

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



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 14, 2015

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: **CORIX UTILITIES (TEXAS), INC.**  
**TCEQ DOCKET NO. 2015-1117-DIS**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script, reading "Isabel G. Segarra Treviño".

Isabel G. Segarra Treviño, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2015-1117-DIS**

**IN THE MATTER OF CORIX  
UTILITIES (TEXAS) INC.'S  
REGIONAL PROVIDER  
CERTIFICATION REQUEST**

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**BEFORE THE  
TEXAS COMMISSION  
ON  
ENVIRONMENTAL  
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO MOTION TO  
OVERTURN**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to the Motion to Overturn in the above-referenced matter and respectfully shows the following.

**I. Introduction**

On April 16, 2015, Corix Utilities (Texas), Inc. (Corix or Movant) submitted an application for certification as a regional wastewater provider to the Executive Director (ED) of the TCEQ pursuant to TEX. TAX CODE (TTC) § 151.355(5) seeking tax-exempt status. Corix is an investor owned utility and the sole owner of 18 regulated water and wastewater systems, each providing service to one or more communities or subdivisions.

On July 3, 2015, the ED's staff notified Corix that it could not approve Corix's application for regional provider certification because Corix is not a political subdivision. Pursuant to the TCEQ Resolution entitled "A Resolution Delegating to the Executive Director the Authority to Certify Certain Political Subdivisions as Providing Regional Water and/or Wastewater Service," dated May 13, 2002 (Resolution), the ED has been delegated the authority

to certify certain political subdivisions, as defined by TEX. WATER CODE (TWC) § 15.001, as providing regional water or wastewater services. The Resolution defines criteria for the Commission to use to determine whether a political subdivision is a regional provider:

- (1) one owner and one large system serves several different communities or subdivisions or,
- (2) one owner and several isolated systems each provide service to one or more communities or subdivisions or,
- (3) several owners, each with individual systems operated through a centrally coordinated operating system or,
- (4) several owners, each with an isolated system, all served by a central wholesale provider.

On July 23, 2015, Corix filed a timely Motion to Overturn the ED's decision (Motion or MTO) regarding certification as a regional provider. For the reasons discussed below, OPIC recommends the Commission grant the Motion.

## **II. Applicable Law**

The applicant, OPIC, or any person may file with the Chief Clerk a motion to overturn the ED's action on an application, and wherever other agency rules refer to a "motion for reconsideration," that term should be considered interchangeable with the term "motion to overturn executive director's decision." 30 TEX. ADMIN. CODE (TAC) § 50.139(a). A motion to overturn must be filed no later than 23 days after the date the agency mails notice of the decision to the applicant and persons on any required mailing list for the action. 30 TAC § 50.139(b). An action by the ED is not affected by a motion to overturn unless expressly ordered by the Commission. 30 TAC § 50.139(e). The Commission or General Counsel may extend the period of time for filing motions to overturn and for taking action on the motions. 30 TAC § 50.139(e).

### III. Discussion

Corix filed an MTO 20 days after the ED's decision, therefore, it is timely. The Motion provides that the ED's denial of Movant's certification as a regional water and wastewater provider should be overturned. Corix asserts that the use tax exemption it seeks in TTC § 151.355 is available to regional systems and does not require these to be political subdivisions. Further, Corix asserts that the Resolution the ED relies on is based on an incorrect version of the legislation to amend TTC § 151.355 by the Texas Legislature in 2001. Corix states that the ED looked to Senate Bill 2 (77th Tex. Leg., ch. 966) when it drafted the Resolution, but the enacted version of the bill was in fact Senate Bill 312 (77th Tex. Leg., ch. 1234). Senate Bill 2 limited the tax exemption to political subdivisions while Senate Bill 312 did not. Corix further supports its position by citing a 2003 amendment to TTC § 151.355(5) which relied on the Senate Bill 312 text and not the Senate Bill 2 text. 78th Tex. Leg., ch. 209 (H.B. 2424), § 24, effective Oct. 1, 2003. The Movant urges the Commission to apply its authority pursuant to TTC § 151.355(5) to overturn the ED's decision.

In his response to Corix's MTO, the ED found that the current statute does not limit regional provider certification to political subdivisions. Further, the ED found that absent the political subdivision condition, Corix has shown that it qualifies as a regional provider under the 2002 Resolution because it is the sole owner of 18 water and wastewater utility systems, each providing service to one or more communities or subdivisions.

OPIC concurs with the ED and recommends that the Commission grant Corix's MTO. OPIC is persuaded by Corix's position that in 2001 the Texas Legislature intended to enact the language of Senate Bill 312 and not Senate Bill 2, and in fact did so. Further, OPIC is persuaded that the Resolution should not have limited regional provider certification to political

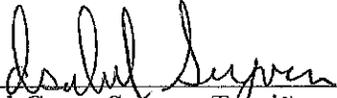
subdivisions. Removing this condition, OPIC finds that, under the second criterion of the Resolution, Corix is the sole owner of several isolated systems, each of which provides service to one or more communities or subdivisions and, therefore, qualifies as a regional provider.

#### **IV. Conclusion**

OPIC recommends the Commission grant the Motion to Overturn.

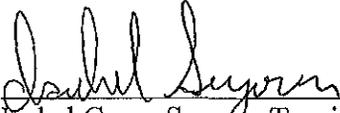
Respectfully submitted,

Vic McWherter  
Public Interest Counsel

By:   
Isabel Grace Segarra Treviño  
Assistant Public Interest Counsel  
State Bar No. 24075857  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-4014 Phone  
(512) 239-6377 Fax

## CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Motion to Overturn was 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, electronic mail, or by deposit in the U.S. Mail.

  
Isabel Grace Segarra Treviño

**MAILING LIST  
CORIX UTILITIES (TEXAS), INC.  
TCEQ DOCKET NO. 2015-1117-DIS**

Derek Seal  
Winstead P.C.  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
512/370-2800 FAX 512/370-2850  
[dseal@winstead.com](mailto:dseal@winstead.com)

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

Brian Christian  
TCEQ Environmental Assistance  
Division MC 108  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3100 FAX 512/239-5678

Bridget Bohac  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3300 Fax: 512/239-3311