landowners, prospective landowners, tenants, or residents to request service. However, if the requested area is developed as planned, there will be a future need for service.

**C. Effect of the 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**

As the recipient of amendments to its water and sewer CCN's, Tapatio would be required to provide continuous and adequate service to its expanded certificated area. The development company, CDS International Holdings, Inc. (CDS), is the sole landowner, and granting the amendments would secure water and sewer service for the proposed development. No other retail public utility is serving the area.

**D. Ability of the applicant to provide adequate service**

According to the testimony of Daniel Smith, the ED finds that Tapatio is presently providing adequate service to its customers.<sup>1</sup> This conclusion is based on Tapatio's compliance history and customer complaint history, and according to Mr. Smith, these histories contain no evidence that Tapatio is not providing continuous and adequate service.<sup>2</sup>

However, if the certificated area is expanded, the ratepayers question whether Tapatio will continue to provide adequate service. Since 2002, Tapatio has had a contract with the Guadalupe Blanco River Authority (GBRA) to provide 500 acre-feet of surface water. This water is intended for the existing Tapatio Springs Resort and for Kendall County Utility Company; not for the CDS property. A new pipeline is needed to bring this water from GBRA to Tapatio Springs, but this pipeline has not been constructed. Tapatio has not received any of this GBRA water, but continues to pay a monthly reservation fee for the water, and has been doing so since the execution of the contract in 2002. Additionally, John J. Parker, Jr. testified that this surface water supply is necessary to provide an alternate source for the groundwater supply currently relied upon to serve the existing customers and satisfy the projected demand for

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<sup>1</sup> Direct Testimony of Daniel K. Smith; ED-5, page 3, lines 5-7.

<sup>2</sup> Tr at page 88, line 23 through page 89, line 2.

the build-out of the remaining portion of Tapatio's service area under its existing CCN.<sup>3</sup> If not needed presently, it appears that the 500 acre-feet of GBRA water will be needed in the immediate future, and yet the pipeline has not been constructed, and the easements necessary for the construction have not been obtained. The OPIC finds that this situation reflects poorly on Tapatio's ability to provide adequate service in the future.

The OPIC also finds that Tapatio's water loss for the past two years is a reason to question the utility's ability to provide adequate service in the future. In 2004, Tapatio lost 20 percent (8,135,000 gallons) of all the water pumped,<sup>4</sup> and in 2005, Tapatio lost 18.6 percent (9,105,000 gallons) of the water pumped.<sup>5</sup> These large amounts of lost water cause the OPIC to question whether Tapatio's water system is being properly managed and maintained.

**E. Feasibility of obtaining service from an adjacent retail public utility**

According to the testimony of Kamal Adhikari, the City of Boerne is the only utility adjacent to the proposed area, and the City has not shown any intention to provide service in the proposed area.<sup>6</sup>

**F. Financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio**

Daniel Smith testified that Tapatio's debt-equity ratio shows a substantial amount of term debt against a small amount of equity.<sup>7</sup> He also testified that if the debt owed to Clyde B. Smith was satisfied, a substantial improvement in Tapatio's debt-to-equity ratio would occur.<sup>8</sup>

However, the Applicant has not provided the TCEQ with documentation to show that the debt

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<sup>3</sup> Pre-Filed Testimony of John J. Parker, Jr.; A-3, page 4, lines 33-37.

<sup>4</sup> Tr at page 32, line 20 through page 33, line 2.

<sup>5</sup> Tr at page 38, line 20 through page 39, line 1.

<sup>6</sup> Direct Testimony of Kamal Adhikari; ED-7, page 6, lines 3-6.

<sup>7</sup> Tr at page 91, lines 4-6.

<sup>8</sup> Tr at page 109, line 18 through page 110, line 7.

situation has changed.<sup>9</sup> The OPIC finds it troubling that Tapatio's debt-equity situation remains unclear because the Applicant has not provided the necessary information to the ED.

The ED has concluded that Tapatio has demonstrated financial capability to warrant approval of the CCN amendments, but the OPIC finds several instances in the record which indicate that the ED lacks information he would like to obtain from the Applicant. When asked if Tapatio has shown the ED its expectation of timing and depth of cash flows, Daniel Smith answered, "Not yet adequately," and when asked if Tapatio has provided the information on an annual connection rate, Mr. Smith didn't recall a projection of annual connection rates.<sup>10</sup> When asked if the Applicant has submitted the cost of construction for the proposed expansion, Mr. Smith answered, "Not in as succinct a summary as I would like to see and, again, in the phased processes I would like to see."<sup>11</sup> When asked if he has an estimate of how the phases are going to come on line, Mr. Smith answered, "No, I don't have a good feeling for their speed of connections."<sup>12</sup> When asked if Tapatio has provided any cash flow estimates for this project, Mr. Smith answered, "I don't believe I've seen cash flow detail to my satisfaction."<sup>13</sup> Finally, when asked if prior to making his recommendation, Mr. Smith would require cash flows, staging estimates, and construction cost estimates, he answered, "Yes."<sup>14</sup> While the OPIC is aware that the ED has not granted final approval of these amendments, the ED's present recommendation to grant the amendments seems inappropriate given the missing documents and information which he will admittedly need to make a final recommendation. The ED has acknowledged that the scope of this project is ambitious, and comprehensive financial capability information is required

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<sup>9</sup> Tr at page 91, lines 7-11.

<sup>10</sup> Tr at page 98, line 20 through page 99, line 1.

<sup>11</sup> Tr at page 106, lines 5-10.

<sup>12</sup> Tr at page 108, lines 11-15.

<sup>13</sup> Tr at page 108, line 23 through page 109, line 4.

<sup>14</sup> Tr at page 109, lines 5-9.

for approval.<sup>15</sup> The record does not support a conclusion that the ED has received the desired comprehensive financial information, and the OPIC therefore believes it is premature for the ED to take a position in support of the amendments.

The record contains testimony which calls into question the financial stability of Tapatio. Daniel Smith was asked if based on income, liability and equity, and the debt-to-equity ratio, Tapatio would be able to start the proposed expansion. Based on Tapatio's December 31, 2004 balance sheet, Mr. Smith answered, "No."<sup>16</sup> Using Tapatio's 2004 income statement, Mr. Smith was asked if an interest expense which accounts for 24.26 percent of all expenses is high, and he answered, "In my experience, that is a higher-than-usual percentage of total expenses, yes."<sup>17</sup> The pipeline needed to bring the GBRA surface water to Tapatio Springs will cost an estimated \$2,154,983,<sup>18</sup> and CDS has agreed to contribute \$1.5 million towards that cost.<sup>19</sup> The difference which Tapatio would be responsible for is \$654,983. When Mr. Smith was asked if Tapatio, according to the December 2004 balance sheet, would be able to fund \$654,000 of additional construction, he replied, "As a lender, I would not provide additional funding based on this balance sheet without other sources of equity."<sup>20</sup> The OPIC asserts that Tapatio has not sufficiently demonstrated its financial ability or financial stability, and this criterion remains unsatisfied.

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<sup>15</sup> Tr at page 97, lines 1-5.

<sup>16</sup> Tr at page 92, lines 19-24.

<sup>17</sup> Tr at page 93, line 22 through page 94, line 5.

<sup>18</sup> Pre-Filed Testimony of John-Mark Matkin; A-2, page 3, lines 40-44.

<sup>19</sup> Pre-Filed Testimony of John J. Parker, Jr.; A-3, page 4, lines 20-22.

<sup>20</sup> Tr at page 92, line 25 through page 93, line 4.

### **G. Environmental Integrity**

This criterion was specifically raised by the OPIC, but no other party discussed this factor, and at this time the OPIC has no opinion regarding the environmental integrity of Tapatio's proposal.

### **H. Probable improvement in service or lowering of cost to consumers in that area**

It is unclear whether granting the amendments will result in improvement of service or lowering of costs to consumers, but the factors which could affect the situation include: which, if any, expansion costs are passed on to existing customers; if and when the 500 acre-feet of GBRA surface water is received by Tapatio; and whether a significant increase in the number of customers will help stabilize rates. The OPIC concludes that this criterion does not favor one recommendation over another.

## **III. Conclusion**

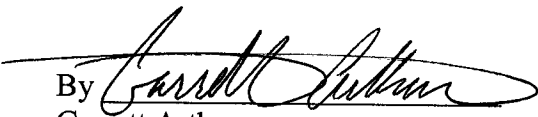
The OPIC recommends that the Administrative Law Judge (ALJ) find that the evidentiary record does not contain sufficient information to support granting Tapatio's application. Of the eight criteria used to evaluate a CCN amendment application, the OPIC finds that at least two of the criteria weigh against the Applicant. The first of these two criteria is the applicant's ability to provide adequate service, and given the facts in the record concerning the GBRA to Tapatio pipeline that is still needed and the substantial amount of water loss from Tapatio's utility system, the OPIC asserts that Tapatio has not demonstrated its readiness to provide adequate service to an expanded area. The second of these two criteria is the applicant's financial stability, and the OPIC finds that the record lacks sufficient information and documentation to satisfy this criterion. For the reasons stated herein, the OPIC concludes that Tapatio has not met



its burden of proof and respectfully requests that the ALJ recommend denial of Tapatio's application.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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## CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2006, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served on all parties listed below via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

For the State Office of Administrative Hearings:

The Honorable Mike Rogan  
Administrative Law Judge  
State Office of Administrative Hearings  
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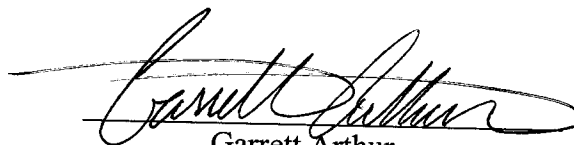
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CHIEF CLERKS OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



Garrett Arthur

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 26, 2006

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

TEXAS  
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ON ENVIRONMENTAL  
QUALITY  
2006 JUL 26 PM 3:18  
CHIEF CLERK'S OFFICE

Re: Tapatio Springs Service Company, Inc.  
SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Closing Argument in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure