

TCEQ DOCKET NO. 2009-0120-UCR

**APPLICATION FROM GLIDDEN § BEFORE THE TEXAS
FRESH WATER SUPPLY DISTRICT §
NO. 1 REQUESTING AN EMERGENCY §
ORDER COMPELLING THE CITY OF § COMMISSION ON
COLUMBUS TO PROVIDE AN §
EMERGENCY INTERCONNECTION §
IN COLORADO COUNTY, TEXAS § ENVIRONMENTAL QUALITY**

CITY OF COLUMBUS' BRIEF

The City of Columbus (City) files this brief regarding Glidden Fresh Water Supply District No. 1's (Glidden) Application for an Emergency Order compelling the City of Columbus to provide Glidden with an emergency interconnection for the provision of temporary sewer service. Glidden filed its application pursuant to Section 13.041(d)(2) of the Texas Water Code and Title 30, Section 291.14(a)(2) of the Texas Administrative Code. In support of its brief, the City shows the following:

I. BACKGROUND

City is a general law city that owns and operates a wastewater treatment system. Glidden is a fresh water supply district that owns and operates a wastewater collection system. The City and Glidden have contracted since 1974 to allow City to provide wholesale sewer service to Glidden. The last long term contract between the parties expired on January 27, 2009; while the parties attempted to negotiate a renewal prior to expiration, they were unable to reach an agreement. There was a temporary extension for ten days (from January 27, 2009 through February 6, 2009) and then an Interim Agreement was entered on February 6, 2009 until October 1, 2009. Also during that time, a wholesale rate appeal petition was filed on January 20, 2009. That matter was referred to the State Office of Administrative Hearings (SOAH) (SOAH Docket No. 582-

09-2555). The SOAH matter has been abated while the parties were attempting to negotiate a revised contract.

The October 1, 2009 hearing before the Commission was precipitated by a letter from the City dated September 25, 2009 in which it notified Glidden that it did not intend to extend the terms of the Interim Agreement beyond October 1, 2009. Glidden responded by filing the Application for an Emergency Order requiring the City to continue to serve Glidden. Such Application was heard before the Commissioners at an emergency session on October 1, 2009 and an Emergency Order was issued until December 30, 2009.

Negotiations and exchanges of offers have continued since October 1, 2009, but the parties have still not been able to reach an agreement. It is unknown what steps Glidden is taking to provide for treatment of the sewage gathered with its wastewater collection system.

II. LEGAL AUTHORITIES

Section 13.041(d)(2), Texas Water Code, allows the Commission to issue an emergency order compelling the City to provide temporary sewer service to Glidden for not more than ninety (90) days. Section 13.139, Texas Water Code allows the Commission to set out reasonable standards, regulations, service rules and minimum service standards or practices to be observed and followed by every retail public utility.

III. CITY RECOMMENDATION

The Executive Director asserts in his brief that Glidden's reasons for requesting an emergency order met Section 13.041(d)(2)'s requirements. The City concurs for the

most part. Due to the constraints imposed under the Texas Constitution and case law¹, the City was unable to continue to provide service to Glidden since there was no contract and Glidden had, at that time no viable option for immediately obtaining wastewater treatment services. However, the emergency nature that the Application was based upon was perhaps misleading. Glidden asserted to the Commission that September 25, 2009 was the first it knew that the City was not going to continue to serve it and in fact, the first it knew that the City indicated that it intended to plug the pipeline. However, in its Petition which is the basis for the rate appeal, Glidden asserted in Section 4(a) that “at the January 8, 2009 City Council meeting that if the District does not meet the City’s demands the contract will not be renewed and the City will ‘plug the main’ causing raw sewage to dump into an ‘Interstate 10 ditch.’ It accompanied such provision with an exhibit of a newspaper article quoting then City Manager David Meisell.

Therefore, nearly a year ago, Glidden was aware that the City intended to not renew the contract and “plug the main” unless the parties could agree on terms; to date the parties still cannot agree on a terms despite repeated attempts. To date, nothing has been forthcoming from Glidden as to what steps they are taking to ensure that on December 31, 2009, they are not in the same position they were on October 1, 2009. The concern of the City at this time is that despite their best efforts to resolve this matter and providing any and all documents requested, Glidden will attempt to assert that there is another emergency. Further, the Commission has not set out any requirements for Glidden, who operates the wastewater collection system in its district, to present any evidence to the Commission that it is taking pro-active steps to ensure that an emergency

¹ See *Pittman v. City of Amarillo*, 598 S.W.2d 941, 945 (Tex.Civ.App Amarillo 1980, rehrg denied); *City of Livingston v. Wilson*, 310 S.W.2d 569, 574 (Tex Civ.App. Beaumont 1958), rehrg denied).

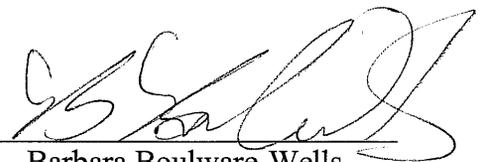
is not forthcoming should the parties fail to reach an agreement prior to December 31, 2009.

The City has no objection to continuing to operate under the terms of the Emergency Order in providing service to Glidden until its expiration on December 30, 2009. It does request, however, that Glidden be required to provide the Commission within ten (10) days plans as to how it intends to provide treatment of the sewer it collects should the parties not reach an agreement prior to December 30, 2009. The City recommends that the Commission affirm that portion of its October 1, 2009 Emergency Order issued in this case for the remainder of the ninety (90) day period ending on December 30, 2009, but add to such order the requirement that Glidden provide adequate information as to steps it is taking to ensure that its sewage is treated; such proposed order is attached to that effect.

Respectfully submitted,

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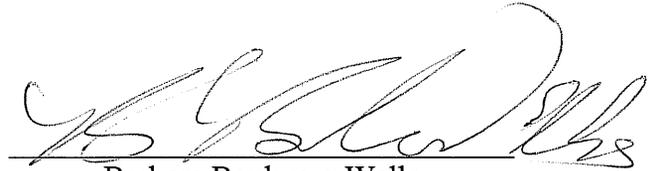


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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2009, a true and correct copy of the foregoing document was sent by first class, electronic mail and/or facsimile to the persons on the attached Mailing List.

A handwritten signature in black ink, appearing to read 'Barbara Boulware-Wells', written over a horizontal line.

Barbara Boulware-Wells

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ORDER MODIFYING EMERGENCY ORDER

On December 9, 2009, the Texas Commission on Environmental Quality (TCEQ or Commission) considered whether to affirm, modify, or set aside an emergency order regarding Glidden Fresh Water Supply District No. 1's (Glidden) Application for an Emergency Order compelling the City of Columbus to provide Glidden with an emergency interconnection for the provision of temporary sewer service. The Commission issued the Emergency Order at an emergency session on October 1, 2009. Both Glidden and the City were represented at the October 1, 2009 agenda session. The Commission finds that the situation continues to justify the issuance of an emergency order compelling the City to provide an emergency interconnection to Glidden for the provision of temporary sewer service.

THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS THE FOLLOWING:

1. The October 1, 2009, emergency order, attached as Exhibit A and incorporated into this order by reference is modified, as follows:
 - a. Glidden is required provide adequate information as to steps it is taking to ensure that its sewage is treated and provide for reasonable standards,

regulations, service rules and minimum service standards or practices to

be observed and followed by Glidden.

2. This order shall be effective from October 1, 2009 for ninety (90) days.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman