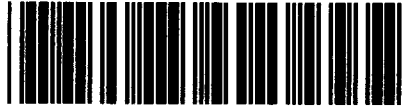


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Item Number: 38

Addendum StartPage: 0

43990

Law Office of Elizabeth R. Martin

Dienger Building  
106 West Blanco, Suite 206  
P.O. Box 1764  
Boerne, Texas 78006  
830 816-8686  
830 816-8282 fax

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PUBLIC UTILITY COMMISSION  
FILING CLERK

†

November 15, 2006

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

CHIEF CLERK'S OFFICE  
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COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Ref: **SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC;**  
**Application of Tapatio Springs Service Company, Inc. to Amend Certificates of**  
**Convenience and Necessity Nos. 12122 and 20698 in Kendall County, Texas**

Dear Mr. Seal;

Ratepayers submit this letter to the General Counsel in response to the ALJ's letter on the above referenced matter. The Ratepayers respectfully request that the Commission consider the following.

**The Ratepayers offer to the TCEQ the truth.**

Ratepayers Exceptions Attachment A contains the sworn affidavits of Guadalupe Blanco River Authority (GBRA) General Manager, W.E. West, Jr., and GBRA Director of Project Development, David Welsch. These gentlemen verify that the statements made under oath by the Applicant's representative were not true. The GBRA did not verbally agree to provide additional water for the proposed development and there is not additional supply for private water companies.<sup>1</sup> Counsel for the Executive Director elicited this testimony and the Applicant testified falsely to the hearing officer and the TCEQ.<sup>2</sup> Ratepayers had no notice that the Applicant would offer this evidence. Ratepayers only learned of the false testimony after speaking with the GBRA. Now the ALJ urges the Commission to ignore the affidavits which show the Applicant testified falsely. Subsequently, the ALJ's PFD Finding of Fact #50 and #51 are factually incorrect as established by the Affidavits. What is the purpose of excluding the truth?

Ratepayers would have the record reopened to admit the Affidavits if the Commission is unwilling to consider them as submitted for the record in the filed

<sup>1</sup> Attached Exhibit A Ratepayers Exceptions and Motion to Reopen Record.  
<sup>2</sup> Tr. 23-25.

Ratepayers Exceptions. Please see following the Ratepayers Motion for Reopening the Record.

**Official Notice of the Hill Country Priority Groundwater Management Area (PGMA).**

After the evidentiary record was closed, the ALJ took official notice of the Applicant's tariff "pursuant to Texas Gov't Code § 2001.090.... Because the tariff was approved by the Commission, which is presumed to know of its own actions, taking official notice is appropriate."<sup>3</sup> Therefore it is similarly correct to take official notice that Kendall County is within the Hill County PGMA, as the TCEQ designates the PGMA. It is proper to take official notice of this fact. All of the PGMA information included in the Ratepayers' Exceptions was submitted by the Applicant's witness.<sup>4</sup> As shown by that data, there is a shortage of groundwater in Kendall County.<sup>5</sup>

Ratepayers would have the record reopened to admit proof of PGMA designation if the Commission is unwilling to consider it under Official Notice standard. Please see following the Ratepayers Motion for Reopening the Record.

The TCEQ is responsible for protecting the citizens from the monopolies it creates.<sup>6</sup> The duty of the TCEQ is to identify the hazards for the existing ratepayers and to protect against these monopolies creating hardship for their customers. In this matter, lack of adequate water is a problem for the current customers. Yes, even the Cow Creek Groundwater District sees problems with the application as it is now presented to the Commission,<sup>7</sup> but the ALJ recommends disregarding any such concerns. It is the Applicant's burden to prove it has adequate water, etc. The ALJ would have the agency ignore its own PGMA findings, ignore the GBRA's situation, ignore the groundwater district's concerns and create a larger monopoly without a realistic review of present customers' concern or real inadequacies in water supply. Exclusion of relevant information benefits only wrongdoing. Ratepayers merely request that the Commission consider the truth.

**Striking the Ratepayers Exceptions**

The Ratepayers object to any part of their exceptions being struck. The ALJ recommends striking part of the exceptions but the Ratepayers argue no authority exists to allow the TCEQ or SOAH to edit their exceptions. The ALJ does not offer any authority which would allow this action. Thus the Ratepayers offer that no part of their exceptions may be struck from the record.

**NSSA Contract is Null and Void**

There is no evidence in the record that any construction has begun, in fact the Applicant testified that not even one foot of easement had been purchased.<sup>8</sup> The NSSA

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<sup>3</sup> Order No. 10, Sept. 13, 2006, Wm. G. Newchurch, ALJ, SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR.

<sup>4</sup> Ex. A-1, subex. 2 and 3.

<sup>5</sup> Id.

<sup>6</sup> TEX. WATER CODE §13.001 (West 2000).

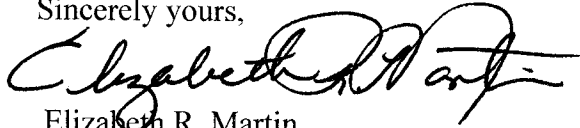
<sup>7</sup> Ex. P-6.

<sup>8</sup> Tr. 41, ll. 20-25.: J. Parker(stating no easement contracts had been executed at time of evidentiary hearing).

Contract is the only evidence that the property owner at one time was interested in supply from the Applicant. The evidence shows that the contract is now null and void. Furthermore, the Applicant offers no contradicting evidence.

The Ratepayers respectfully request your consideration of these matters and their following Motion to Reopen the Record.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Elizabeth R. Martin". The signature is fluid and cursive, with a large initial "E" and "M".

Elizabeth R. Martin

erm/dw  
cc Mailing List

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Dienger Building  
106 West Blanco, Suite 206  
P.O. Box 1764  
Boerne, Texas 78006  
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†

November 15, 2006

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

CHIEF COUNSEL'S OFFICE

NOV 15 11:23

COMMISSION ON ENVIRONMENTAL QUALITY

Ref: **SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC;**  
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<sup>7</sup> Ex. P-6.

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†

November 15, 2006

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

CHIEF CLERK'S OFFICE

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CONFIDENTIAL

Via Regular Mail and Fax to 1 512 239 3311

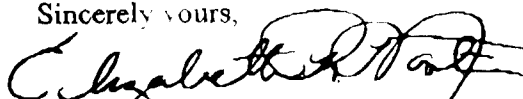
Ref. **SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC**

Dear Ms. Castañuela,

Please find for filing an original (via fax and regular mail) and 11 copies (via regular mail per Clerk's instructions) of **Ratepayer's Motion to Reopen the Record** concerning the above referenced matter.

Thanks in advance for your assistance.

Sincerely yours,



Elizabeth R. Martin

erm/dw

cc Mailing List

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
CHEREE TULL KINZIE  
R. GAINES GRIFFIN  
RICHARD E. HETTINGER  
PATRICK W. LINDNER  
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CHIEF CLERKS OFFICE  
AUG 2 4 11 PM '06  
TXAS COM STS ON  
ENHANCING  
QUALITY

August 2, 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

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

Sincerely,  
  
Patrick Lindner  
For the Firm

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