



Control Number: 44065



Item Number: 9

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

44065

RECEIVED

SOAH DOCKET NO. 582-06-1641
TCEQ DOCKET NO. 2006-0044-UCR 2015 JAN -6 AM 9: 03

APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
PRINCETON TO OBTAIN A WATER AND §
SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY (CCN) §
IN COLLIN COUNTY, TEXAS., §
APPLICATION NOS. 35072-C & 35073-C §

**TIM BENNETT ENGINEERING & CONSTRUCTION, INC.'S
RESPONSES TO THE TCEQ EXECUTIVE DIRECTOR'S
REQUESTS FOR DISCLOSURE AND PRODUCTION**

TO: Brian MacLeod, staff attorney for the TCEQ, P.O. Box 13087;MC 173, Austin, Texas
78711-3087.

Tim Bennett Engineering & Construction, Inc. ("Protestant") serves this its Responses to
The TCEQ's Requests for Disclosure and Production.

Respectfully submitted,

Tim Bennett Engineering & Construction, Inc.
P.O. Box 2077
601 Parker Road
Wylie, Texas 75098

By: Tim Bennett
Tim Bennett, P.E., President
TIM BENNETT ENGINEERING &
CONSTRUCTION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2006, a true and correct copy of this document has been sent to the following as indicated below:

Tim Bennett

Tim Bennett, P.E.

Brian MacLeod (VIA US MAIL)
Office of General Counsel, TCEQ
12100 Park 35 Circle
Building A, 3rd Floor
Austin, Texas 78711
(512) 239-0606 (FAX)
Counsel for TCEQ Executive Director

Arturo Rodriguez, Jr. (VIA US MAIL)
(FAXED August 29, 2006)
Russell & Rodriguez, LLP
102 West Morrow Street, Suite 103
Georgetown, Texas 78626
(512) 930-7742 (FAX)
Counsel for Applicant, City of Princeton

Blas Coy (VIA US MAIL)
TCEQ-MC 103
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-6377 (FAX)
Public Interest Counsel

Emily Rogers (VIA US MAIL)
Bickerstaff, Heath, Pollan & Caroom
816 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-5638 (FAX)
Counsel for City of McKinney

James Wilson & Skip Newsom (VIA US MAIL)
Rapier & Wilson
103 West McDermott
Allen, Texas 75013-2782
(972) 727-4273 (FAX)
**Counsel for Culleoka WSC, Altoga WSC,
& North Collin County WSC**

Robert Gammenthaler (VIA US MAIL)
9637 County Road 867
Princeton, Texas 75407
**Pro Se and as Representative for Marie
Biggs, Louis G. and Linda G. Pollaehn,
Gary R. and Juliann Edwards, and
Douglas A. Kowalski**

Phil Haag & Karey Oddo (VIA US MAIL)
Winstead Sechrest & Minick
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 370-2850 (FAX)
**Counsel for Billy Jo Donihoo, David
Strawn, the Felicia Saigling Estate, and
W.N. Saigling, Jr.**

RESPONSE TO REQUESTS FOR DISCLOSURE

Request for Disclosure (c): State the legal theories and, in general, the factual bases for your claims or defenses.

RESPONSE:

Protestant does not need or want water or wastewater service from the City of Princeton.

Protestant has the ability to acquire wastewater service from it's own sewer treatment plant which is planned for construction on property adjacent to this 5.46 acre tract in question.

Protestant's property is not within the extraterritorial jurisdiction of the City of Princeton and Protestant does not consent that such property be included in the City's proposed CCN. Therefore, pursuant to 30 TEX. REG. 8961, such property should be excluded from the City of Princeton's proposed service area:

As a result of input and comments from affected parties and the public, the commission recognizes the existence of interpretive differences in regard to CCNs outside cities' ETJs. Therefore, the commission will not take any affirmative action on cities' CCNs outside their ETJ until after January 1, 2008, in order to conduct a study and to provide opportunities to cities to obtain any necessary landowner consent in those areas. This will also allow the legislature to further consider this very important issue. During this period, the commission will consider those portions of cities' pending CCN application that are outside their ETJ only of [sic.] they provide landowner consent for those areas.

Request for Disclosure (b): State the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

City of Princeton
 c/o Arturo Rodriguez, Jr.
 Russell & Rodriguez, LLP
 102 West Morrow Street, Suite 103
 Georgetown, Texas 78626
 (512) 930-1317
Applicant

Arturo Rodriguez, Jr.
 Russell & Rodriguez, LLP
 102 West Morrow Street, Suite 103
 Georgetown, Texas 78626
 (512) 930-1317
Counsel for Applicant

Glenn Shankle
 TCEQ – MC-109
 12100 Park 35 Circle
 Building A, 3rd Floor
 Austin, Texas 78753
 (512) 239-3900
TCEQ Executive Director

Brian MacLeod
 Office of General Counsel, TCEQ
 12100 Park 35 Circle
 Building A, 3rd Floor
 Austin, Texas 78711
 (512) 239-0750
Counsel for TCEQ Executive Director

Blas Coy
 TCEQ-MC 103
 P.O. Box 13087
 Austin, Texas 78711-3087
 (512) 239-6363
Office of Public Interest Counsel, TCEQ

City of McKinney
 c/o Emily Rogers
 Bickerstaff, Heath, Pollan & Caroom
 816 Congress Avenue, Suite 1700
 Austin, Texas 78701
 (512) 472-8021
Protestant

Emily Rogers
 Bickerstaff, Heath, Pollan & Caroom
 816 Congress Avenue, Suite 1700
 Austin, Texas 78701
 (512) 472-8021
Counsel for City of McKinney

Culleoka Water Supply Corporation
 Altoga Water Supply Corporation
 North Collin County Water Supply
 Corporation
 c/o James Wilson and Skip Newsom
 Rapier & Wilson
 103 West McDermott
 Allen, Texas 75013-2782
 (972) 727-9904
Protestants

James Wilson
 Skip Newsom
 Rapier & Wilson
 103 West McDermott
 Allen, Texas 75013-2782
 (972) 727-9904
**Counsel for Culleoka WSC, Altoga WSC,
 & North Collin County WSC**

Billy Jo Donihoo (Agent: Steve Sallman,
 President of Warner Group, Inc.)
 David Strawn
 The Felicia Saigling Estate
 W.N. Saigling, Jr.
 c/o Phil Haag and Karey Oddo
 Winstead Sechrest & Minick P.C.
 401 Congress Avenue, Suite 2100
 Austin, Texas 78701
 (512) 370-2800
Protestants

Phil Haag and Karey Oddo
 Winstead Sechrest & Minick P.C.
 401 Congress Avenue, Suite 2100
 Austin, Texas 78701
 (512) 370-2800
**Counsel for Billy Jo Donihoo, Steve
 Sallman, Warner Group, Inc., David
 Strawn, The Felicia Saigling Estate, &
 W.N. Saigling, Jr.**

Tim Bennett, P.E.
 Tim Bennett Engineering & Construction,
 Inc.
 P.O. Box 2077
 Wylie, TX 75098
 (972) 429-3993
Protestant

Robert Gammenthaler
 9637 County Road 867
 Princeton, Texas 75407
 (972) 734-1645
Protestant

Marie Biggs
 Louis G. and Linda G. Pollaehn
 Gary R. and Juliann Edwards
 Douglas A. Kowalski
 c/o Robert Gammenthaler
 9637 County Road 867
 Princeton, Texas 75407
 (972) 734-1645
Protestants

Brenda and Tommy Eubanks
 3600 N. McDonald Street
 McKinney, Texas 75071
 (214) 649-1446
**Property owners of land within the City's
 proposed CCN**

Patricia and John Donaghey
 P.O. Box 977
 Princeton, Texas 75407-0977
 (972) 736-3791
**Former Protestants, Property owners of
 land within the City's proposed CCN**

Protestant reserves the right to call any and all witnesses designated by all parties herein as well as reserves the right to call all parties to this matter designated at the time of trial.

Request for Disclosure (f): For any testifying expert:

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (b) the expert's current resume and bibliography.

RESPONSE:

Protestant has not engaged an expert at this time, but reserves the right to supplement this Response. Protestant reserves the right to call any and all witnesses designated by all parties herein.

Protestant hereby cross designates and states that he may call any expert witness identified or designated by any party or any employee or representative of a party, subject to any objections Protestant may make concerning the designation of those expert witnesses and/or the qualifications of said witnesses and/or the relevance and reliability of the proffered expert's opinions.

Protestant reserves the right to elicit, by way of cross-examination, opinion testimony from experts designated and called by other parties to the suit. Protestant may also call, as a witness associated with other parties any expert witness of any party who may be added to this lawsuit.

Protestant reserves the right to withdraw the designation of any expert and to aver positively that any such previously designated expert will not be called as a witness to trial and to re-designate same as a consulting expert, who cannot be called by opposing counsel.

Protestant reserves the right to elicit any expert opinion or lay opinion testimony at the time of trial which would be truthful, which would be a benefit to the trier of fact to determine material issues of fact, which would not be violative of any existing Court order or the Texas Rules of Civil Procedure.

Protestant reserves any additional rights he may have with regard to experts, pursuant to the Texas Rules of Civil Procedure, the case law construing same, and the rulings of the Court.

Protestant reserves the right to supplement this designation with additional designations of experts within any time limits imposed by the Court or any alterations of same by subsequent Court order or agreement of the parties or pursuant to the Texas Rules of Civil Procedure.

Request for Disclosure (i): Produce any witness statements as described in Rule 192.3(h).

RESPONSE:

Protestant is unaware of any witness statements at this time, but reserves it's right to supplement this Response.

RESPONSE TO INTERROGATORIES**INTERROGATORY NO. 1:****RESPONSE:**

Protestant has not engaged an expert at this time, but reserves the right to supplement this response. Protestant reserves the right to call any and all witnesses designated by all parties.

INTERROGATORY NO. 2:**RESPONSE:**

NONE.

INTERROGATORY NO. 3:**RESPONSE:**

Protestant objects to the Sewer CCN requested by Princeton because it has CCN No. 20947 together with water quality permit No. WQ-0014932-001 currently in existence in the area and has the desire and ability to serve customers which adjoin it.

Protestant owns 5.46 acres of land which lies within 90 feet of CCN 20947 across FM 546 which it desires to serve. The 5.46 acres is within Princeton's sewer CCN application area. Mr. Bill Donihoo and The Felicia Saigling Estate own land across FM 546 which adjoins CCN No. 20946. Protestant has letters from these property owners requesting service. Protestant is in the process of preparing a CCN application to include these property owners in it's service area. Their land also lies within the sewer CCN area requested by Princeton.

To Protestant's knowledge, Princeton has no plans to provide sewer service to these properties in the near future.

INTERROGATORY NO. 4:**RESPONSE:**

The projected financial consequences of granting Princeton's sewer CCN would have a significant effect on the Protestant:

1. Protestant's 5.46 acres is a commercial tract, which lies at the corner of 2 state Highways. This tract would not receive sewer service in the foreseeable future, if Princeton is granted it's CCN.

INTERROGATORY NO. 5:**RESPONSE:****None.****INTERROGATORY NO. 6:**

The identification of people requesting sewer service is shown on the attached letters from them.

INTERROGATORY NO. 7:**RESPONSE:****None****INTERROGATORY NO. 8:****RESPONSE:**

To Protestant's knowledge Princeton has no plan to provide sewer service to this area in the foreseeable future.

INTERROGATORY NO. 9:**RESPONSE:****None.****INTERROGATORY NO. 10:****RESPONSE:****See response No. 3.****INTERROGATORY NO. 11:****RESPONSE:****None.****INTERROGATORY NO.12:****RESPONSE:****None.**

INTERROGATORY NO. 13:**RESPONSE:**

See response No. 3.

INTERROGATORY NO. 14:**RESPONSE:**

Protestant does not want nor need sewer service from the City of Princeton.
Protestant has an alternative sewer provider adjoining it's tract of land-CCN No 20947.
Protestant's tract of land is outside the ETJ of Princeton.
Protestant does not consent to sewer service from Princeton.

V. REQUEST FOR PRODUCTION:

Two letters requesting sewer service are attached.
All other items of production have been previously submitted with the request for production from Russell & Rodriguez on August 30th 2006.

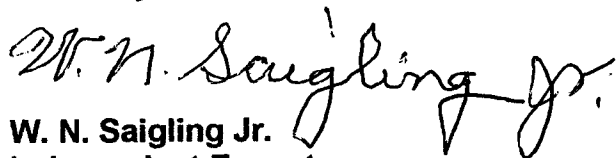
September 2, 2006

**Tim Bennett Engineering and Construction, Inc. dba TBEC
P. O. Box 2077
Wylie, TX 75098**

Dear Mr. Bennett:

I am W. N. Saigling, Jr., independent executor of the Felicia A. Saigling Estate. The Felicia Saigling Estate owns approximately 303 acres of land in Collin County located on FM 982 approximately one-half mile south of FM 546. Because of the proximity to land within your current CCN #20947, the Felicia A. Saigling Estate hereby requests to include this 303 acres in your sewer CCN #20947 area of service. Your consideration in this matter would be appreciated.

Sincerely,

A handwritten signature in cursive script that reads "W. N. Saigling Jr." with a stylized flourish at the end.

**W. N. Saigling Jr.
Independent Executor
Felicia A. Saigling Estate**

**Billy Joe Donihoo
2404 Dublin Road
Parker, Texas 75094**

August 29, 2006

Tim Bennett Engineering and Construction, Inc.,
Dba TBEC
P.O. Box 2077.
Wylie, Texas 75098

Ref: Property consisting of approximately 99.43 acre located at the southeast corner of FM 3286
and CR 437, A 0476 Johnson, William, Tract 21, Collin County, Texas

Dear Mr. Bennett:

Please be advised that it is my desire to obtain sanitary sewage service from TBEC for the above referenced property that I own in Collin County, Texas. I am requesting that you take the necessary action to serve this property in the future, including amending your CCN No. 20947 to include my property.

Please let me know if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Donihoo", written in a cursive style.

Billy Joe Donihoo