

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 7, 2014

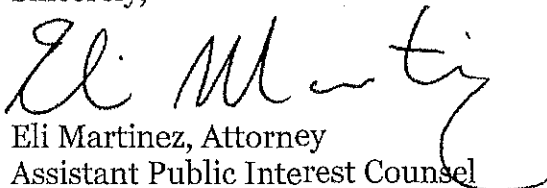
Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **LAKE CITIES MUNICIPAL UTILITY AUTHORITY**  
**TCEQ DOCKET NO. 2014-0084-DIS**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

  
Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**TCEQ DOCKET NO. 2014-0084-DIS**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>BEFORE THE TEXAS COMMISSION</b>
<b>APPLICATION BY LAKE CITIES</b>	<b>§</b>	
<b>MUNICIPAL UTILITY AUTHORITY</b>	<b>§</b>	<b>ON</b>
<b>FOR APPROVAL OF IMPACT FEES</b>	<b>§</b>	
	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO REQUESTS FOR HEARING**

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and files this Response to Requests for Hearing in the above-referenced matter, and would respectfully recommend referring this matter to the State Office of Administrative Hearings ("SOAH").

**I. INTRODUCTION**

The Lake Cities Municipal Utility Authority of Denton County (the "Authority") filed an application with the TCEQ for authority to levy an impact fee of up to \$4,257 per equivalent single-family connection (ESFC) for water facilities and up to \$3,415 per ESFC for wastewater facilities within the Authority's service area boundaries.

The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of water and wastewater capital improvements or facility expansions made necessary by and attributable to serving new development in the Authority's service area. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the water and wastewater systems that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed.

The application was declared administratively complete on April 23, 2013. On July 10, 2013, the applicant sent notice of the application to each owner of property within the service

area as required by 30 TAC §293.173(c). Notice of the application was published in the *Denton Record Chronicle* on August 28, 2013 and September 4, 2013. The comment period ended 30 days after publication of notice, on October 4, 2013. In response to the notice, the TCEQ received hearing requests from Sharon S. Babb, Barbara Ruth Miller, Payne Victor Rucker, Jr., Gayle Rumbleck, and Carl R. Stapp. OPIC recommends that each of the hearing requests be granted.

## II. APPLICABLE LAW

Under 30 TAC §293.14(d), the commission may act on an application without holding a public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection. This application was declared administratively complete April 23, 2013. Therefore, the hearing requests associated with this application are evaluated under Subchapter G of Chapter 55 of the Commission's rules.

The contents of a hearing request concerning the approval of an impact fee is governed by 30 TAC §55.251, which specifies that:

(c) A hearing request must substantially comply with the following:

- (1) Give the name, address, and daytime telephone number of the person who file the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

In order to grant an individual's request for a contested case hearing, the Commission must find that the request is made in writing and by an affected person. 30 TAC §55.251(b). An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC §55.256(a). This justiciable interest does not include an interest common to the general public. *Id.* Section 55.256(c) of 30 TAC provides relevant factors that will be considered in determining whether or not a person is affected. These factors include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

### III. HEARING REQUESTS

The Office of the Chief Clerk received timely hearing requests from Sharon S. Babb, Barbara Ruth Miller, Payne Victor Rucker, Jr., Gayle Rumbeck, and Carl R. Stapp.

Any owner of property subject to the proposed fee would have a personal justiciable interest and can be considered an affected person pursuant to 30 TAC §55.256. From the information available in the file, OPIC can neither prove nor disprove that the requestors own property located in the Applicant's service area. However, because each of the requestors represent that they will be subject to the Applicant's impact fee, OPIC recommends that the Commission find each requestor is an affected person under applicable law and entitled to a hearing unless the District can demonstrate otherwise. If additional information is submitted by

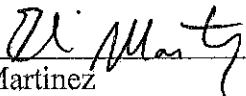
the Applicant purporting to make such a demonstration, OPIC will review that information and reconsider its recommendation.

#### IV. CONCLUSION

For the reasons set forth above, OPIC recommends that the Commission find Sharon S. Babb, Barbara Ruth Miller, Payne Victor Rucker, Jr., Gayle Rumbleck, and Carl R. Stapp are affected parties and that the Commission refer this case to the State Office of Administrative Hearings.

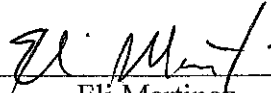
Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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#### CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2014, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Eli Martinez

**MAILING LIST**  
**LAKE CITIES MUNICIPAL UTILITY AUTHORITY**  
**TCEQ DOCKET NO. 2014-0084-DIS**

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