

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

Texas Commission On Environmental Quality

INTEROFFICE MEMORANDUM

To: Texas Commission On Environmental Quality Date: March 23, 2007

Through: LaDonna Castañuela
Chief Clerk

From: Environmental Law Division

Subject: Docket No. 2006-0595-UCR, Petition of City of Hardin, Sewer Certificate of Convenience and Necessity, CCN No. 20950, Requesting an Order to Compel Hardin Water Supply Corporation (WSC), CCN No. 11270, to Disconnect Water Service for Non-Payment of Sewer Service charges, Application No. 35020-D

PROCEDURAL BACKGROUND: This matter was first considered by the Commission on the January 10, 2007 Agenda. At that hearing, the Commission continued the matter until March 28, 2007, to allow for mediation. On March 22, 2007, the Executive Director received by email, a copy of an agreed order, signed by representatives of the City of Hardin and Hardin Water Supply Corporation.

STAFF RECOMMENDATION: Staff for the Executive Director has reviewed the agreed order used the essential language to draft a proposed order. The Executive Director recommends that the proposed order be granted.

STAFF CONTACTS: Christiaan Siano, Environmental Law Division, MC-173 (239-6743)
Brian Dickey, Water Supply Division, MC-153 (239-0963)



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CHIEF CLERKS OFFICE

ORDER TO COMPEL

AN ORDER to compel the Hardin Water Supply Corporation to terminate water utility service to customers for nonpayment of sewer utility service provided by City of Hardin in Liberty County, Texas; Docket No. 2006-0595-UCR

On March 28, 2007, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the petition of City of Hardin ("the City") for an order to compel the Hardin Water Supply Corporation ("Hardin WSC") to terminate water utility service for nonpayment of sewer utility service in Liberty County in accordance with the requirements of 30 Texas Administrative Code (TAC) § 291.88(e).

- a. City of Hardin is a retail public utility that supplies sewer service in Liberty County. City of Hardin is authorized by the TCEQ to provide such service pursuant to the authority granted in Certificate of Convenience and Necessity ("CCN") No. 20950.
- b. City of Hardin has obtained funding through the State or Federal government for the provision, expansion or upgrading of sewer service.
- c. Hardin WSC provides retail water utility service in Liberty County pursuant to CCN No. 11270.
- d. Hardin WSC provides water utility service to many of City of Hardin's customers ("Affected Customers").
- e. The provision of sanitary sewer service to the Affected Customers is integral to Hardin WSC's separate provision of water service to those same customers.
- f. City of Hardin is experiencing losses due to uncollected revenue.
- g. City of Hardin requested that Hardin WSC enter into an agreement to terminate water

service for the nonpayment of sewer utility service.

- h. An Order compelling a process for the termination of water utility service for nonpayment of sewer utility service by the Affected Customers is necessary to effectuate the purposes of the Texas Water Code.
- i. The parties have negotiated for and provided agreed language (see Attachment A), that has been incorporated into this order, specifying the terms that Hardin WSC will terminate water service for nonpayment of wastewater service. However, both parties have requested a Commission order formalizing the agreement pursuant to Texas Water Code Sections 13.041(b) and 13.250(b).

WHEREAS, the Commission has jurisdiction to consider this matter with continuing jurisdiction to modify this Order upon petition or request of the City of Hardin or Hardin WSC and is authorized to make and enter this Order in accordance with Texas Water Code Sections 13.041(b) and 13.250(b).

WHEREAS, the Commission's findings are sufficient to allow the issuance of this Order under 30 TAC § 291.88(e).

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

1. City of Hardin's petition for an order to compel Hardin WSC to terminate water utility service for nonpayment of sewer utility service is hereby **granted**.
2. Delinquent Customers. Hardin WSC is hereby ordered to terminate an Affected Customer's water utility service for nonpayment of sewer utility services owed to City of Hardin. 30 TAC § 291.88(a)(2) when the City of Hardin follows the procedures set out herein.
3. Subject to the provisions of 30 TAC § 291.88, the parties must use the following process in order to terminate water utility service for nonpayment of sewer utility service:
 - A. Notice to Delinquent Customers. After proper notice to its delinquent customers, City of Hardin may initiate procedures for the disconnection of water service. The notice to delinquent customers must comply with 30 TAC § 291.88(a)(1).
 - B. Disconnection. Prior to the intended date of disconnection described in 30 TAC §

291.88(a)(1)(D), City of Hardin shall notify Hardin WSC in writing of any customer account that requires disconnection of water service for nonpayment of sewer utility services by providing the address of the delinquent account and the intended date of disconnection. In order to avoid unnecessary disconnection of water service, City of Hardin shall provide immediate notice to Hardin WSC when a delinquent customer has paid all of its past-due charges prior to the intended date of disconnection and City of Hardin is no longer requesting disconnection. Prior to disconnection of water service, City of Hardin shall pay Hardin WSC the cost of disconnecting the water service in an amount not to exceed Hardin WSC's established disconnection fee.

- C. Reconnecting. If water service is disconnected for nonpayment of sanitary sewer service charges, except as otherwise required by law or as agreed to by City of Hardin, Hardin WSC shall not provide water services to that customer until City of Hardin notifies Hardin WSC that it has received payment of all delinquent sewer collection charges, plus any applicable charges which are then collectible in accordance with City of Hardin's tariff or other applicable law. Hardin WSC may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. Hardin WSC shall receive a reconnection charge of thirty dollars (\$30) from the City of Hardin within a reasonable time after reconnection. Hardin WSC must follow the service restoration procedures provided in 30 TAC § 291.88(h) of the Texas Administrative Code.
- D. Effect on Provision of Water. This Order shall not affect or impair Hardin WSC's rights and obligations with respect to its customers or the provision of water utility services, except as specifically set forth in this Order and as allowed by law.
- E. Purpose of Order/Indemnity. This Order is made for the purpose of facilitating the collection of fees for sanitary sewer services provided by City of Hardin. No partnership or joint venture is intended to be created hereby. Hardin WSC's sole responsibility is that of complying with this Order and that of City's agent for disconnection of utility service, and it is ordered that Hardin WSC shall have no

responsibility for, and City of Hardin shall indemnify, defend, and hold Hardin WSC harmless for, any damage, claims, or causes of action arising from:

i. the construction, operation, maintenance, repair or existence of the sewer collection system;

ii. the provision of sewer collection service; and

iii. any act or omission relating to such services.

iv. damage to water meters and locks that may result after disconnection of a water meter from the nonpayment of sewer services.

F. Commencement. The effect of this order shall commence after the first billing date which includes service provided on the date that this Order is issued.

G. Automatic Termination. If any provision of this Order is determined by any regulatory or judicial body to be invalid, or in violation of any law, the remainder of the Order shall continue to be valid.

H. Expiration. This Order shall remain in effect until January 1, 2010, unless the parties agree to continue the terms and conditions of this Order by written notice to the Commission within thirty (30) days prior to its termination.

I. Notices. Any notice or communication required or permitted to be given under this Order shall be deemed sufficient if it is delivered by hand delivery, mailed by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission to the addresses indicated below, or to other addresses furnished in writing by any party to all other parties.

City of Hardin
PO Box 324 - County Road 2010
Hardin, Texas 77561-0324

Hardin Water Service Corporation
PO Box 819
Hardin, Texas 77561

Issue Date: _____

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ORDER TO COMPEL

2007 MAR 23 PM 3: 03

CHIEF CLERKS OFFICE

AN ORDER to compel the Hardin Water Supply Corporation to terminate water utility Service to customers for nonpayment of Sewer utility service provided by City of Hardin in Liberty County, Texas; Docket No. 2006-0595-UCR

On March 28, 2007, the Texas Commission of Environmental Quality ("Commission" or "TCEQ") considered the petition of City of Hardin ("the City") for an order to compel the Hardin Water Supply Corporation ("Hardin WSC") to terminate water utility service for nonpayment of sewer utility service in Liberty County in accordance with the requirements of 30 Texas Administrative Code (TAC) 291.88(e).

- a. City of Hardin is a retail public utility that supplies sewer service in Liberty County. City of Hardin is authorized by the TCEQ to provide such service pursuant to the authority granted in Certificate of Convenience and Necessity ("CCN") No. 20950.
- b. City of Hardin has obtained funding through the State or Federal government for the provision, expansion or upgrading of sewer service.
- c. Hardin WSC provides retail water utility service in Liberty County pursuant to CCN No. 11270.
- d. Hardin WSC provides water utility service to many of City of Hardin's customers ("Affected Customers").
- e. City of Hardin is experiencing losses due to uncollected revenue.
- f. City of Hardin requested that Hardin WSC enter into an agreement to terminate water service for the nonpayment of sewer utility service and the parties have been able to negotiate an agreement on this issue.
- g. An Order approving a process for the termination of water utility service for nonpayment of sewer utility service by the Affected Customers has been agreed to by the parties in this matter.

WHEREAS, the Commission has Jurisdiction to consider this matter with continuing Jurisdiction to modify this Order before the Commission upon petition or request of the parties in

Exhibit A

this matter and is authorized to make and enter this Order in accordance with Texas Water Code Sections 13.041(b) and 13.250(b).

WHEREAS, the Commission's findings are sufficient to allow the issuance of this Agreed Order under 30 TAC 291.88(e).

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

1. An Agreed Order to compel Hardin WSC to terminate water utility service for nonpayment of sewer utility service is hereby approved and granted.
2. Delinquent Customers. This Order is valid for the purpose of terminating an Affected Customer's water utility service for nonpayment of sewer utility services owed to City of Hardin. 30 TAC 291.88(a)(2).
3. Subject to the provisions of 30 TAC 291.88, the parties must use the following process in order to terminate water utility service for nonpayment of sewer utility service:
 - A. Notice to Delinquent Customers. After proper notice to its delinquent customers, City of Hardin may initiate procedures for the disconnection of water service. The notice to delinquent customers must comply with 30 TAC 291.88(a)(1).
 - B. Disconnection. Prior to the intended date of disconnection described in 30 TAC 291.88(a)(1)(D), City of Hardin shall notify Hardin WSC in writing of any customer account that requires disconnection of water service of nonpayment of sewer utility services by providing the address of the delinquent account and the intended date of disconnection. In order to avoid unnecessary disconnection of water service, City of Hardin shall provide immediate notice to Hardin WSC when a delinquent customer has paid all of its past-due charges prior to the intended date of disconnection and that City of Hardin is no longer requesting disconnection. Prior to disconnection of water service, City of Hardin shall pay Hardin WSC the cost of disconnecting the water service in an amount not to exceed Hardin WSC's established disconnection fee.
 - C. Reconnecting. If water service is disconnected for nonpayment of sanitary sewer service charges, except as otherwise required by law or as agreed to by City of Hardin, Hardin WSC shall not provide water services to that customer until City of Hardin notifies Hardin WSC that it has received payment of all delinquent

sewer collection charges, plus any applicable charges which are then collectible in accordance with City of Hardin's tariff or other applicable law. Hardin WSC may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. Hardin WSC shall receive a reconnection charge of Thirty Dollars payable from the City of Hardin within a reasonable time after reconnection. Hardin WSC must follow the service restoration procedures provided in 30 TAC 291.88(h) of the Texas Administrative Code.

- D. Effect on Provision of Water. This Order shall not affect or impair Hardin WSC's rights and obligations with respect to its customers or the provision of water utility services, except as specifically set forth in this Order and as allowed by law.
- E. Purpose of Order/Indemnity. This Order is made for the purpose of facilitating the collection of fees for sanitary sewer services provided by City of Hardin. No partnership or joint venture is intended to be created hereby. Hardin WSC's sole responsibility is that of complying with the Order issued by TCEQ and that of City's agent for disconnection of utility service, the City is to indemnify, defend, and hold Hardin WSC harmless for, any damage, claims, or causes of action arising from:
- i. the construction, operation, maintenance, and repair of the sewer collection system;
 - ii. the provision of sewer collection service;
 - iii. any act or omission relating to such services;
 - iv. damage to water meters and locks that may result after disconnection of a water meter from the nonpayment of sewer services.
- F. Commencement. The effect of this order shall commence after the first billing date which includes service provided on the date that this Order is issued.
- G. Automatic Termination. If any provision of this Order is determined by any regulatory or judicial body to be invalid, or in violation of any law, the remainder of the Order shall continue to be valid.

- H. Termination. This Order shall remain in effect until January 1, 2010, unless the parties agree to continue the terms and conditions of this Order by written Notice to the Commission within Thirty Days prior to its termination.
- I. Notice. Any notice or communication required or permitted to be given under this Order shall be deemed sufficient if it is delivered by hand delivery, mailed by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission to the addresses indicated below, or to other addresses furnished in writing by any party to all other parties.

City of Hardin
Po Box 324-County Road 2010
Hardin, Texas 77561-0324

Hardin Water Service Corporation
Po Box 819
Hardin, Texas 77561

Issue Date: _____

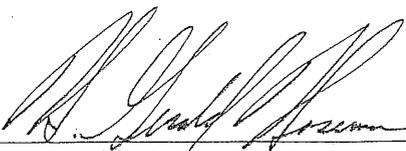
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman

AGREED AS TO FORM:



E. Bruce Mintz
Attorney for the City of Hardin, Texas



H. Gerald Hosemann
Attorney for the Hardin Water Supply Corp.