

Control Number: 43990



Item Number: 51

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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SOAH DOCKET NO. 582-06-0425

2014 DEC 19 AM 8:12 EQ DOCKET NO. 2005-1516-UCR

2013 MAY 19 AM 10:08

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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BEFORE THE STATE OFFICE
CHIEF CLERKS OFFICE
OF
ADMINISTRATIVE HEARINGS

APPLICANT TAPATIO SPRINGS SERVICE COMPANY, INC.'S
REPLY TO RATEPAYER'S RESPONSE TO
APPLICANT'S MOTION TO QUASH NOTICES OF ORAL DEPOSITIONS

NOW COMES, TAPATIO SPRINGS SERVICE COMPANY, INC.
("Applicant") and submits this its Reply to Ratepayers' Response to Motion to Quash
Notices of Oral Depositions served by Ratepayers Represented by Ms. Martin
("Ratepayers") and in support thereof would show the Court the following:

1. Rules 191.2 and 199.2 mandate reasonable agreement and convenience to witnesses in discovery.

Applicant asserts that the subject depositions should take place at a mutually agreeable place that is most convenient to the witnesses. Ratepayers argue in their Response that this assertion is "not supported by the Rules or by any legal precedent." However, Texas Rule of Civil Procedure 191.2 expressly states that "(p)arties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case." (Emphasis added). Further, TRCP 199.2 states that the deposition of most witnesses may be taken in the county of the witness's residence, employment or business, or in "any convenient location" as directed by the Court. TRCP 199.2(b)(2)(A), (B), (E). Convenience to the witness is the clear objective of the Rule. The Texas Rules of Civil Procedure therefore expressly dictate that

the depositions of witnesses are to be held in a mutually agreeable and convenient location.

2. Rules and custom seek to protect reasonableness.

The office of counsel for the deposition witness is, by far, the most customary location for a deposition. This is meant to protect the witness from the possibility of an overtly hostile or abusive environment that the witness may not leave without risking sanctions from the Court. If necessary, the Rules and custom dictate that parties and attorneys agree on an alternative location that is reasonable and convenient for the deponents. The office of Ratepayer's counsel is not at all a reasonable location for the deposition of Applicant's officers, employees and experts for the reasons set forth below.

3. The nature of the dispute gives rise to concern.

The dispute between Ratepayers and Applicant is a highly volatile and public controversy that has forced Applicant to file a civil action in state court for defamatory statements made by certain Ratepayers. In the same action, Ratepayers' counsel has alleged and filed claims on behalf of certain Ratepayers against Applicant for similar complaints. Ratepayers and their counsel have actively pursued publicity favorable to their arguments and positions. Therefore, to conduct the depositions of Applicant's officers, employees and experts in an environment controlled entirely by Ratepayers and/or their counsel would unfairly expose the witnesses to a potentially hostile or abusive environment contrary to custom, tradition and the Rules. This concern is borne out by the fact that Ratepayers strenuously argue that the office of Ratepayers' counsel is the only acceptable location for the subject depositions.

4. The location of the depositions should be reasonable.

Applicant agrees that the depositions of Jay Parker, Stan Scott and Mike Shalit should take place in Boerne, Texas. Therefore, Applicant has obtained the agreement of another attorney in Boerne, Texas to allow the depositions to be conducted in his more than adequate conference areas. However, Darrell Nichols resides and works in Travis County, Texas and his deposition should be taken in Travis County, Texas in the office of Applicant's counsel. In addition, due to the recent filing by the parties of claims in state court, directly relating to this proceeding, the dates of the subject depositions must be modified slightly to allow for attendance by Applicant's legal representation in the state court proceeding between the parties. Applicant will diligently work toward the scheduling of these depositions to occur at the above-referenced locations as soon as reasonably possible.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Court quash the subject notices attached to its Motion to Quash as Exhibit "A", sustain Applicant's objections thereto and for such other and further relief to which Applicant may show itself entitled.

Respectfully submitted,

DAVIDSON & TROILO,
a Profession Corporation
919 Congress Ave., Ste. 810
Austin, Texas 78701
Telephone: (512) 469-6006
Facsimile: (512) 473-2159

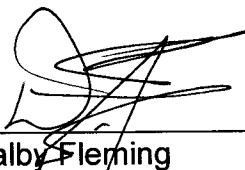
By: 

Patrick W. Lindner
State Bar No. 12367850

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May 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.

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
Mary Alice Boehm-McKaughan 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 - facsimile
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	



Dalby Fleming

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

†

May 17, 2006

CHIEF CLERKS OFFICE

77 MAY 17 PM 12:09

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Dalby Fleming
Davidson & Troilo, PC
2550 IH-10 West, Northwest Center, Ste. 800
San Antonio, TX 78229

Via Fax to: 210-349-0041

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

1516-URC

Dear Ms. Fleming:

In response to your letter of May 16, 2006 we will agree to the tentative scheduling of the deposition of Mr. Matkin for June 1, 2006, depending on the location. Please notify of our office of the address of the location you have scheduled to conduct the deposition in order that we may confirm the arrangements with you.

In addition, we would like to request that you schedule the deposition of Ken Kolacy on the same day, allowing approximately two hours for the taking of his deposition.

I look forward to hearing from you so that we may finalize these arrangements.

If you have any questions, please don't hesitate to call me

Sincerely,

Elizabeth R. Martin

Elizabeth R. Martin
With Permission
Dianne Wiltz, Legal Assistant

c: (via fax)
Mailing List

MAILING LIST
TAPATIO SPRINGS SERVICE COMPANY, INC.
SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1515-URC

ADMINISTRATIVE LAW JUDGE

Mike Rogan
Administrative Law Judge
State Office of Administrative Hearing
300 West Fifteenth Street
Austin, TX 78701
512 475-4993
512 475-4994 FAX

FOR THE CHIEF CLERK:

LaDonna Castañuela
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
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FOR THE APPLICANT:

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FOR THE EXECUTIVE DIRECTOR:

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Staff Attorney
Environmental Law Division, MC-173
Texas Commission on Environmental Quality
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FOR THE PUBLIC INTEREST
COUNSEL:

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FOR RANGER CREEK HOA:

Eric Sherer
Attorney at Law
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210 696-9675 FAX

FACSIMILE TRANSMITTAL SHEET

To:

Patrick Lindner

210/ 349-0041

Honorable Mike Rogan

512/ 475-4994

Kathy Humphreys Brown

512/ 239-0606

LaDonna Castañuela

512/ 239-3311

Mary Alice Boehm-McKaughan

512/ 239-6377

Enc Sherer

210/ 696-9675

CHIEF CLERKS OFFICE

MAY 17 PM 12:09

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COMPANY:

DATE

MAY 17, 2006

FAX NUMBER

TOTAL NO. OF PAGES INCLUDING COVER

4

PHONE NUMBER

SENDER'S PHONE NUMBERS

830/ 816-8686 office 830/816-8282 fax

RE SOAH DOCKET NO 582-06-0425

TCEQ DOCKET NO 2005-1516-URC

☐ FOR REVIEW☒ PLEASE REPLY☐ HARD COPY WILL FOLLOW☒ HARD COPY WILL NOT FOLLOW

IF YOU HAVE ANY PROBLEMS WITH THIS FAX TRANSMISSION, PLEASE CONTACT

DEANNE WILIZ AT 830 816 8686

Letter of May 17, 2006 to Dalby Fleming for Patrick Lindner to confirm deposition arrangements for John-Mark Matkin and to request scheduling the deposition of Ken Kolacy on the same day.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND IS TRANSMITTED FOR THE EXCLUSIVE INFORMATION AND USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE ADMONISHED THAT THIS COMMUNICATION MAY NOT BE COPIED OR DISSEMINATED EXCEPT AS DIRECTED BY THE ADDRESSEE. IF YOU RECEIVE THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DESTROY THE COMMUNICATION

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BOERNE, TEXAS 78006

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ARTHUR TROILO
TERRY TOPHAM
CHEREE TULL KINZIE
R. GAINES GRIFFIN
RICHARD E. HETTINGER
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IRWIN D. ZUCKER
RICHARD D. O'NEIL
J. MARK CRAUN

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May 15, 2006

VIA EXPRESS MAIL

Ms. LaDonna Castanuela, 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. Castanuela:

Enclosed for filing is Applicant Tapatio Springs Service Company, Inc.'s Motion to
Quash Notices of Oral Depositions for the above-referenced matter.

Sincerely,



Elizabeth Paul
Assistant to Patrick Lindner

cc: Mailing List

TEXAS
COMMISSION
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QUALITY
MAY 15 PM 2:32
CHIEF CLERKS OFFICE