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Public Utility Commission of Texas

Memorandum

TO: Christiana Denmark
Administrative Law Judge

FROM: Mildred Anaele, Attorney
Legal Division

DATE: July 29, 2022

RE: Docket No. 53728– Request of City of Ames for Emergency Order to Maintain
Sewer Service from City of Liberty

On June 27, 2022, Commission Staff (Staff) filed its response to order no. 1 and motion to dismiss. In its pleading, referenced a duplicative Texas Commission on Environmental Quality (TCEQ) proceeding which was to consider a similar request by the City of Ames (Ames). On June 29, 2022, TCEQ considered Ames's request for an emergency order and signed an order granting an Emergency Order for 120 days. Staff has attached the signed order to this memorandum.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2022-0763-UCR-E

IN THE MATTER OF THE	§	BEFORE THE TEXAS
REQUEST BY THE CITY OF	§	
AMES UNDER TEXAS WATER	§	
CODE § 13.041 FOR AN	§	
EMERGENCY ORDER TO	§	COMMISSION ON
COMPEL THE CITY OF	§	
LIBERTY TO PROVIDE SEWER	§	
SERVICE IN LIBERTY COUNTY,	§	
TEXAS	§	ENVIRONMENTAL QUALITY

EMERGENCY ORDER

On June 29, 2022, the Texas Commission on Environmental Quality (Commission) considered the City of Ames's request for an Emergency Order under Texas Water Code (TWC) § 13.041(h) and 30 Texas Administrative Code (TAC) § 35.202. The parties made the subject of this Order are the City of Ames (Ames) and the City of Liberty (Liberty). The Commission has jurisdiction to consider this matter, and the following Findings of Fact and Conclusions of Law are appropriate:

FINDINGS OF FACT

1. Liberty is a municipality and a retail public utility, as defined in 30 TAC § 291.3(14).
2. Liberty has obtained Certificate of Convenience and Necessity No. 20056 to provide sewer service.
3. Ames is a municipality that receives wastewater treatment services from Liberty pursuant to a contractual agreement issued on March 14, 2001.
4. Liberty informed Ames by letter dated January 5, 2022, that it would cease accepting wastewater flows on July 1, 2022.

5. On June 16, 2022, Ames filed a request for emergency order alleging that Ames has no means of obtaining sewer service other than from Liberty and requesting that the Commission issue an emergency order to compel Liberty to continue to provide sewer service to Ames pursuant to TWC § 13.041(h) and 30 TAC § 35.202.
6. As of June 29, 2022, Liberty had not rescinded its January 5, 2022, letter.
7. The City of Ames currently does not have an alternative in place to provide sewer service on or after July 1, 2022.
8. It is reasonably foreseeable that Liberty's suspension of Ames's sewer service would result in an unauthorized discharge of wastewater under TWC § 26.121.
9. Liberty is located in close proximity to Ames and is capable of providing sewer to Ames through existing lines.
10. Liberty should be compelled to continue to provide sewer service to Ames that complies with all statutory and regulatory requirements of the Commission to ensure the protection of the environment in accordance with TWC Chapter 26, TWC § 13.041(h)(1), and 30 TAC Chapters 35 and 291 of TCEQ's rules for 120 days.

CONCLUSIONS OF LAW

1. The Commission may issue an emergency order under TWC § 13.041(h)(1) 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 Commission if necessary to ensure environmental protection.
2. Liberty is a retail public utility as defined in 30 TAC § 291.3(14) and holds a sewer certificate of convenience and necessity.
3. An unauthorized discharge of wastewater under TWC § 26.121 and hazard to the environment is likely to occur if Liberty suspends Ames's sewer service on July 1, 2022, due to Ames not having alternative sewer service in place. Liberty has notified Ames that the discontinuance of service will occur on July 1, 2022.
4. The Commission may therefore compel Liberty to continue to provide sewer service to Ames pursuant to Texas Water Code § 13.041(h)(1) to ensure the protection of the environment.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. This Order shall become final and effective on the date of signature;

2. Liberty shall continue to provide to Ames continuous and adequate sewer service that complies with TWC Chapter 26, TWC § 13.041(h)(1), and 30 TAC Chapters 35 and 291 of TCEQ's rules;
3. This Order shall expire in 120 days, unless extended;
4. Pursuant to TWC § 5.504, the Commission hereby sets a hearing to consider whether to affirm, modify or set aside this Emergency Order at its regular Agenda meeting on **August 24, 2022, at 9:30 a.m.**, at TCEQ Park 35 Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas;
5. The provisions of this Order shall apply to and be binding upon Liberty and Ames. Liberty and Ames shall give notice of this Order to personnel who maintain day-to-day control over the operations referenced in this Order;
6. The Chief Clerk of the Commission shall mail a copy of this Order to all parties; and
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY



For the Commission

6/29/22
Date