



Filing Receipt

Received - 2022-06-27 01:12:24 PM
Control Number - 53728
ItemNumber - 5

DOCKET NO. 53728

REQUEST OF CITY OF AMES FOR	§	PUBLIC UTILITY COMMISSION
EMERGENCY ORDER TO MAINTAIN	§	
SEWER SERVICE FROM CITY OF	§	OF TEXAS
LIBERTY	§	

COMMISSION STAFF'S RESPONSE TO ORDER NO. 1 AND MOTION TO DISMISS

I. INTRODUCTION

The executive director of the Public Utility Commission of Texas (Commission) has received the request for an emergency order of the City of Ames (Ames). The executive director has decided not to act on the request because the Texas Commission on Environmental Quality (TCEQ) is better suited to act on a similar request that Ames has made to the TCEQ and the TCEQ is scheduled to consider that request on a timely basis. Commission Staff therefore moves to dismiss the application in this docket because it is duplicative of Ames' application to the TCEQ and TCEQ is better suited to act because of the type of harm that Ames alleges may occur.

II. BACKGROUND

The City of Liberty (Liberty) is a retail public utility that holds Certificate of Convenience and Necessity No. 10144. On June 16, 2022, City of Ames (Ames) filed an application initiating this docket and requesting an emergency order under Texas Water Code (TWC) § 13.041(d)(1) and 16 Texas Administrative Code (TAC) § 24.14, to compel Liberty to provide sewer service in response to Liberty's January 5, 2022 notice of suspension of services beginning July 1, 2022. On June 21, 2022, Liberty filed its response to Ames' request for an emergency order. On June 23, 2022, Ames's filed an amended application requesting an emergency order.

On June 17, 2022, the administrative law judge (ALJ) filed Order No. 1, requiring Commission Staff to file by June 27, 2022, comments regarding (1) the administrative completeness of the application and the sufficiency of notice; and (2) whether the Executive Director intends to receive and act on Ames' request. In addition, the order requires Commission Staff's comments to include a proposed procedural schedule for further processing of this docket. This pleading is timely filed.

III. LEGAL AUTHORITY

Under Texas Water Code (TWC) § 13.041(a), the Commission may regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation, whereas the Texas Commission on Environmental Quality (TCEQ) may regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. This provision shows legislative intent that the Commission's primary mission with respect to water and sewer service is economic regulation whereas TCEQ's primary mission with respect to water and sewer service is to ensure safe drinking water and environmental protection.¹

Under TWC § 13.041(d), the Commission, in accordance with TWC Chapter 13, Subchapter K-1, may issue an emergency order without a public hearing to compel a retail public utility that has obtained a certificate of convenience and necessity to provide continuous and adequate sewer service if the discontinuance of service is imminent. Under TWC Chapter 13, Subchapter K-1, § 13.451(b), the Commission by order may delegate to the Commission's executive director the authority to receive applications and issue emergency orders under this subchapter. The Commission has delegated that authority to the executive director.² Under TWC Chapter 13, Subchapter K-1, § 13.451(c), Texas Government Code Chapter 2001—the Administrative Procedure Act—does not apply to the issuance of an emergency order without a hearing under this subchapter.

Under TWC § 13.041(h), TCEQ, in accordance with TWC Chapter 5, Subchapter L, may issue an emergency order without a public hearing to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide sewer service that complies with all statutory and regulatory requirements of the TCEQ if necessary to ensure safe drinking water or environmental protection.

IV. EXECUTIVE DIRECTOR'S RESPONSE TO AMES' REQUEST

On January 5, 2022, Liberty served on Ames a notice of suspension of services beginning July 1, 2022. TCEQ initiated a mediation process for the dispute between Ames and Liberty on

¹ This legislative intent exists even though Liberty is a retail public utility but not a water and sewer utility. *See* TWC §13.002(19) and (23).

² Delegation of Authority Generally to the Executive Director, Docket No. 43517, Order (Dec. 4, 2015).

April 29, 2022.³ Ames has requested an emergency order from the TCEQ compelling the continuation of sewer service and that request is scheduled for consideration at TCEQ's public meeting on June 29, 2022.⁴ Ames alleges, as the basis for its request to the Commission, if Liberty suspends sewer service on July 1, 2022, "it is reasonably certain that an unauthorized discharge of untreated waste will occur" that will constitute an environmental hazard.⁵

As indicated above in the preceding section III, the Commission's primary mission with respect to sewer service is economic regulation whereas TCEQ's primary mission with respect to sewer service is to ensure safe drinking water and environmental protection. As a result, TCEQ is better suited to address Ames' request because it is based on an allegation that, if sewer service is discontinued, it is reasonably certain that an unauthorized discharge of untreated waste will occur that will constitute an environmental hazard.

V. MOTION TO DISMISS

Staff moves under 16 TAC § 22.181(e)(1) and (d)(5) and (11) for dismissal of Ames application for emergency order in this docket. As explained above in preceding section IV, this docket is an unnecessary duplication of the TCEQ's proceedings to consider a request by Ames similar to the one in this docket. Also as explained above in the preceding section, TCEQ is better suited to act on such a request and as a result good cause exists to dismiss the request that Ames has made in this docket. Staff requests that the application be dismissed without prejudice because of the seriousness of the alleged harm that Ames seeks to avoid.

VI. ADMINISTRATIVE COMPLETENESS OF THE APPLICATION AND THE SUFFICIENCY OF NOTICE

Commission Staff has reviewed the request for an emergency order and supplemental information filed by Ames in its Amended Request. Commission Staff recommends that Ames' Amended Request be found administratively complete under 16 TAC 22.295 and TWC 13.452. Further, Ames provided Liberty with service of its original request for an emergency order as well

³ City of Ames' Amendment to Request for Emergency Order at 4 (June 23, 2022) (Amended Request).

⁴*Id.* at 5-6.

⁵ *Id.* at 5.

as its amended Request; therefore, Commission Staff recommends that notice is sufficient under 16 TAC 22.55.

VII. PROCEDURAL SCHEDULE

Order No. 1 requires Commission Staff to propose a procedural schedule for further processing of the docket. Commission Staff recommends that a deadline be set under 16 TAC § 22.181(e)(3) for responses to Staff's motion for dismissal in section V, above.

VIII. CONCLUSION

Commission Staff respectfully requests that Ames' application requesting an emergency order be dismissed without prejudice to refile after the other parties in the docket have been given an opportunity to respond to Staff's motion to dismiss.

Dated: June 27, 2022

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Keith Rogas
Division Director

Sneha Patel
Managing Attorney

/s/Mildred Anaele
Mildred Anaele
State Bar No. 24100119
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7345
(512) 936-7268 (facsimile)
Mildred.Anaele@puc.texas.gov

DOCKET NO. 53728

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on June 27, 2022, in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/Mildred Anaele
Mildred Anaele