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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 13, 2010

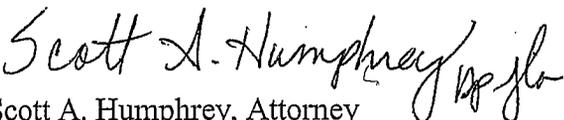
LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: CITY OF PRINCETON
SOAH DOCKET NO. 582-06-1641
TCEQ DOCKET NO. 2006-0044-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Reply to Exceptions in the above-entitled matter.

Sincerely,


Scott A. Humphrey, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. BOX 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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SOAH DOCKET NO. 582-06-2069
TCEQ DOCKET NO. 2006-0044-UCR

APPLICATIONS OF THE CITY OF	§	BEFORE THE
PRINCETON TO AMEND	§	STATE OFFICE
CERTIFICATES OF CONVENIENCE	§	OF
AND NECESSITY IN COLLIN	§	ADMINISTRATIVE HEARINGS
COUNTY	§	

THE OFFICE OF PUBLIC INTEREST COUNSEL'S
REPLY TO EXCEPTIONS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on
Environmental Quality (TCEQ or Commission) submits this Reply to Exceptions in the above-
captioned matter and would respectfully show the following:

I. INTRODUCTION

The Executive Director (ED) of the TCEQ was the only party to file Exceptions to the
Proposal for Decision. OPIC will address two issues raised in the ED's Exceptions: (1) the ED's
policy regarding Extraterritorial Jurisdiction; and (2) concerns about the City of Princeton's
(Applicant or Princeton) financial position.

II. Discussion

A. ED's Position Regarding Extraterritorial Jurisdiction

In his Exceptions, the ED asserts that the ALJ slightly misstated the ED's position
regarding extraterritorial jurisdiction.¹ This portion of the ED's Exceptions discusses how the
ED has changed his review process in light of the *City of Meridian* decision. Since this portion

¹ ED's Exceptions at 2-3.

of the Exceptions does not pertain to any substantive matters related to this case and only to how the ED conducts reviews internally, OPIC has no reason to dispute the ED's statement. OPIC asserts the ALJ correctly applied the Commission's policy regarding expansion of Princeton's ETJ and supports the ALJ's recommendation.

B. ED's Concern Regarding Financial Position

The ED also questions Princeton's debt-to-equity ratio.² The ED's accounting expert, Daniel Smith, expressed concern over the fact that the Applicant was not as highly leveraged when it first submitted its application as it is now.³ Being more highly leveraged means that Princeton has more debt now than it did when it filed the applications.⁴ Mr. Smith has no objection to the expansion of the CCNs entirely within the ETJ because it has been an operating policy of the ED to allow such expansion as long as the city is planning within its ETJ.⁵ Mr. Smith also testified that he may not be so concerned about Princeton's more highly leveraged position, depending on how much of that additional debt was incurred for the future growth that is related to the CCN amendments.⁶

City Manager Lee Lawrence testified that Princeton has already taken a number of measures in anticipation of the growth in the area.⁷ The Applicant has made infrastructure improvements based on a water-sewer master plan put together a few years ago, and Princeton has made considerable progress in implementing key elements of that water and sewer master plan.⁸ One significant improvement is the Applicant's contract for a one million gallon elevated

² ED's Exceptions at 4-5.

³ Tr. p. 72

⁴ Tr. p. 73

⁵ Tr. p. 89

⁶ Tr. p. 93

⁷ Tr. p. 159

⁸ *Id.*

storage tank, the design of which is approximately 50 to 60 percent completed.⁹ Princeton has already dedicated funds to the construction of this project, and as soon as the engineering work is completed, it will accept bids for the construction of the tank.¹⁰

OPIC understands the ED's concerns regarding the potential overextension of Princeton and how that may affect its financial ability for the entire CCN amendments it seeks. However, the record indicates that a portion of the increased debt is dedicated to the actual expansion it has applied for in this matter. OPIC concludes that the testimony regarding the money dedicated to the CCN amendments is sufficiently responsive to the ED's concerns.

The ED raises a brand new argument questioning the City's ability to raise taxes. The ED notes that Princeton relies on its ability to raise taxes as its current tax rate is 70 cents, whereas the maximum tax rate is \$2.50. The ED opines that "Of course, this cushion is somewhat specious, in that the market in the area would not support a tax increase up to \$2.50. The true cap is what the market will bear in a time when growth of the City is slowing."¹¹ OPIC notes that there is no support in the record for that position, and the ED cited nothing in the record to support that statement. Therefore, no consideration should be given to that statement. However, even if the Commission were to speculate on Princeton's ability to raise funds through taxation, OPIC notes that if there is no expansion in the very near future, it will not be necessary to raise substantial revenue for services. Conversely, if the need for service expands in the area Princeton seeks to certify, then the economy must be doing better at that time, and Princeton will have the ability to increase revenue through taxation. OPIC supports the findings and conclusions as set out in the PFD with respect to Princeton's financial ability.

⁹ Tr. p. 161

¹⁰ *Id.*

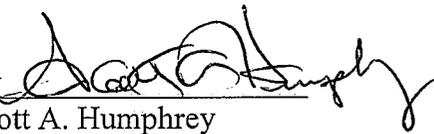
¹¹ ED's Exceptions at 5.

III. Conclusion

Based on the foregoing, OPIC recommends the Administrative Law Judge not make any changes to her Proposal for Decision based on Exceptions filed by the Executive Director. Furthermore, OPIC recommends the Commission approve and adopt the Administrative Law Judge's Proposal for Decision.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2010 the original and seven copies of the foregoing 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, other electronic transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Scott A. Humphrey

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TCEQ DOCKET NO. 2006-0044-UCR**

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