



Control Number: 43990



Item Number: 8

Addendum StartPage: 0

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SOAH DOCKET NO. 2005-1516-UCR
TCEQ DOCKET NO. 2005-1516-UCR
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APPLICATION OF TAPATIO SPRINGS § BEFORE THE STATE OFFICE
SERVICE COMPANY, INC., §
TO AMEND CERTIFICATES § OF
OF CONVENIENCE AND NECESSITY §
NOS. 12122 AND 20698 IN KENDALL § ADMINISTRATIVE HEARINGS
COUNTY, TEXAS §

**ORDER NO. 9
DENYING MOTIONS FOR SUMMARY DISPOSITION**

Both the Applicant (Tapatio Springs Service Co., Inc.) and the group of aligned parties represented by Elizabeth Martin have submitted to the State Office of Administrative Hearings ("SOAH") motions for summary disposition in the captioned proceeding. The Applicant noted that the aligned protesting parties have submitted no pre-filed evidence in this case, and thus the pre-filed testimony from the Applicant and the Executive Director, supporting approval of the pending application, is uncontroverted. The aligned parties assert that the pre-filed evidence in the case fails to address a number of statutory prerequisites for the approval of an application to amend a Certificate of Convenience and Necessity.

In the view of the Administrative Law Judge ("ALJ"), granting either of the pending motions for summary disposition would be inappropriate. Although the Applicant's evidence is essentially uncontroverted, the Applicant bears the burden of proof in this matter, and the criteria it must satisfy to obtain the amendment are quite general and subjective. Cross examination with respect to the evidence in question should be allowed, in order to evaluate the sufficiency of the evidence.

The aligned parties' motion appears to be predicated in large part upon statutory requirements that do not apply to this application. Other bases for the motion are supported only by argument, not by any summary-disposition evidence.

Accordingly, both pending motions for summary disposition are DENIED.

OVERRULING OBJECTIONS TO PRE-FILED TESTIMONY

The aligned parties have objected to the pre-filed testimony of the Applicant and the Executive Director, generally on the basis that it is irrelevant, based on hearsay, not based on

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SOAH Docket No 582-06-0425
TCEQ Docket No. 2005-1516-UCR

Order No. 9

Page 2

personal knowledge, and without support in the record. The objections in question are, for the most part, insufficiently specific to allow their proper evaluation (although, as general propositions, they appear to be invalid). Those few objections that relate to specific points of testimony are lacking in merit. Accordingly, the objections are overruled.

PRE-HEARING CONFERENCE

The ALJ's administrative assistant will contact the parties within the next day or two to determine whether they consider a telephonic pre-hearing conference on June 29, 2006 to be necessary, as well as to arrange for the parties' participation in the conference, if it is convened.

HEARING ON MERITS

After reviewing the pre-filed evidence and the overall record, the ALJ does not believe that the hearing in this matter should last longer than one day. The ALJ will therefore seek to complete the hearing on Thursday, July 6, 2006. Any party who has reason to think this cannot be accomplished needs to provide the ALJ with an explanation of that position as soon as practicable.

PROCEDURAL QUESTIONS

Routine procedural and logistical questions may be directed to Rita McBride at (512) 425-3419; however, please note that SOAH support personnel are not authorized to provide general advice or the interpretation of regulations or policy.

SIGNED June 27, 2006.



MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: TAPATIO SPRINGS SERVICE CO, INC

SOAH DOCKET NUMBER: 582-06-0425

REFERRING AGENCY CASE: 2005-1516-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ MIKE ROGAN

REPRESENTATIVE / ADDRESS

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TAPATIO SPRINGS SERVICE CO.

cc: Docket Clerk, State Office of Administrative Hearings

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REGARDING:

ORDER NO. 9 - DENYING MOTIONS FOR SUMMARY DISPOSITIONS

DOCKET NUMBER:

582 06-0425

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March 17, 2006

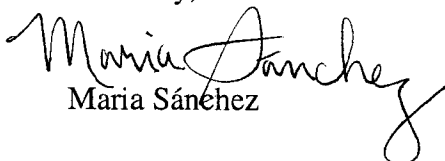
Elizabeth Robison Martin
P.O. Box 1764
Boerne, Texas 78006

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 Nos. 12122 and 20698 in Kendall County, Texas

Dear Ms. Martin:

Enclosed please find Tapatio Springs Service Company, Inc.'s Response to the Ratepayers' Interrogatories, Request for Admissions, Requests for Production and Request for Disclosure in the above-referenced matter. Please call me if you have any questions.

Sincerely,


Maria Sánchez

Enclosure