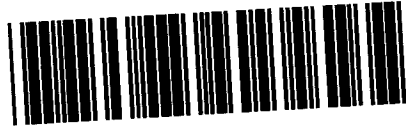


Control Number: 44001



Item Number: 10

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

44001

CCN 1035010

TCEQ Interoffice Memorandum

RECEIVED

2014 DEC 22 AM 7:31

To: Melissa Morton
Liz Nichols
Business Support Services

PUBLIC UTILITY COMMISSION
FILING CLERK

1/27/13
2/14/13
Kent Steelman
Utilities Financial Review Team

From: Elizabeth Flores
Utilities Financial Review Team

RECEIVED

FEB 14 2013

Thru: Lisa Fuentes, Team Leader
Utilities Financial Review Team

TCEQ
CENTRAL FILE ROOM

February 4, 2013

Date:

Subject: Return of Application
Name of Utility: Community Utility Company
Application Numbers: 37266-C
Application Received: October 10, 2011

Reason Application Returned: An application was received by the Commission on October 10, 2011, for Community Utility Company (Community) to amend and decertify a portion of its CCN in Harris and Montgomery Counties and assigned Application No. 37160-C. A Notice of Deficiency (NOD) was sent to the applicant on October 27, 2011 requesting digital data to meet the mapping requirements and for the applicant to submit the 2010 Annual Report in order for the application to continue to be processed. The requested items were delayed due to unforeseen medical issues which arose for the applicant. The applicant submitted the Annual Report on January 13, 2012, but was unable to provide maps and therefore withdrew the application (37160-C) until correct mapping data could be submitted. On February 9, 2012 the application was reinstated with a new application number 37266-C was assigned. During the administrative review phase, it was determined that the applicant had not remitted the 2011 Regulatory Assessment Fee (RAF) in the amount of \$1,200. A NOD letter dated May 30, 2012, was sent to the applicant requesting remittance of the RAF. Commission policy does not allow the processing of an application/permit in which fees owed exceed \$25. On July 16, 2012 Community paid the fee along with penalties and interest in the amount of \$1,393.51. The application was accepted for filing on August 6, 2012.

During the technical review a letter was mailed dated December 12, 2012, requesting the applicant to revise the application (question 5.A.v) to explain how the deficiencies noted in the last region inspections were to be corrected, specifically for plans and specifications for the two public water systems. The letter also asked the applicant to explain how the deficiencies on the last inspection would be resolved give that the Texas Water Development Board (TWDB) funding was not approved. In addition, technical staff received a letter from the applicant's attorney rescinding the signed "Agreed Order" for the Forest Manor Subdivision, PWS No. 1010264; Docket No. 2012-1193-MLM-E; Enforcement

Case No. 44339. The applicant failed to respond to the deadline of January 14, 2013, and the application is being returned for failure to prosecute.

On January 23, 2013, staff phoned the applicant, stating that the application was being returned.

To complete the closure of this application, please:

- Update the database to reflect the closure of this application as of the date of this memo.
- Forward the attached letter and enclosure to the applicant.
- Forward the original application to Central Records.

Status: **D**

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 1, 2013

VIA EMAIL: lesromo.lawoffice@gmail.com

Mr. Les Romo
Law Office of Les Romo
307 Shannon Lane
Georgetown, Texas 78628

Re: Application from Mitchell M. Martin dba Community Utility Company, to Amend and to Decertify a portion of its Certificate of Convenience and Necessity (CCN) No. 10350, in Harris and Montgomery Counties; Application No. 37266-C

CN: 603180696; RN: 101458933

As we discussed during our telephone conversation on January 23, 2013, the Texas Commission on Environmental Quality (TCEQ or Commission) has not received a response to our letter dated December 12, 2012, requesting Community Utility Company to revise its pending CCN application in light of the fact that the Texas Water Development Board funding had not been approved.

This letter is to notify you that the application has been closed. The original application will be retained in the Commission's Record Services official file under CCN No. 10350, for reference purposes only. A copy of the application is enclosed for your records.

If you have any questions, please contact Ms. Elizabeth Flores at 512/239-6846, or if by correspondence, include Mail Code 159 in the letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy Benter".

Tammy Benter, Manager
Utilities & Districts Section
Water Supply Division

TB/EF/mmg

Enclosure

cc: TCEQ Region 12 Office

Elizabeth Flores

From: Les Romo <lesromo.lawoffice@gmail.com>
Sent: Friday, December 21, 2012 8:11 AM
To: Elizabeth Flores
Cc: Tammy Benter
Subject: Community Utility Company
Attachments: Melissa Cordell Rescission of Community Agreed Order0001.pdf

Elizabeth: I tried to send this to the email address listed in your message to me, but it bounced back twice, so I am sending it to this address. Anyway, I will get you a response to the letter from Tammy Benter dated December 12, 2012 very soon. Please note that her letter refers to an Agreed Order in Docket No. 2012-1193-MLM-E; Case No. 44399. I sent a letter to Melissa Cordell with TCEQ dated November 28, 2012 who sent the Agreed Order to my client in which I informed her that my client had rescinded its approval of the Agreed Order. For your reference, I am attaching a copy of my letter. I sent a copy of the letter to Tammy Benter the day I sent it to Ms. Cordell, so she should know that the Agreed Order has no binding effect on my client as the rescission occurred prior the Commission giving its approval of the Agreed Order. Please let me know if you have any questions. I will reply to Ms. Benter's December 12th letter very soon. Thank you - Les Romo

--

Law Office of Les Romo
307 Shannon Lane
Georgetown, Texas 78628
(512) 868-5600; Fax: (512) 591-7815

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**Law Office of
LES ROMO
Attorney at Law and Mediator**

307 Shannon Lane
Georgetown, Texas 78628

(512) 868-5600
Fax: (512) 863-0452
lesomo.lawoffice@gmail.com

November 28, 2012

Melissa Cordell, Manager
Enforcement Division
Texas Commission on Environmental Quality, Region 14
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

Re: *Notice of Enforcement Action*

Forest Manor Subdivision; RN 101198554; Public Water Supply ID No. 1010264

Docket No. 2012-1193-MLM-E; Enforcement Case No. 44339

Proposed Agreed Order from the Texas Commission on Environmental Quality

Dear Ms. Cordell:

I represent Community Utility Company (“Community”) to whom you sent a proposed Agreed Order by letter dated August 16, 2012 related to the above-referenced enforcement action concerning the Forest Manor Subdivision water system owned and operated by Community. My client’s representative signed the Agreed Order and returned it to the Commission’s Financial Administration Division, Revenues as instructed in your letter. At the time my client’s representatives signed and returned the Agreed Order it was believed that there might be sufficient funds available to Community to comply with the numerous facility compliance requirements set forth in the Order. However, given the time deadlines set forth in the Agreed Order, and given that my client has not been able to obtain sufficient funds to perform all of the facility compliance requirements set forth in the Order, my client is unable to perform the demanded facility compliance requirements. In order to possibly meet the facility compliance requirements within the deadlines set forth in the Agreed Order, my client would have to assess a surcharge against its customers in an amount that would be almost impossible for the customer to afford. For this reason, my client has to inform you that it will not be able to comply with the facility compliance requirements and provisions of the Agreed Order, and this letter constitute formal notice that my client is rescinding its approval and agreement to enter into the terms of the Agreed Order. By this letter, my client is informing you, and the Commission, that it is withdrawing and rescinding its approval of the Agreed Order, and we request that it not be presented to the Commission for entry and approval by the Commission as we deem my client’s previous approval of the Agreed Order to be hereby null and void.

My client’s representatives regret that this action has to be taken, but it was anticipated last year that a loan would be obtained from the Texas Water Development Board (the “Board”) that would address most if not all of the compliance requirement demands in the Agreed Order. The Board’s staff, and to some degree the Commission’s staff, made impossible demands on my client and its affiliated companies and systems to meet, and the loan was denied. The denial of this loan by the Board has placed my client in a financial position that it cannot currently pay the cost of performing all of the compliance requirement demands set forth in the Agreed Order. Please note that some of the requirements are being accomplished, and we will provide documentation to show what actions my client has taken to address these compliance requirements. However, some of the compliance requirements will necessitate