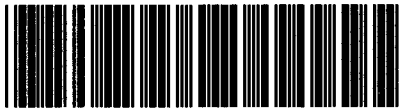

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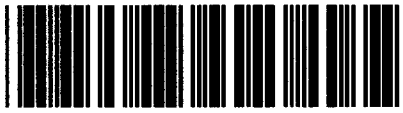

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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014

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

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

APPLICANT'S RESPONSE TO CLOSING ARGUMENTS OF OPIC AND THE RATEPAYERS OPPOSED TO THE APPLICATION

I.
Introduction

OPIC and the Ratepayers opposed to the application focus on minor details in an effort to blur the following undisputed basic facts that support granting the application:

1. CDS wants its property within Applicant's CCN.
2. CDS is responsible for providing all new infrastructure, additional water supply, and permits required for Applicant to serve the property and has already financed the acquisition of at least 250 acre-feet of surface water supply towards this commitment.
3. If the application is granted, but CDS does not fulfill its contractual obligations to Applicant for whatever reason, Applicant is not committed to expend funds or use its existing water supply and sewage treatment resources to serve CDS' property.
4. Approval of the application benefits the ratepayers by providing access to $1.5 million for construction of a water main and increasing the Applicant's customer base without increasing its costs; while denial of the application harms the ratepayers because Applicant must then solely finance the water main.
5. Granting the application is consistent with state policy of consolidating retail utilities, consistent with the regional water plan promoting conjunctive use of surface and groundwater, and avoids the proliferation of individual water wells.
6. More ratepayers favor the application than the few who oppose the application.

II.
Financial Capability

Financial capability is one of the several factors that must be considered, but in this application financial capability is really of secondary importance.

The financial ability of the Applicant becomes an issue only if the application is denied. If the application is approved, CDS becomes responsible for practically all costs of extending Applicant's existing system and Applicant must pay only the incremental cost of oversizing the water main that connects its existing water system to the point of delivery for the treated water

from GBRA. However, if the application is denied then CDS cancels the agreement and the $1.5 million dollars of CDS contribution in aid of construction disappears, leaving Applicant and its existing ratepayers to shoulder the entire cost of the water main. Only then, if the application is denied, does the Applicant's financial capability become an issue. According to the Ratepayers, the Applicant does not appear financially capable of constructing the water main without CDS' contribution, and if that is the case, then the application should be granted so Applicant has access to the additional funding provided by CDS under the service extension agreement.

If the application is approved, CDS contributes at least $1.5 million towards the cost of the water main, and the letter from Bank of America confirms CDS has the funds for at least this share of the main. The Applicant has access to the funds necessary to pay its share of the expenses. (See Jay Parker, direct testimony, page 7, line 40-page 8, line 13.)

In addition, if the application is approved, the Applicant has the regulatory approval necessary to offer retail service within the area Under its tariff and the CDS contract, Applicant is not obligated to advance funds to provide the service or to construct additional infrastructure, but only to use any its existing water storage and water distribution system to provide service. (See Jay Parker, cross examination, page 53, line 21 thru page 55, line 3.) The Applicant can require CDS or any other developer to install the infrastructure at the developer's cost. (See Daniel Smith, cross-examination, pg. 99-page 100, line 13.)

CDS has timely performed its obligations and there is no reason to doubt that it will not do so in the future. (See Jay Parker, direct testimony.) The Commission has previously allowed CCN applicants to rely upon contractual obligations of third parties to satisfy the requirements of section 13.241. *Bexar Metropolitan Water Dist. v. Texas Com'n on Environmental Quality,* 85 S.W.3d 546 (Tex App -Austin, 2006) The TCEQ regularly approves applications based upon utility contracts with developers. (See Daniel Smith, cross-examination, pg 99, line 24 to page 100, line 13, page 106, line 3.)

III.
Managerial Ability

The record clearly establishes that Applicant has been providing continuous and adequate service to its customers and that Applicant will be able to continue this service if the application is approved. The Ratepayers did not allege any prior or existing service complaints.

Jay Parker has been managing the utility for over fifteen years. During this time he has overseen main extensions in the past, when the Ranger Creek System and the Tapatio Spring System were interconnected and as new subdivisions within Tapatio have been developed. (See Jay Parker, direct testimony, page 6, line 6, to page 7, line 24; Jay Parker, cross-examination, page 45, line 5-16.) The service extension agreement with CDS is comparable to these past projects that were successfully completed. Under the agreement, CDS is responsible for hiring a registered professional engineer to design the system infrastructure and submit plans and specifications to Applicant for its review and approval and also to the TCEQ for its review and approval in

accordance with TCEQ rules.[1] (See Pre-Filed testimony of Darrell Nichols, page 5.) When these approvals are obtained, CDS hires the contractor to construct the improvement with oversight by the Applicant. When all the tests are completed and Applicant's engineers assure Applicant that the work was constructed in accordance with the approved plans and specs, the Applicant accepts title and places the line into service. (Id.) There is nothing complicated or unusual about this process

What about the easements for the water line? Deciding on a final alignment in order to acquire the easement depends in large part on whether the Applicant has the additional $1.2 million contribution from CDS with which to work. Whether or not Applicant will have the additional $1.5 million from CDS depends solely on the TCEQ's decision in this matter. The Ratepayers' request for hearing delayed TCEQ action on the application, thereby stalling easement acquisition and CDS' contribution towards the water main project pending the TCEQ action on the application. Therefore, Ratepayers are themselves directly responsible for the delay occasioned by their request for hearing

Applicant's decision to purchase 500 acre-feet of treated surface water from GBRA, and then increase this amount an additional 250 acre-feet, shows Applicant's commitment to the regional water plan. The regional water plan, attached to the pre-filed testimony of Darrell Nichols, promotes the need for utilities within Kendall County to develop conjunctive use of surface and groundwater supplies.

Jay Parker negotiated a contract with CDS that provides Applicant access to an additional $1.5 million for construction of a water main so that the Applicant is only required to pay the incremental cost of oversizing, and, at CDS' sole cost, requires CDS to provide the water supply sources and infrastructure needed to serve the development. This arrangement simply makes good sense for the Applicant and its ratepayers and demonstrates Jay Parker's commitment to address the real, substantive issues facing the utility.

IV.
Water Supply Issues

Ratepayers mischaracterize the extent of the service commitment, so their arguments based upon this mischaracterization are without merit. The service commitment is not for 1,700 connections, but for the lesser of either 1,700 connections or the number of connections that can be served by the additional water supply (surface and groundwater) provided by CDS to the Applicant. The Non-Standard Service Agreement (Jay Parker direct testimony, attachment 1) clearly states: (i) CDS requests service "to *no more than* 1,700 future customers within the Property" (3rd recital (emphasis added), and that facilities will be *sized* to accommodate Developer's projected demand equivalent to 1700 connections, but the *actual demand will be determined later*"(section 9(c)(emphasis added)), in the event Developer plans are revised to decrease the required number of connections, all contributions in aid of construction which are variable or no longer required will be proportionately reduced (section 9(f)), and under no circumstances is Utility Company obligated to use any portion of the 500 acre-feet reserved under the GBRA contract to provide

[1] In order to get TCEQ approval of plans, the Applicant at that time must show availability of water 30 TAC §290.41(b)

water service to the property or to use the groundwater supply facility that it owns on the date of the contract to supply water to the Property (section 9(l)); *See also Pre-Filed Testimony of Jay Parker and cross examination of Jay Parker.*

As of the date of the hearing, Applicant has acquired an amendment to the GBRA contract for an additional 250 acre-feet for service to the territory to be added. (See Pre-Filed Testimony of Darrell Nichols, page 11.) There are several alternatives available to increase this already existing supply, as described in the testimony of Jay Parker and John Mark Matkin, P.E. However, if all of these alternatives to increase the supply of water available to the CDS property are exhausted without increasing the supply, then the service commitment is capped at this level. See Non-Standard Service Agreement (section 9 (l)); Jay Parker direct testimony, page 5, lines 14-22). Accordingly, Applicant has satisfied the requirements of Water Code, Section 13.241(b).

V.
Response to OPIC

Upon what basis does OPIC ignore the sixty ratepayers who support the application and defer to the ten who do not? There is absolutely no evidence that the amendment will result in a rate increase. There is absolutely no evidence of any legitimate financial risk. There is absolutely no evidence of any water quality risk There is only evidence that granting the application will greatly benefit the ratepayers

The need for service is clearly and irrefutably reflected by the contract between Applicant and CDS wherein CDS requests service

Regarding the easement for the GBRA water main, Applicant had to pay GBRA "reservation" fees in order to have access to the GBRA water. Under the GBRA contract, Applicant had to begin paying for the GBRA project long before GBRA could deliver any water. GBRA did not begin supplying water until April 2006. (See Jay Parker, cross-examination, page 44, lines 3-23, page 59, line 17-19). Under Section 1 of the agreement between CDS and the Applicant, CDS is responsible for design of the water main and Section 9(a) requires CDS and the Applicant to cooperate with GBRA regarding the change of the delivery point. Until Applicant's authority to serve CDS is approved and the location of the delivery point is confirmed, easement acquisition must be deferred. But CDS has no incentive to resolve the delivery point issue and pay for the work required to obtain the easements until the application is approved. The Ratepayers' protest of the pending application casted doubt on whether Applicant would be authorized to serve the CDS property, which in turn delayed work on all other aspects relating to the service extension. In other words, the Ratepayers' actions delayed the easement acquisition; nevertheless OPIC unfairly blames Applicant for the delay.

Lost and unaccounted for water is an important issue to Applicant and Applicant has recently fixed a large break that it suspects is largely responsible for the loss. (See Jay Parker, cross-examination, page 39, line 2 thru page 40, line 2). The only evidence in the record is the percentage from past years, and there is no evidence in the record of the reasonable range of lost and unaccounted for water for systems comparable to the Applicant's system, so there is no

measure from which to conclude whether or not this percentage is unreasonable Further, if the application is approved, Applicant will have access to a large customer base from which to recover the revenue needed to repair and replace mains.

Regarding Applicant's debt to equity ratio, the undisputed evidence is that the debt to Clyde Smith has been paid. (See Jay Parker, cross-examination, page 33, lines 10-16; page 35, lines 2-4.) This is no longer an issue. Dan Smith testified in favor of the application and did not change his testimony or his recommendation that the application be approved.

Regarding environmental integrity, the adverse environmental impacts if the application is denied were fully described in Applicant's pre-filed testimony These adverse impacts included, among others, the proliferation of individual wells serving each lot within the CDS development, thus impairing water quality (contamination from more wells) and water quantity (base and peak demand being satisfied by groundwater, not base demand being satisfied from surface water).

OPIC proposes that the TCEQ "punish" Applicant by denying the application because of perceived lack of progress on easement acquisition and water loss. However, this does not punish Applicant, but punishes the existing ratepayers because the $1.5 million contribution by CDS towards the water main extension will not be available, nor will the increased customer base be available to recover the costs of constructing the new water main to get the GBRA water or repairing the existing water mains to reduce water loss (if the water loss is due to leakage, and not to other factors, such as slow running meters, etc.). Denial also punishes CDS, who wants service from Applicant.

VI.
Response to Ratepayers

Ratepayers' allegations regarding water supply, financial, and management related issues are addressed above. The Ratepayers never allege and certainly did not present any evidence that Ratepayers are harmed by any of the deficiencies they allege. The uncontroverted testimony is that the Ratepayers are insulated from harm and that approval of the application presents more potential benefits to all of the Applicant's ratepayers.

Applicant fully complied with the TCEQ's regulatory requirements to add the territory to its existing CCN. As the ALJ knows from many years of experience, addition of service area has always been processed as an application to amend a CCN. Applicant defers to the Executive Director to respond to Ratepayers' constitutional/statutory arguments, if any response is merited. Daniel Smith testified that the applications are extensive and that applicants are not expected to send every piece of documentation. Daniel Smith, cross-examination, page 107, lines 25 The Ratepayers conducted full discovery, including production of documents, interrogatories, and depositions, so they had full access to all information they needed to supplement and question the information provided in the application and testimony.

As explained below, the mere fact that a contested-case hearing was conducted is evidence that the application was deemed administratively complete and that the Applicant provided the Commission with all information that the Executive Director considered essential for its

recommendation. Applications for amended CCNs are subject to chapter 281 of the TCEQ rules. Section 281.2(8). If an application is not administratively complete, or requested information is not provided within thirty days, the ED issues a deficiency notice and returns the application. Section 281.18(a) If the application is deemed administratively complete, or not returned as deficient, the ED performs a technical review. During the technical review, if additional information deemed required by the ED is not timely provided and the information is considered essential to make recommendations to the commission on a particular matter, the ED may return the application to the applicant. Section 281.19(b). When the ED has competed the administrative and technical review, the application is forwarded to the commission. Section 281.22(a). Exhibit P-7 states that if the additional requested information is not provided by the Applicant, the application would be dismissed for failure to prosecute, so it can be presumed that Applicant provided all the information deemed essential by the ED or otherwise the application would not have been further processed and the ED witnesses would not have recommended approval of the application. Applicant is not required to establish at the contested-case hearing that its application complied with each administrative and technical requirement because it had already done so prior to the hearing. *Steidinger v Texas Commission on Environmental Quality*, 169 S.W. 3d 258 (Tex App.-Austin, 2005).

Ratepayers also mischaracterize the system. Mr. Matkin was quite clear in his testimony that Ratepayers' attempt to equate the requirement of 0.6 gallons per minute into acre-feet per year, is not accurate conversion or consistent with TCEQ rules. (See Matkin cross-examination, page 71, line 9 thru page 72, line 17, page 81, lines 10-19.) The utility system will be an integrated system with a common water main from GBRA delivery point to the Applicant's existing water tank on Jones Road, and from there using an existing water main to the existing service area for delivery within the CDS property. (See Pre-Filed testimony of Nichols, page 6, line 25 to page 7, line 6; Matkin-Hoover Pre-Filed testimony, attachment 1.)

Ratepayers propose to punish the Applicant by denying the application. But who is actually punished if the application is denied? CDS is punished because they will not have access to utility service. The Applicant's existing customers are also punished because CDS' monetary contribution to the water main will not be available nor will the increased customer base be available to share fixed costs of operating and maintaining the system. The regional water plan will be a victim if the application is denied because CDS will need to develop its property using individual water wells, rather than by using the conjunctive use of surface water and ground water. These individual wells will be used to supply all the water needs of the homes within the development, not just peak demand, and this increased demand will put greater stress on the groundwater resources including the wells used by Applicant.

VII.
Conclusion

The overwhelming evidence in this case supports granting of the application Denying the application deprives CDS of utility service that it wants and for which it has agreed to pay; and deprives Applicant and its ratepayers access to $1.5 million in funds for construction of a needed water main. By contrast, the ratepayers who oppose the application, fewer in number than the ratepayers who support the application, cannot and did not specify one element by which they

may be harmed if the application is approved, primarily because such harm simply will not occur. The application should therefore be granted

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SUBJECT:
Applicant's Response to Closing Arguments of OPIC and the Ratepayers Opposed to the Application

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

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