

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 13, 2014

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

Re: Consideration of a request filed on January 6, 2014, by La Villa Independent School District for the issuance of an emergency order to compel the City of La Villa to provide continuous and adequate water and sewer service in Hidalgo County, Texas. TCEQ Docket No. 2013-2211-UCR.

Dear Ms. Bohac:

Enclosed for filing with the Texas Commission on Environmental Quality is the original plus seven copies of the "Executive Director's Response to La Villa Independent School District's First Amended Application for an Emergency Order" for the above referenced matter.

If you have any questions, please call me at (512) 239-0608.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron M. Olson".

Ron M. Olson
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2013-2211-UCR

CONSIDERATION OF A REQUEST	§	BEFORE THE TEXAS COMMISSION
FOR AN EMERGENCY ORDER	§	
FILED BY LA VILLA INDEPENDENT	§	
SCHOOL DISTRICT TO COMPEL	§	ON
THE CITY OF LA VILLA TO	§	
PROVIDE CONTINUOUS AND	§	
ADEQUATE WATER AND SEWER	§	
SERVICE; HIDALGO COUNTY	§	ENVIRONMENTAL QUALITY

**THE EXECUTIVE DIRECTOR'S RESPONSE TO LA VILLA INDEPENDENT
SCHOOL DISTRICT'S FIRST AMENDED APPLICATION FOR AN EMERGENCY
ORDER**

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") and files the following Response to La Villa Independent School District's ("La Villa ISD") First Amended Application for an Emergency Order in the above captioned matter.

I. BACKGROUND AND PROCEDURAL HISTORY

La Villa ISD is a political subdivision of the State of Texas, established in accordance with the Texas Education Code and the Constitution of the State of Texas, having its principal office in Hidalgo County, Texas. The school district encompasses an early college high school, alternative high school, middle school and elementary school located in La Villa, Texas.

The City of La Villa ("City") is a Type A, general-law municipality organized under Chapter 6 of the Texas Local Government Code, and is a city located in Hidalgo County. The City holds sewer certificate of convenience and necessity ("CCN") No. 20803.

La Villa ISD receives its water and wastewater service from water and wastewater systems operated by the City. The school district is billed by the City for the water service based upon a flat fee plus a per gallon charge after maximum usage is exceeded.

On December 10, 2013, the City issued a letter to La Villa ISD seeking collection of an outstanding balance of \$57,212.69 and stated that water service will be disconnected on December 20, 2013 at 5:00 pm if the remaining balance is not paid.

On December 17, 2013, La Villa ISD notified the TCEQ that the discontinuance of its water service by the City is imminent. La Villa ISD requested an emergency order from the Commission to compel the City to provide continuous and adequate water service to the school district. La Villa ISD alleged that on or about December 14, 2012, the City began adding additional charges to La Villa ISD's water bill in addition to the flat fee and per gallon charge. La Villa ISD objected to the extra amount and stated in its amended application that it has paid its water bill at the lower, previously agreed upon amount.

On December 20, 2013, the Commission held an emergency agenda to consider La Villa ISD's application for an emergency order. At that agenda, the Commission decided to take no action.

On December 25, 2013, the City terminated water service to La Villa ISD. Consequently, on January 6, 2014, La Villa ISD filed its first amended application for an emergency order to compel the City to provide continuous and adequate water and wastewater service.

In its amended application, La Villa ISD asserts that there is an imminent threat to public health and safety resulting from the possibility of unsanitary conditions on the campuses due to the termination of water service. La Villa ISD also urges that there will be an immediate and irreparable harm if the schools remain closed and educational programs cancelled due to lack of water service.

II. LEGAL AUTHORITY

La Villa ISD is seeking an emergency order from the Commission to compel the City to provide continuous and adequate water and sewer service to the school district. The Texas Water Code ("TWC") and the TCEQ rules establish the authority for when the Commission may issue emergency orders.¹ Specifically, TWC Section 13.041(d)(1) states that the Commission may issue an emergency order "to compel a water or sewer service provider that *has obtained or is required to obtain* a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act."²

¹ TEX. WATER CODE § 13.041(d); 30 TEX. ADMIN. CODE § 291.14(a)

² TEX. WATER CODE § 13.041(d)(1) (emphasis added); *See also*, 30 TEX. ADMIN. CODE § 291.14(a)

The City of La Villa is a Type A, general-law municipality. As such, it is not required to obtain a CCN from the Commission in order to provide water or sewer utility service.³ The City does hold sewer CCN No. 20803, but does not have a water CCN. Pursuant to TWC Section 13.041(d)(1), since the City is neither required to obtain, nor has obtained, a water CCN, the Commission lacks the jurisdiction to issue an emergency order compelling the City to provide water service to La Villa ISD. The fact that the City has a sewer CCN does not expand the jurisdiction of the Commission to compel the City to provide water service.

Although TWC Section 13.041(d)(1) states that the Commission may issue an order to compel a service provider that has obtained, or is required to obtain, a CCN to provide water service, sewer service, or both, the plain language of this section, when read in conjunction with other provisions of Chapter 13 of the TWC, indicates that the Commission may only compel a utility service provider to provide both water and sewer service when the service provider has, or is required to have, a water CCN and a sewer CCN. The relevant provisions in Chapter 13 do not indicate that the Commission may order the provision of water service by an entity that only has a sewer CCN, or order the provision of sewer service by an entity that only has a water CCN. The basis for this limitation is that the authority to issue an order under TWC Section 13.041(d)(1) is limited to providers that have, or are required to have, a CCN. Thus, the legislative intent of Section 13.041(d)(1) is to link the Commission's authority to issue an order compelling service to the service provider's obligation to provide continuous and adequate service within its certificated service area under TWC Section 13.250. If a provider does not have, or is not required to have, a CCN, then it is not subject to the Commission's jurisdiction to require the provider to provide service. To hold otherwise would subject an entity that is not required to have a CCN, such as a city, to the Commission's jurisdiction under Section 13.041(d)(1) when that entity has made the decision not to obtain a CCN.

As a municipality, the City has the option to avail itself of the benefits, protections, and obligations that are afforded to a retail public utility that obtains a CCN from the Commission. A municipality may also choose to provide service without obtaining a CCN. In the case at issue, the City chose not to obtain a water CCN; and, therefore, did not subject itself to the Commission's jurisdiction to issue an emergency order compelling water utility

³ A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water or sewer utility service does not apply to a municipality.

service. If a municipality does not obtain a CCN, then, pursuant to TWC 13.042(f), the Commission does not have the power or jurisdiction under Subchapter C of the TWC to regulate or supervise the rates or services of a utility owned and operated by a municipality within its corporate limits.⁴

La Villa ISD also requests an emergency order based on the fact that the City of La Villa has been issued a Certificate as a Public Water System (“PWS”). The Commission regulates public water systems under the authority of the Texas Health and Safety Code and Chapter 290 of the TCEQ’s regulations to ensure that they meet the regulatory obligations for the provision of safe drinking water to the public. However, the PWS requirements do not address billing disputes or confer jurisdiction on the Commission to issue emergency orders under TWC Section 13.041(d).

III. SCHOOL LOCATION

La Villa ISD consists of an early college high school, alternative high school, middle school, and an elementary school. Based on the TCEQ’s records, it appears that the high school⁵ may be within the water CCN of the North Alamo Water Supply Corporation (CCN 10553). The parties did not provide sufficient information to determine the exact boundaries of the City’s corporate limits⁶, or when the City began providing service to the high school. As a result, the Executive Director cannot determine if the location of the high school has any impact on La Villa ISD’s request for an emergency order. Nevertheless, even if additional information were provided, issuance of an emergency order may not be warranted in this situation. TWC Section 13.250(d) allows a retail public utility, which includes a municipality, to discontinue, reduce, or impair retail water or sewer service for nonpayment of charges.⁷ As noted in the parties’ filings, service to La Villa ISD was shut off for non-payment. Accordingly, an order compelling the City to temporarily resume water service, even if it were within the TCEQ’s jurisdiction, may not be appropriate in this instance because service was

⁴ By design, the Legislature has limited the authority of the Commission to regulate or supervise a municipally owned utility within the municipality’s corporate limits. In those few instances where the Legislature does intend for the Commission to have jurisdiction over a municipally owned utility, the Legislature has been very specific in granting that authority. See TWC 13.087.

⁵ The early college high school and the alternative high school have the same address and appear to be located on the same campus.

⁶ La Villa ISD asserts in its First Amended Application for an Emergency Order that the schools are located within the corporate limits of the City of La Villa. See First Amended Application for an Emergency Order, page 3, paragraph 10.

⁷ TEX. WATER CODE § 13.250(d) (“Subject to rules of the regulatory authority, a retail public utility, utility, or water supply corporation described in this subsection may discontinue, reduce, or impair retail water or sewer service for: (1) nonpayment of charges;....”) This section discusses discontinuing service to a certified service area, which further supports the position that the TCEQ’s authority to compel utility service is tied to a CCN obligation.

terminated for an allowable reason under the TWC, and because it would not resolve the underlying rate dispute between the parties or address the outstanding balance requested by the City.⁸

IV. CONCLUSION

For the reasons discussed above, the Executive Director respectfully recommends that the Commissioners take no action on the request for an emergency order due to a lack of jurisdiction, and due to the fact that service was discontinued for non-payment. While the Executive Director recognizes the seriousness of the situation, the TCEQ does not have the authority to issue an emergency order to compel the City to provide water service to the La Villa ISD. The Executive Director urges the parties to resolve this dispute locally as quickly as possible.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Interim Executive Director

Robert Martinez, Director
Environmental Law Division

By 

Ron M. Olson, Staff Attorney
State Bar of Texas No. 24056070
Environmental Law Division
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
Phone: 512.239.0600
Fax: 512.239.0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

⁸ The ED recognizes that La Villa ISD disagrees with the City's rate structure; however, because this dispute involves a municipally owned utility operating within the city's corporate limits, this dispute is outside of the Commission's jurisdiction to address and will need to be resolved locally or in another forum.

Mailing List
Request for Emergency Order
La Villa Independent School District
TCEQ Docket No. 2013-2211-UCR

Miguel A. Saldana
Walsh, Anderson, Gallegos, Green &
Trevino, P.C.
105 E. 3rd Street
Weslaco, Texas 78596
956/647-5122 FAX 956/647-5421

Robert J. Salinas
Attorney at Law
2101 Wood Avenue
Donna, Texas 78537
956/464-2460 FAX 956/464-2494

Richard W. Fryer
Fryer & Hansen, PLLC
1352 West Pecan Blvd.
McAllen, Texas 78501
956/686-6606 FAX 956/686-6601

Jaime A. Garza, Director
TCEQ Harlingen Regional Office
MC R-15
1804 W. Jefferson Ave.
Harlingen, Texas 78550-5247
956/425-6010 FAX 956/412-5059

Mark Harmon
TCEQ Intergovernmental Relations
Division MC 119
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3500 FAX 512/239-3335

Tammy Benter
TCEQ Water Supply Division
MC 153
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4691 FAX 512/239-2214

Todd Galiga
TCEQ Environmental Law Division
MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Blas Coy
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of Chief Clerk
MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Brian Christian
TCEQ SBEA Division
Public Participation and Education
Program MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-5678