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Chief Clerk, TCEQ
PO Box 13087 MC-105
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CHIEF CLERKS OFFICE
2006 JUL 28 AM 9:42
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Application of the City of Hardin, Sewer Certificate of Convenience and Necessity (CCN) No. 20950, to Compel Hardin Water Supply Corporation, CCN No. 11270, to Terminate Water Utility Service for Nonpayment of Sewer Utility Service in Liberty County, Application No. 35020-D

VIA: US Mail

Dear Madam or Sir,

Pursuant to Title 30 Ch. 1 Rule 1.10, enclosed please find the Affirmative Defenses and Responses of Hardin Water Supply Corporation for filing. I have previously forwarded a copy to Christian Siano, Esq, Attorney for the Executive Directors and Honorable Allen Tidwell, Mayor of Hardin County.

Also, please accept the Response as a request for you to refer the Hearing Request to SOAH pursuant to Title 30 Ch. 55 Rule 55.21 of the Texas Administrative Code.

If you have any questions concerning the above please do not hesitate to advise.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Gerald Hosemann', with a long horizontal flourish extending to the right.

H. GERALD HOSEMANN

HGH/sr
Enclosed

cc: Christian Siano

BEFORE THE ADMINISTRATIVE OFFICE OF HEARINGS AND/ OR
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

HARDIN WATER SUPPLY CORPORATION RESPONSES TO APPLICATION OF THE CITY HARDIN, SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 20950, TO COMPEL HARDIN WATER SUPPLY CORPORATION, CCN NO. 11270, TO TERMINATE WATER UTILITY SERVICE FOR NONPAYMENT OF SEWER UTILITY SERVICE IN LIBERTY COUNTY, APPLICATION NO. 35020-D.

AFFIRMATIVE DEFENSES AND RESPONSE

NOW COMES, Hardin Water Supply Corporation herein after referred to as H. W. S. C. and files it's Affirmative Defenses and Response to the above caption application responding as follow:

1. H. W. S. C. is a member owned corporation established on March 8, 1965 with over 1500 members who each have a proprietary interest of there respective water rights, contract rights and franchise rights. The Corporation has adapted a resolution that prohibits the disconnection of water for the non-payment of another utility bill.
2. Article 1 Section 16 of the Texas Constitution States that No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.
3. Article 1 Section 17 stated No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.
4. All of H. W. S. C. and its Board is bound by its bylaws and resolutions for the protection of all the Corporation members. If the application is granted some 1500 members of HWSC would be disenfranchised of there absolute rights in derogation of the Texas Constitutional Provisions sighted supra.
5. The application by the city of Hardin fails to conform to the requirements of the Administrative Code and otherwise fails to state a claim upon which relief can be granted.
6. There is no necessity for the implementation of the City of Hardin's request.
7. Proper venue and forum should be before an Administrative Law Judge pursuant to the Texas Administrative Code 80.17.
8. The enforcement requested by the City is premature for decision. There has been no commission process specifying financial considerations, rules, regulation, and other protection required by Rule 291.88 (e)(1) and Water Code 13.250. The enforcements of the application without the necessary prerequisites would create an undue financial hardship on H. W. S. C.

9. Proper venue and forum should be before an Administrative Law Judge pursuant to the Texas Administrative Code 80.17
10. The enforcements are in violation of the Fourteenth Amendment of the United States Constitution.

WHEREFORE PREMISES CONSIDERED, Respondents pray and request this matter be dismissed, or in the alternative to transfer pursuant to the Administrative Code or in the alternative transferred for Hearing pursuant Administrative Code 2003.056 regarding Alternative Dispute Resolution.

Respectfully Submitted,



H. Gerald Hosemann
ATTORNEY FOR H. W. S. C.

HGH/sr

CERTIFICATE OF SERVICE

I, H. Gerald Hosemann, attorney of record for Respondents, Hardin Water Supply Corporation, do hereby certify that I have this day caused to be sent via US Mail, a true and correct copy of the above and forgoing documents to:

To:

Honorable Allen Tidwell
Mayor of the City of Hardin
P.O. Box 324
Hardin, TX 77561

SO CERTIFIED, this the 27th day of July, 2006