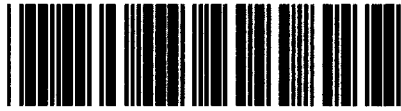


Control Number: 43990



Item Number: 54

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

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

2014 DEC 19 AM 8:31

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
§ PUBLIC UTILITY COMMISSION
§ FILING CLERK
§ OF
§ ADMINISTRATIVE HEARINGS

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
CHIEF CLERK'S OFFICE
12/19/14 PM 1:00

**RATEPAYERS' SECOND RESPONSE TO APPLICANT'S
MOTION TO QUASH**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ratepayers and bring this Response to Applicant in support thereof would show the Court the following:

I.

In compliance with Rules 191.2 and 199.2 as previously stated, Ratepayers sent a letter to Applicant's counsel on April 24, 2006 requesting dates the identified parties could be available for deposition. This letter clearly stated the depositions would be conducted at the office of counsel for Ratepayers. Applicant offered no suggestion of alternative locations or any objections. Applicant did not comply with the very rules of procedure that they now quote. See TEXAS RULES OF CIVIL PROCEDURE Rule 191.2 and 199.2

II.

Rules and customs dictate that any objection to the location should be put forth as to allow agreement on the date and location of depositions. Applicant did not object or suggest any alternative locations. Applicant has not offered any evidence or facts indicating a overtly hostile or abusive environment. The only hostility exhibited has been

the filing of the Civil Suit by Applicant against Ratepayers for asking questions of their public utility. See Exhibit A, Applicant's Petition Suing Ratepayers. The assertions of Ratepayers' hostility are untrue.

Applicant filed the suit against Ratepayers on April 28, 2006 the day after they requested dates for deposition. See File Stamp on Exhibit A. Applicant did not give Ratepayers available dates until May 2 and May 9, 2006 thus any modification of dates due to the lawsuit could have been requested. Applicant did not so request.

Ratepayers are strenuously arguing that Applicant abused Ratepayers' good faith attempts to schedule depositions and are now seeking the Court's Order to require Ratepayers to start all over in securing testimony to be used at trial. Applicant is seeking to incur additional expense and inconvenience and thwart the Ratepayers attempts to have full disclosure in these proceedings.

The Applicant failed to inform Ratepayers of any objection to the deposition location but now uses it as an excuse to argue for a continuance and delay the depositions that the Ratepayers have sought since April 24, 2006. This is an attempt to avoid answering questions determinative to the matter before the Court.

III.

As for the Applicant's request for modification of dates, Ratepayers' counsel has scheduled other matters in reliance on the Applicant's suggested dates of availability. Any modification of those dates would be prejudicial and unfair to the Ratepayers in consideration of the deadlines set by the Court.

IV.


Furthermore, Applicant displays its' contempt of the proceedings and this Court

by ignoring Order No. 3 and refusing to serve copies to counsel for Ranger Creek Homeowners Association as directed by the Court order.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Ratepayers pray that the Court Deny Applicant's Motion to Quash and the Depositions be taken at the place and time agreed to by the Applicant and Noticed by the Ratepayers and for such and further relief that may be awarded at law or in equity.

Respectfully submitted,
LAW OFFICE OF ELIZABETH R. MARTIN

By: 
ELIZABETH R. MARTIN
Texas Bar No. 24027482
106 WEST BLANCO, STE. 206
BOERNE, Texas 78006
Tel. (830)816-8686
Fax (830)816-8282
Attorney for Ratepayers

CERTIFICATE OF SERVICE

I certify that on May 16, 2006, a true and correct copy of Ratepayers Response to Applicant's Motion to Quash was served via FAX Transmission to all parties on the following mailing list.


ELIZABETH R. MARTIN

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

R MtQ 2

Page 3

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
P O Box 13087
Austin, TX 78711-3087
512 239-3300
512 239-3311 FAX

FOR THE APPLICANT:

Patrick Lindner
Davidson & Troilo, P.C.
7550 IH-10 West, Northwest Center
Suite 800
San Antonio, TX 78229
210 349-6484
210 349-0041 FAX

FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys Brown
Staff Attorney
Environmental Law Division, MC-173
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
512 239-3417
512 239-0606 FAX

FOR THE PUBLIC INTEREST
COUNSEL:

Mary Alice Boehm-McKaughan
Assistant Public Interest Counsel, MC-175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
512 239-6361
512 239-6377 FAX

FOR RANGER CREEK HOA:

Eric Sherer
Attorney at Law
11124 Wurzbach Road, Suite 100
San Antonio, TX 78232
210 696-9730
210 696-9675 FAX

Exhibit "A"

From: 8308168282
05/16/2006 12:04 8308168282

May 16 2006 12:09
ELIZABETH MARTIN

P.06
Page 06/11

SANANTONIO/741680 1

On numerous occasions, including on April 21, 2006, Defendants stated the following:

DEFAMATORY STATEMENTS

III.

served at 436 Paradise Point, Boerne, Texas 78006.

3. Richard Haas is an individual residing in Kendall County, Texas and may be

served at 108 Jack Rabbit Circle, Boerne, Texas 78006.

2. Andy Calvert is an individual residing in Kendall County, Texas and may be

business in Kendall County, Texas.

1. Tapatio Springs Services Company is a Texas corporation and public utility doing

PARTIES

II.

accordance with Rule 190.3 of the Texas Rules of Civil Procedure.

Tapatio requests that this case be conducted under a Level 2 Discovery Control Plan in

DISCOVERY LEVEL

I.

cause of action shows:

Defendants Andy Calvert and Richard Haas (collectively referred to as "Defendants") and for

COMES NOW Plaintiff Tapatio Springs Services Company ("Tapatio") complaining of

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFF'S ORIGINAL PETITION

ANDY CALVERT AND RICHARD HAAS

§
§
§
§
§
§
§
§

V.

COMPANY

TAPATIO SPRINGS SERVICES

IN THE DISTRICT COURT

County

CAUSE NO. 06-19566L

FILED
APR 28 2006 11:00
CLERK
KENDALL COUNTY, TEXAS
BY: [Signature]
AT LAW

1. Plaintiff was poorly managed and was not capable of expanding its services.
2. Plaintiff loaned money to a third party interest free in violation of law.
3. Plaintiff is bordering on bankruptcy and is like Enron in its financial structure.
4. Plaintiff is self-dealing with commercial customers and operates to benefit other businesses of Plaintiff's owners.
5. Plaintiff's pass through of certain costs to ratepayers is improper

IV. SLANDER PER SE

These defamatory statements constitute slander per se in that they suggested that the Plaintiff is engaged in criminal activity, is dishonest, has engaged in business improprieties and is not creditworthy and almost bankrupt.

V. PUBLICATION

The Defendants published the defamatory statements on numerous occasions, including on April 21, 2006 in the *Boerne Star & Recorder* newspaper. The statements were made to the entire circulation of the newspaper.

VI. FALSE STATEMENTS

The defamatory statements set forth above are false.

VII. DAMAGES

As a direct and proximate result of the Defendants' false and defamatory statements, the Plaintiff has endured shame, embarrassment, humiliation, and mental pain and anguish. Additionally, Plaintiff has and will in the future be seriously injured in its business reputation, good name, standing in the community, and will be exposed to the hatred, contempt, and ridicule

of the public in general, as well as its business associates and customers. Consequently, the Plaintiff seeks actual damages in a sum within the jurisdictional limits of this Court.

VIII. BUSINESS DISPARAGEMENT

Defendants' false statements also constitute business disparagement. The statements were made with malice. Plaintiff sues for its actual and special damages proximately caused by Defendants' false and malicious statements.


IX. PRAYER

Plaintiff requests that Defendants be cited to appear and answer and that on final trial, the Plaintiff have the following:

1. Judgment against Defendants for actual damages in a sum within the jurisdictional limits of the Court.
2. Judgment for exemplary damages against Defendants in a sum determined by the trier of fact.
3. Prejudgment and post-judgment interest as provided by law.
4. Costs of suit.
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP
106 South St. Mary's Street, Suite 800
San Antonio, Texas 78205
Telephone: 210/226-1166
Facsimile: 210/226-1133



Annalyn G. Smith
State Bar No. 18532500
Frank Z. Ruttenberg
State Bar No. 17465400

ATTORNEYS FOR PLAINTIFF
TAPATIO SPRINGS SERVICES COMPANY

CLERK OF THE COURT

Shirley R. Stehling
201 E. San Antonio, Suite 201
Boerne, TX 78006

ATTORNEYS FOR PLAINTIFF

Bracewell & Giuliani LLP
106 South St. Mary's Street, Suite 800
San Antonio, TX 78205

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you."

TO Richard Haas
436 Paradise Point
Boerne, TX 78006

Defendant, Greeting.

You are hereby commanded to appear by filing a written answer to the **PLAINTIFF'S ORIGINAL PETITION** on or before ten o'clock A.M. of the Monday next after the expiration of twenty (20) days after the date of service of this citation before the *Honorable County Court at Law* of Kendall County, Texas at the Courthouse of said County in Boerne, Texas. Said document was filed on the 28th day of April A.D., 2006, in this cause numbered 06-195CCL on the docket of said court, and styled,

TAPATIO SPRINGS SERVICES COMPANY

VS.

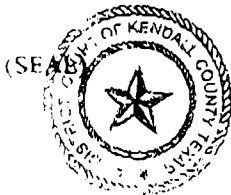
ANDY CALVERT AND RICHARD HAAS

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **PLAINTIFF'S ORIGINAL PETITION** which is attached to this citation and made a part hereof.

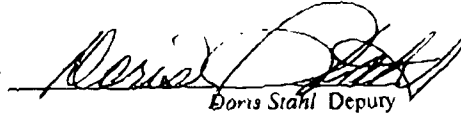
The Officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Boerne, Texas, this the 28th day of April, 2006.

SHIRLEY R. STEHLING, District Clerk
Kendall County, Texas



By


Doris Stahl, Deputy

FACSIMILE TRANSMITTAL SHEET

To
 Honorable Mike Rogan 512/ 475-4994
 Patrick Lindner 210/ 349-0041
 Kathy Humphreys Brown 512/ 239-0606
 LaDonna Castañuela 512/ 239-3311
 Mary Alice Boehm-McKaughan 512/ 239-6377
 Eric Sherer 210/ 696-9675

CHIEF CLERKS OFFICE

MAY 16 PM 1:03

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

COMPANY _____ DATE _____
 MAY 16, 2006
 FAX NUMBER _____ TOTAL NO. OF PAGES INCLUDING COVER
 11
 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 DIANNE WILTZ AT 830 816 8686

RATEPAYER'S RESPONSE TO MOTION TO QUASH NOTICE OF DEPOSITION

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.

106 W BLANCO STE 206
 BOERNE, TEXAS 78006