

SMITH, MURDAUGH, LITTLE & BONHAM, L.L.P.

W. JAMES MURDAUGH, JR.  
HERMAN I. LITTLE, JR.  
JAMES D. BONHAM  
SARA J. ANDERSON  
LORI G. AYLETT  
MELISSA P. KILPATRICK  
WM. SCOTT SMITH  
G. TAYLOR GOODALL, JR.

ATTORNEYS AT LAW  
1100 LOUISIANA STREET  
SUITE 400  
HOUSTON, TEXAS 77002-5211  
713/652-6500  
TELECOPIER 713/652-6515

CYRIL J. SMITH  
(1904-1982)

November 30, 2009

via FedEx

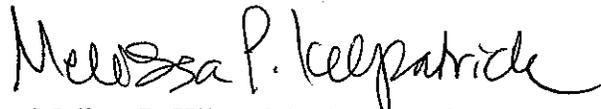
LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, MC-105  
Austin, Texas 78753

Re: Application from Glidden Fresh Water Supply District No. 1 requesting an emergency order compelling the City of Columbus to provide an emergency interconnection in Colorado County, Texas; TCEQ Docket No. 2009-1599-UCR

Dear Ms. Castañuela:

Please find enclosed Glidden Fresh Water Supply District No. 1's Brief. Please contact me with any questions.

Very truly yours,



Melissa P. Kilpatrick, Attorney for  
Glidden Fresh Water Supply District No. 1

Enclosure

cc: Mailing List (*via email*)  
cc: President, Glidden Fresh Water Supply District No. 1  
G. Taylor Goodall, Jr. (firm)

Certificate of Service

The undersigned attorney certifies that a true and correct copy of the foregoing document was forwarded to all counsel of record and parties of interest listed on the attached service list by e-mail, first class mail, electronic mail and/or facsimile this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Melissa P. Kilpatrick

**Mailing List**  
**City of Columbus**  
**Glidden Fresh Water Supply District No.1**  
**TCEQ Docket No. 2009-159-UCR**

**REPRESENTING THE CITY OF COLUMBUS:**

Barbara Boulware-Wells  
Akers & Boulware-Wells, LLP  
6618 Sitio Del Rio Blvd., Bldg E., Suite 102  
Austin, Texas 787730  
Phone: (512) 852-2280; Fax: (512) 233-0801

**TCEQ:**

Ms. Stefanie Skogen, Staff Attorney  
Texas Commission on Environmental Quality Office of Legal Services, MC-I73  
Environmental Law Division  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-0575; Fax: (512) 239-0606

**REPRESENTING THE OFFICE OF PUBLIC INTEREST COUNSEL:**

Blas Coy, Jr.  
Texas Commission on Environmental Quality Office of  
Public Interest Counsel, MC-103  
P. O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-6363; Fax: (512) 239-6377

**OFFICE OF THE CHIEF CLERK:**

LaDonna Castanuela  
Texas Commission on Environmental Quality Office of the Chief Clerk, MC-I05  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-3300; Fax: (512) 239-3311

**OFFICE OF PUBLIC ASSISTANCE:**

Bridget Bohac  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P. O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-4000; Fax: (512) 239-4007

TCEQ DOCKET NO. 2009-1599-UCR

|                          |   |                       |
|--------------------------|---|-----------------------|
| IN THE MATTER OF AN      | § | BEFORE THE            |
| EMERGENCY ORDER          | § |                       |
| CONCERNING GLIDDEN FRESH | § |                       |
| WATER SUPPLY DISTRICT    | § | TEXAS COMMISSION ON   |
| NO. 1 AND THE CITY OF    | § |                       |
| COLUMBUS IN COLORADO     | § |                       |
| COUNTY, TEXAS            | § | ENVIRONMENTAL QUALITY |

GLIDDEN FRESH WATER SUPPLY DISTRICT NO. 1'S BRIEF

Glidden Fresh Water Supply District No. 1 ("District" or "Glidden") files this brief regarding its application for an emergency order compelling the City of Columbus ("City") to provide an emergency interconnection for the provision of temporary sewer service. In support of this brief, Glidden shows the following:

I. Background and Facts

The Texas Commission on Environmental Quality (the "Commission") received the District's Petition for Appeal of Decision of Provider of Sewer Service ("Petition") on January 20, 2009 and referred the Petition to the State Office of Administrative Hearings ("SOAH") for an evidentiary hearing. A preliminary hearing was held on April 30, 2009, and on June 30, 2009, Petitioner and the City of Columbus (the "City") participated in mediation at SOAH. The dispute was not resolved at the mediation but the parties continued to negotiate and filed an Agreed Motion to modify the original Scheduling Order to facilitate further negotiations, which motion was granted in SOAH's Order No. 3. On September 25, 2009 the City notified the District that the City would no longer accept District sewage for treatment beginning on October 1, 2009. On September 29, 2009 District co-counsel filed the attached Request for Emergency Order (Exhibit "A"). After an emergency hearing on the matter, the Commission granted the District's request and issued the attached Emergency Order (Exhibit "B"). The Emergency Order is in effect for 90 days and requires the City provide wastewater treatment service during that period according to the rates and conditions set out in the "Interim agreement for sewer treatment services" attached as an exhibit (Exhibit D) to the

District's Request for Emergency Order. The Emergency Order also importantly provides that if the final rates approved by the Commission under the rate appeal differ from the rate charged under the authority of the Emergency Order, or if the parties enter into a new contract that establishes a different rate, the difference is subject to either a refund or surcharge as applicable.

Both parties continue to negotiate, and the District is preparing for an evidentiary hearing on the rate under 30 Texas Administrative Code Section 291.131(c). On November 17, 2009 the Commission notified the parties it would conduct a public hearing to determine whether to affirm, modify or set aside the Commission's Emergency Order.

## II. Applicable Law

Section 13.002(21) of the Texas Water Code is that law that defines "service." It defines "service" as:

"any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities."

Section 13.002(19) of the Texas Water Code is that law that defines "retail public utility." It defines "retail public utility" as:

"any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

Section 13.041(d)(2) of the Texas Water Code is that law that establishes the Commission's right to issue an emergency order to compel one retail public utility to

provide temporary sewer service to another retail public utility. It states that the Commission may:

“compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.”

Section 13.041(e) of the Texas Water Code is that law that establishes the Commission’s right to establish the “reasonable compensation” to be paid to the retail public utility providing service pursuant to an emergency order issued under Section 13.041(d)(2). It states in part:

“The commission may establish reasonable compensation for the temporary service required under Subsection (d)(2).”

### III. Activity Since October 1 Emergency Hearing

Although rate negotiations continue, it is unlikely a final agreement will be reached prior to the expiration of the Emergency Order on December 31, 2009. Therefore the Commission should modify the Emergency Order to extend the term for an additional 90 days. In the alternative, the Commission should affirm the Emergency Order.

The District continues to negotiate with the City and is moving forward with the necessary procedural measures for an evidentiary hearing on the rate before SOAH. To that end, on November 20, 2009 the District filed the attached Request for Setting of Procedural Schedule for Evidentiary Hearing on the Rate and Motion to Establish Interim Rate (Exhibit “C”). Also, the District forwarded a counter-offer dated November 6, 2009, with supporting arguments, attached hereto as (Exhibit “D”), in response to the City’s October 23, 2009 offer which represented only a \$50.00 monthly reduction in the rate the District is currently paying under the Emergency Order. Representatives of the District were present at the City’s November 12, 2009 City Council meeting at which the

official meeting agenda allowed for consideration of the District's November 6 counter-offer. The City declined action on the matter at said meeting, and the District thereafter sent the attached letter to counsel for the City on November 18, 2009 (Exhibit "E"). Since that time, other than informal discussions between the undersigned and counsel for the City, and the City's placing on its November 30 meeting agenda an item for discussion of provision of sewer service to the District, the City has not indicated that it intends to work diligently to resolve this matter prior to the December 31, 2009 expiration of the current Emergency Order, at which point the District, without any further information from the City, must anticipate that the City will move forward with the termination of service to the District. Thus, in the absence of a modification of the Emergency Order, termination of service is imminent.

The Conclusions of Law in the current Emergency Order indicate that it was properly issued in accordance with Texas Water Code §§ 13.401(e) and 13.041(d)(2). No additional facts or changes in the law have altered or nullified said conclusions since issuance of the Emergency Order. Furthermore, at the October 1 hearing on the Emergency Order, the Commission acknowledged the importance of uninterrupted wastewater treatment service to approximately 250 connections served by the District. The District's position that there is not an economically or environmentally feasible alternative for wastewater treatment service which can be obtained prior to the expiration of the current Emergency Order is supported by the attached documentation (Exhibit "F"). Said documents note the District's search for alternative means of wastewater treatment service, along with continued negotiations with the City and the undertaking of necessary actions leading up to an evidentiary hearing on the rate before SOAH as shown above in the attached Exhibits C, D and E.

In short, the District continues to make every practicable effort to bring this matter to conclusion but is doubtful a final outcome will be reached prior to December 31, 2009 and, absent further information from the City, the District must anticipate that the City will immediately suspend service thereafter. This belief, combined with those circumstances and legal principles set out in the Findings of Fact and Conclusions of Law in the Emergency Order, indicate that the Emergency Order is solidly grounded in

applicable State of Texas law and necessary to prevent the immediate termination of wastewater treatment service by the City.

#### IV. Conclusion

The Emergency Order is both necessary and appropriate under the circumstances and at a minimum should be affirmed. To that end, the District has reviewed the proposed order affirming the Emergency Order submitted by the attorneys for the Commission's Executive Director and has no objection to it.

Further, under the facts and circumstances described above under Paragraph III, the District argues in the alternative that the Emergency Order should be modified to extend its term for an additional 90 days to allow the parties to (a) reach a final agreement for long-term sewer treatment service, (b) reach an agreement for provision of sewer treatment service until the District is able to provide, or make suitable alternative arrangements for providing, wastewater treatment service to District customers, or (c) continue with the rate appeal before SOAH.

RESPECTFULLY SUBMITTED,

SMITH, MURDAUGH, LITTLE &  
BONHAM, L.L.P.

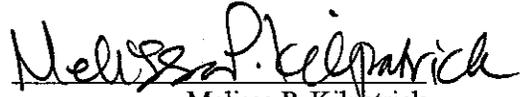


Melissa P. Kilpatrick  
SBN 15525735  
G. Taylor Goodall, Jr.  
SBN 24059838

Attorneys for Petitioner  
1100 Louisiana Street, Suite 400  
Houston, Texas 77002  
713-652-6500  
713-652-6515 (fax)

Certificate of Service

The undersigned attorney certifies that a true and correct copy of the foregoing document was forwarded to all counsel of record and parties of interest listed on the attached service list by e-mail, first class mail, electronic mail and/or facsimile this 30 day of November, 2009.

  
Melissa P. Kilpatrick

**Mailing List**  
**City of Columbus**  
**Glidden Fresh Water Supply District No.1**  
**TCEQ Docket No. 2009-159-UCR**

**REPRESENTING THE CITY OF COLUMBUS:**

Barbara Boulware-Wells  
Akers & Boulware-Wells, LLP  
6618 Sitio Del Rio Blvd., Bldg E., Suite 102  
Austin, Texas 787730  
Phone: (512) 852-2280; Fax: (512) 233-0801

**TCEQ:**

Ms. Stefanie Skogen, Staff Attorney  
Texas Commission on Environmental Quality Office of Legal Services, MC-I73  
Environmental Law Division  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-0575; Fax: (512) 239-0606

**REPRESENTING THE OFFICE OF PUBLIC INTEREST COUNSEL:**

Blas Coy, Jr.  
Texas Commission on Environmental Quality Office of  
Public Interest Counsel, MC-103  
P. O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-6363; Fax: (512) 239-6377

**OFFICE OF THE CHIEF CLERK:**

LaDonna Castanuela  
Texas Commission on Environmental Quality Office of the Chief Clerk, MC-I05  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-3300; Fax: (512) 239-3311

**OFFICE OF PUBLIC ASSISTANCE:**

Bridget Bohac  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P. O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-4000; Fax: (512) 239-4007