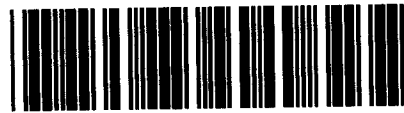




Control Number: 43990



Item Number: 67

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
TCEQ DOCKET NO. 2005-1516-UCR

RECEIVED
PUBLIC UTILITY COMMISSION
CLERK

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

APPLICANT TAPATIO SPRINGS SERVICE COMPANY'S
RESPONSE TO RATEPAYERS REPRESENTED
BY MS. MARTIN'S MOTION TO COMPEL

NOW COMES, TAPATIO SPRINGS SERVICE COMPANY
("Applicant") and submits this its Response to the Motion to Compel ("Motion")
filed by Ratepayers Represented by Ms. Martin ("Movants") and in support
thereof would show the Court the following:

I.

MOTION TO COMPEL WAS NOT TIMELY FILED

On March 17, 2006, Applicant served its Objections and Responses to
Ratepayers' Request for Disclosure, Interrogatories, Admissions and Requests
for Production. Movants filed their responsive Motion on April 25, 2006.

Pursuant to Section 155.31(l) of the Rules of Practice and Procedure
of the State Office of Administrative Hearings (the "Rules"), "the party seeking
discovery shall file a motion to compel within ten days of receipt of the pertinent
objection or alleged failure to comply with discovery." (Emphasis added).

Movants filed their Motion at least twenty-five (25) days late. Movants
have failed to show good cause for the late filing of their Motion. Applicant
previously pointed out the deadline to Movants by faxed correspondence on

April 18, 2006. (See Exhibit 1.) Nevertheless, Movants filed their untimely Motion a full week later and just three days before Applicant's deadline to pre-file its exhibits and testimony for its direct case. Applicant contends that Movants have violated the very nature and purpose of Rules that are in place to promote the orderly, efficient and fair handling of this case.

Based on the foregoing, Movant's Motion to Compel should be denied in its entirety.

II.

MOTION TO COMPEL IS WITHOUT MERIT

a. Discovery is to be reasonably limited.

The Texas Supreme Court has repeatedly emphasized that discovery is to be conducted with reasonable limits, is not to be used as a fishing expedition, and must be reasonably tailored to include only matters relevant to the case. *In re American Optical*, 988 S.W.2d 711, 713 (Tex.1998). The discovery requests forming the basis of Movant's Motion simply do not comply with these principles. In exercising its considerable discretion regarding the course of discovery, the trial court must make an effort to impose reasonable discovery limits. *Id.*

b. Requests are inherently unreasonable.

Further, Movants assert that Applicant carries the burden to provide evidence to support its objections to Movants' clearly improper discovery requests. However, evidence supporting an objection is not required when the improper nature of the discovery request is clear on its face. See, e.g., *In Re*

Union Pac. Res. Co., 22 S.W.3d 388, 341 (Tex.1999) (evidence not necessary to support objection of relevance); **Loftin v. Martin**, 776 S.W.2d 145, 148 (Tex.1989) (request was so unreasonably vague and overbroad it did not merit response).

c. Request No. 3 – any document ever filed concerning Applicant and the development

Movants' Request for Production No. 3 seeks "all documents filed with or presented to any state, county, city, federal or governmental agency, institution or department containing information concerning (Applicant) or the proposed development to be serviced by the company...." This request is not reasonably tailored to include only those matters established as criteria for considering and granting certificates by Title 30, Section 291.102 of the Texas Administrative Code. The request is not reasonable limited to only relevant matters, is not reasonably limited in time and scope, and is not reasonably calculated to lead to the discovery of admissible evidence. Applicant's objections to the request should therefore be sustained and Movant's Motion to Compel as to their Request for Production No. 3 should be denied.

d. Request No. 4 – Every finance-related document ever generated as to Applicant and twelve other entities

Movants' Request for Production No. 4 requires over 150 words to describe the items that it seeks, indicating the amount of latitude in discovery that Movants wrongly claim as their right. Movant's Request for Production No. 4 begins by requesting "all documents related to all financial accounts or balances.... of (Applicant) or CDS International Holdings, Inc." This request

clearly fits the very definition of "overbroad." The request goes on to include, but not be limited to "budgets and financial statements and automated financial records" of eleven distinct and separate corporate entities other than Applicant. The request is improper on its face. Reasonably limited discovery regarding the Applicant's financial stability is proper under 30 TAC § 291.102(d)(6). Completely unlimited discovery of any and every single item ever generated relating in any way to the finances of Applicant and twelve other corporate entities is not proper under any authority. Applicant's objections to Movants' Request for Production No. 4 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 4 should be denied.

e. Request No. 5 – Simply makes no sense

Movant's Request for Production No. 5 requires over 125 words to describe the documents that it seeks. The request is so overwhelmingly vague, confusing and overbroad that it is impossible for Applicant to determine how to respond. The request initially appears to seek the production of all documents relating to Applicant's affiliation with twelve other separate corporate entities or any affiliates of those corporate entities and CDS International Holdings, Inc.'s affiliations with the same entities or their affiliates; and then continues with additional language regarding "applicant's current or future collection or distribution of water and/or their interest or involvement with the applicant's financial management or equity or debt structure of the applicant or CDS International Holdings, Inc." Such a request is unreasonably and patently vague, confusing, overbroad and not

reasonably limited to include only those matters relevant to the criteria established by 30 TAC § 291.102(d)(6). The request is so vague and overbroad that Applicant simply has no way of even knowing how to respond. Applicant's objections to Movants' Request for Production No. 5 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 5 should be denied.

f. Request No. 6 – All documents ever provided to or received by Applicant's CPA

This request is not reasonably tailored to include only matters relevant to the case under 30 TAC § 291.102(d)(6). This request is not reasonably calculated to lead to the discovery of admissible evidence. Applicant's objections to Movants' Request for Production No. 6 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 6 should be denied.

g. Request No. 7 – All documents relating to any draw or loan by or to stockholders, managers, directors of Applicant and CDS International

This request is not reasonably tailored to include only matters relevant to the case under 30 TAC § 291.102(d)(6). This request is not reasonably calculated to lead to the discovery of admissible evidence. This request is not reasonably limited in time and scope. Applicant's objections to Movants' Request for Production No. 7 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 7 should be denied.

h. Request No. 11 – All documents every provided by and/or to Applicant's engineers

This request is overbroad and not reasonably limited in time and scope. Nevertheless, Applicant has already complied to the fullest reasonable extent by making all documents prepared by its engineers associated with the application available to Movants for inspection and copying. Applicant's objections to Movants' Request for Production No. 11 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 11 should be denied.

i. Request No. 13 -- All documents related to regulation by Cow Creek Groundwater Conservation District over Applicant

This request does not seek matters relevant to the case under 30 TAC § 291.102(d)(6). This request is not reasonably calculated to lead to the discovery of admissible evidence. Applicant has provided copies of the applications of Kendall County Utility Company and Tapatio Springs Service Company submitted to Cow Creek Groundwater Conservation District. Applicant argues that these applications are the only documents related to regulation by Cow Creek Groundwater Conservation District that are relevant to this proceeding. Applicant's objections to Movants' Request for Production No. 13 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 13 should be denied.

j. Request No. 14 -- All documents related to December 31, 2004 balance sheet

This request is patently vague and overbroad, not reasonably limited in time and scope, and not reasonably tailored to include only matters relevant to the case under 30 TAC § 291.102(d)(6). This request is not

reasonably calculated to lead to the discovery of admissible evidence. Responding to this request would be unduly burdensome in that weight of the task would greatly outweigh any possible benefit. Applicant's objections to Movants' Request for Production No. 14 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 14 should be denied.

- k. Request No. 17 – All billing and receipts of Tapatio Springs Service Company, Inc. for every account associated with Tapatio Springs Golf Resort

This request greatly exceeds the bounds of any reasonable limitation on discovery in this matter. The request is vague and overbroad, seeks items that are not at all relevant to this proceeding under 30 TAC § 291.102(d)(6) or any other authority, and is not reasonably calculated to seek the discovery of admissible discovery. Applicant's objections to Movants' Request for Production No. 17 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 17 should be denied.

- l. Request No. 18 – All reporting documents required by TCEQ relating to any indebtedness ever incurred to any person owning any interest in Applicant

Reasonably limited discovery regarding the Applicant's financial stability is proper under 30 TAC § 291.102(d)(6). However this request seeks information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. TCEQ does not require Applicant to file all documents relating to any indebtedness ever incurred by the Applicant.

This request is not reasonably tailored to include only matters relevant to this proceeding under Title 30 TAC § 291.102(d)(6) or Section 13.246 of the Texas Water Code. Applicant's objections to Movants' Request for Production No. 18 should therefore be sustained and Movants' Motion to Compel as to their Request for Production No. 18 should be denied.

m. Interrogatory No. 2 – Exceeds reasonable limits of discovery

Movant's Interrogatory No. 2 asks Applicant to "(i) identify all engineers, consultants, real estate agents, contractors, architects, attorneys or other individuals involved with or engaged in the planning and execution of the proposed expansion and their address, project responsibility, assigned task or objective, fees paid or to be paid, which entity pays their fees and estimated completion date of their project task." This interrogatory clearly exceeds the scope of permissible discovery. It seeks volumes of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Movants assert that, in so objecting, Applicant assumes some burden to detail the volumes of irrelevant information sought by this Interrogatory and/or assist Movants in crafting this Interrogatory to be not so blatantly objectionable. Applicant is under no such duty under any authority. The interrogatory is clearly objectionable and Applicant is not required to provide the requested information in order to support the objection. Movants cite case law that applies when the responding party is seeking a protective order, not objecting to a request. Applicant did not assert any privilege in response to this Interrogatory or

make a withholding statement. The Interrogatory is clearly and simply not reasonably tailored to include only matters relevant to this proceeding. Accordingly, Applicant's objections to Movants' Interrogatory No. 2 should be sustained and Movants' Motion to Compel as to their Interrogatory No. 2 should be denied.

n. Interrogatory No. 11 -- All costs and expenses of Applicant paid by CDS

Movant's Interrogatory No. 11 seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Again, reasonably limited discovery regarding the Applicant's financial stability is proper under 30 TAC § 291.102(d)(6). However, this interrogatory is simply not reasonably tailored to this end. The burden of procuring this information greatly outweighs any possible benefit. Accordingly, Applicant's objections to Movants' Interrogatory No. 11 should be sustained and Movants' Motion to Compel as to their Interrogatory No. 11 should be denied.

o. Request for Admission No. 12 -- Development

Movant's Request for Admission asks whether "Tapatio Springs Development Company and/or Tapatio Springs Builders, Inc. and/or Kendall County Development Company plan to construct homes on the 5,000 acre tract for which expanded CCN will serve." Applicant has answered this discovery request to the best of its ability by clearly and unequivocally stating that "CDS International, Inc. plans to construct homes on the 5,000-acre tract." Beyond that, no further answer is possible and it is difficult to fathom

what further answer Movants seek. Therefore, Movants' Motion to Compel as to their Request for Admission No. 12 should be denied.

III.

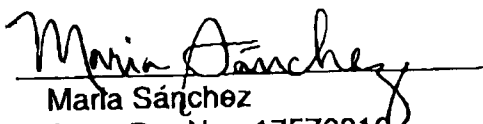
APPLICANT HAS PROVIDED ALL RELEVANT INFORMATION

Applicant has already provided Movants with all documents and information that are relevant to the analysis and consideration of Applicant's application in this proceeding. Applicant's objections to several of Movant's defective and improper discovery requests should not obscure this fact.

WHEREFORE, PREMISES CONSIDERED, Applicant, Tapatio Springs Service Company, Inc. requests that the Court deny Ratepayers represented by Elizabeth Martin's Motion to Compel in its entirety and grant such other relief, both at law and in equity, to which Applicant may show itself to be justly entitled.

Respectfully submitted,

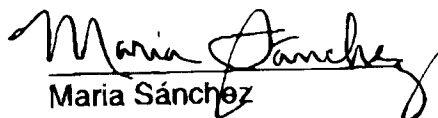
DAVIDSON & TROILO, P.C.
919 Congress Ave., Ste. 810
Austin, Texas 78701
Telephone: (512) 469-6006
Facsimile: (512) 473-2159

By: 
Maria Sánchez
State Bar No. 17570810

CERTIFICATE OF SERVICE

I hereby certify that on the 1st 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 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
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	


Maria Sánchez

MAY-01-2006 MON 01:08 PM DAVIDSON AND TROILO

FAX NO. 512 4732159

13/14

JOHN W. DAVIDSON
ARTHUR TROILO
TERRY TOPHAM
CHERRY TULL KINZIE
R. GAINES GRIFFIN
RICHARD E. HETTINGER
PATRICK W. LINDNER
IRWIN D. ZUCKER
RICHARD D. O'NEIL
J. MARK CHAUN

LAW OFFICES OF
DAVIDSON & TROILO
A PROFESSIONAL CORPORATION

SAN ANTONIO
7560 W IH-10, SUITE 800, 78229-5815
210/348-6484 • FAX: 210/348-0041

LEA A. REAM
FRANK J. SARZA
JAMES C. WOO
RICHARD L. CROZIER
W. JO RESSER
MARIA S. SANCHEZ
DALRY FLEMING
LISA M. DONALEO
RENEE R. HOLLANDER

AUSTIN OFFICE
818 CONGRESS, SUITE 410 78701
512/468-0006 • FAX 512/473-8188

April 18, 2006

Ms. Elizabeth Martin
P.O. Box 1754
Boerne, Texas 78006

Via Facsimile: (830) 816-8282

RE. Application of Tapatio Springs Service Company, Inc., to Amend
Certificates of Convenience and Necessity Nos. 12122 and 20698 in
Kendall County, Texas.
SOAH Docket No. 582-06-0425
TCEQ Docket No. 2005-1516-UCR

Dear Ms. Martin:

Please allow this letter to respond to your April 13, 2006 correspondence to Mr. Lindner regarding discovery in the above-referenced proceeding.

We will supplement with the verification of the answers to your client's Interrogatories as soon as possible, and we are amending certain responses to your clients' Request for Admissions in order to address several issues of your concern. However, we disagree with your assertions regarding your clients' Interrogatories Nos. 2 and 11, and Requests for Production Nos. 3, 4, 5, 6, 7, 10, 11, 13, 14, 17 and 18. We stand on our objections to these discovery requests. The Texas Supreme Court has repeatedly emphasized that discovery is to be conducted with reasonable limits, is not to be used as a fishing expedition, and must be reasonably tailored to include only matters relevant to the case. *See In re American Optical*, 988 S.W.2d 711, 713 (Tex.1998). The aforementioned requests do not comply with these principles. Request for Production No. 10 seeking "copies of all books, documents and tangible items which may be used at the time of trial" is particularly egregious in this respect. The subsequent assertion that this request is entirely proper contradicts all applicable authority and starkly illustrates the nature of our disagreement.

Any motion to compel the requested discovery would be without merit due to the very nature of the requests. In addition, pursuant to SOAH Rules of Practice and Procedure, Section 155.31(1), the allowable period to file such a motion expired on April 1, 2006 at the latest

EXHIBIT 1

Ms Elizabeth Martin
Page 2 of 2
April 18, 2006

Accordingly, the filing of any such motion would be frivolous, made for the purpose of harassment only and would force our client to incur and seek redress for unnecessary attorneys' fees, costs and expenses.

Please do not hesitate to call me with any questions or comments in the foregoing regard

Sincerely,



Dalby Fleming
For the Firm

cc: (via fax)
Jay Parker
David Brock
Darrell Nichols

PCD 161537

MAY-01-2006 MON 01:07 PM DAVIDSON AND TROILO

May 1 2006 14:13
FAX NO. 512 4732159

P. 01

01/14

JOHN W. DAVIDSON
ARTHUR TROILO
TERRY TOPHAM
CHERE TULL KINZIE
R. GAINES GRIFFIN
RICHARD E. HETTINGER
PATRICK W. LINDNER
IRWIN D. ZUCKER
RICHARD D. O'NEIL
J. MARK CRAUN

LAW OFFICES OF
DAVIDSON & TROILO
A Professional Corporation

SAN ANTONIO
7550 WEST IH-10, SUITE 800, 78229-5815
210/349-6484 FAX: 210/349-0041

JAMES C. JOO
LEA A. REAM
RICHARD C. HOZIER
MARIA S. SANCHEZ
DALBY FLEMING
GARY FULMER
SUSAN M. REAY
* AUSTIN OFFICE

AUSTIN
919 CONGRESS, SUITE 810, 78701
Phone: 512/469-6006 FAX: 512/473-2159

TELECOPY TRANSMITTAL LETTER

TO:	Judge Mike Rogan	475-4994
	Elizabeth Martin	830-816-8282
	Eric Sherer	210-696-9675
	Mary Alice Boehm-McKaughan	239-6377
	Kathy Brown	239-0606
	Patrick Lindner	210-349-0041
	La Donna Castanuela	239-3311
	Stan Scott	830-537-5756
FROM:	Maria Sanchez	
RE:	Tapatio Springs' Response to Ratepayers' Motion to Compel	
DATE:	May 1, 2006	

This transmission consists of a total of 14 pages, including this cover page. If you do not receive all pages, or if any difficulty in transmission occurs, please contact Sunny at 512-469 6006 or 800-635-7832

Message:

Hard copy Will ☒ Will Not ☐ follow.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS A 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 MAIL THE COMMUNICATION TO US AT OUR LETTERHEAD ADDRESS.