



Control Number: 43990



Item Number: 45

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

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RECEIVED

SOAH DOCKET NO. 582-06-0425

TCEQ DOCKET NO. 2005-1516-UCR

2014 DEC 19 AM 8:21

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 TAPATIO SPRINGS SERVICE COMPANY, INC.'S RESPONSE TO RATEPAYERS' MOTION FOR SUMMARY DISPOSITION

NOW COMES, TAPATIO SPRINGS SERVICE COMPANY, INC. ("Applicant") and submits this its Response to Ratepayers' Motion for Summary Disposition.

I. THE STATUTES AND RULES CITED BY RATEPAYERS ARE NOT APPLICABLE TO PENDING APPLICATION

The application was filed and deemed administratively complete prior to December 31, 2005. The statutory and regulatory requirements cited by the Ratepayers were adopted as part of HB 2876. These requirements do not apply to applications filed prior to January 1, 2006 because section 15 states:

- The changes in law made by this Act apply only to:
(1) an application for a certificate of public convenience and necessity or for an amendment to a certificate of public convenience and necessity submitted to the Texas Commission on Environmental Quality on or after January 1, 2006; and
(2) a proceeding to amend or revoke a certificate of public convenience and necessity initiated on or after January 1, 2006.

The TCEQ recognized the effect of section 15 when it adopted the rule amendments needed to implement HB 2876. In response to a comment that the TCEQ rules state the requirements pre- and post- January 1, 2006, the TCEQ stated:

[I]t is not necessary for the commission to have two separate sets of procedural requirements set out by rule for CCN applications. The applications that were submitted prior to January 1, 2006, will be governed by the procedural requirements in effect as of December 31, 2005.

Accordingly, the Ratepayers' motion is based upon the wrong law and regulatory requirements applicable to this application, as more specifically described below with the heading tied to the headings used in the Ratepayers' motion:

Financial Ability. HB 2876 amended section 13.241 to make this section applicable to applications to amend a CCN filed after January 1, 2006. Prior to amendment by HB 2876, this section only applied to applications for a CCN, not applications to amend a CCN.

Certificate of Convenience and Necessity Applications. HB 2876 amended section 13.244 by adding a new subsection (d), effective to applications to amend CCNs filed after January 1, 2006. Prior to the recent amendment, there was no subsection (d) and no comparable requirement. TCEQ rule, section 291.105, cited by Ratepayers, was amended to reflect the statutory changes made by HB 2876 and these new requirements cited by Ratepayers do not apply to applications filed prior to adoption of the amendments.

Continuous and Adequate Water Supply. HB 2876 amended section 13.241 to make this section applicable to applications to amend a CCN filed after January 1, 2006. Prior to amendment by HB 2876, this section only applied to applications for a CCN, not applications to amend a CCN. TCEQ rule 291.102(a) and 291.102(d)(4) were amended to reflect the amendment to 13.241 made by HB 2876 and do not apply to applications filed prior to adoption of the amendments.

The application fully complied with the statutory and regulatory requirements in effect when the application was filed.

In addition to citing statutes and rules that do not apply, Ratepayers fabricate other legal requirements, such as alleging that state law requires an applicant for a CCN amendment to "show financial ability to pay for facilities." In addition, the TCEQ approval of the application for a water utility CCN by the City of Bulverde shows that an applicant can show financial ability through a third party, in that case, the GBRA.

II. RATEPAYERS' MOTION IS NOT SUPPORTED BY SUMMARY JUDGMENT EVIDENCE

Ratepayers' motion consists of conclusory statements that are not supported by evidence in the record or expert opinion. The conclusory statements and expert opinions are obvious and listing each would be a tedious waste of the ALJ's time. For example, Ratepayers' motion includes:

1. Expert opinion testimony regarding what the Applicant's financial statements may show or not show.
2. Speculative assertions whether or not the developer has the money available to fulfill its obligations.
3. Conclusory statements on whether or not additional water is necessary, how much water is necessary, and whether all or part of that additional water, if necessary, if available and from what source.

III.
RESPONSE TO RATEPAYERS' ALLEGATIONS

Ratepayers' motion is legally insufficient for the above-stated reasons. However, the allegations in the motion are inflammatory and prejudicial. Applicant offers a summary response as follows:

The TCEQ's expert witnesses had access to the same information as Ratepayers concerning the application and these disinterested, qualified experts filed testimony that contradicts the opinions stated in Ratepayers' motion.

In addition, the owner of the property to be added to Applicant's CCN believes Applicant possesses the managerial, technical, or financial ability to provide continuous and adequate service and that adequate water is available.

If Ratepayers truly believed their allegations that Applicant does not have the financial, managerial, or technical ability to provide continuous and adequate service, they would take appropriate actions to obtain water and wastewater service from another utility. If Ratepayers truly believed their allegations that Applicant is not financially stable, Ratepayers would support the application and the access to additional construction funds that comes with the approval of the application.

WHEREFORE, PREMISES CONSIDERED, Applicant requests that the ALJ deny Ratepayers' Motion for Summary Disposition.

Respectfully submitted,

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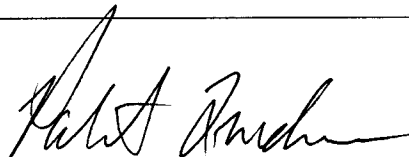
By: 

Patrick W. Lindner
State Bar No. 12367850

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June 2006, a true and correct copy of the foregoing document and all attachments were forwarded to each of the parties listed below via facsimile transmission and/or first-class mail.

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June 23, 2006

VIA FACSIMILE AND FIRST CLASS MAIL


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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 Tapatio Springs Service Company, Inc.'s Response to Ratepayers' Represented by Ms. Martin Objections to Pre-Filed Testimony and Exhibits.

Sincerely,



Patrick Lindner
For the Firm

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