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August 24, 2010

Via e-file

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor
Austin, TX 78759

Re: SOAH Docket Nos. 582-08-3825 and 582-09-3548; TCEQ Docket Nos. 2008-0955-UCR and 2009-0350-UCR; *Application of the City of Mission to Amend CCN No. 20768 in Hidalgo County and Application of the City of Alton to Amend CCN No. 20809 in Hidalgo County*

Dear Ms. Castañuela:

Enclosed for filing is the City of Alton's Reply to the City of Mission's Motion to Strike in connection with the above-referenced matter. A copy is being served on each party of record.

Should you have questions, please do not hesitate to contact me at (512) 472-8021.

Sincerely,



Denise Fregeolle-Burk
Assistant to Emily W. Rogers

/dfb

Enclosure

cc: Judge Craig Bennett
All Parties of Record

SOAH DOCKET NOS 582-08-3825 and 582-09-3548
TCEQ DOCKET NOS. 2008-0955-UCR and 2009-0350-UCR

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|----------------------------|---|-------------------------|
| APPLICATION OF THE CITY | § | BEFORE THE STATE OFFICE |
| OF ALTON TO AMEND | § | |
| CERTIFICATE OF CONVENIENCE | § | |
| AND NECESSITY NO. 20809 | § | |
| IN HIDALGO COUNTY | § | |
| | § | OF |
| APPLICATION OF THE CITY | § | |
| OF MISSION TO AMEND | § | |
| CERTIFICATE OF CONVENIENCE | § | |
| AND NECESSITY NO. 20768 | § | |
| IN HIDALGO COUNTY | § | ADMINISTRATIVE HEARINGS |

**CITY OF ALTON'S REPLY TO
THE CITY OF MISSION'S MOTION TO STRIKE**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the City of Alton ("Alton") and files this, its Reply to the City of Mission's ("Mission") Motion to Strike Exhibit 1 and references to it.

Pursuant to 30 TEX. ADMIN. CODE § 80.265, Alton has requested that the Commission reopen the record to include evidence regarding the TWDB's SFY 2011 Clean Water State Revolving Fund, and Alton's Number One ranking for a 100% principle forgiveness loan for over \$9.0 million in that plan. This recommended loan would benefit the potential customers in the requested area because it would allow Alton to move forward with providing service to the requested area and eliminate from the cost of service the infrastructure costs for the new service. Yet, Mission asks this Commission to close its eyes to this new information. For the reasons set forth below, Alton respectfully requests that the Commission deny Mission's Motion to Strike.

Alton's Motion to Reopen the Record is proper under 30 TEX. ADMIN. CODE § 80.265, which states:

The Commission, on the motion of any party or on its own motion, may order the judge to reopen the record for further proceedings on specific issues in dispute. The Commission's order shall include instruction as to the subject matter of further proceedings and the judge's duties in preparing supplemental materials or revised orders based upon those proceedings for the Commission's adoption.

Inclusion of Exhibit 1 and an explanation of it in Alton's Motion to Reopen the Record are necessary for the Commission to evaluate and determine whether to reopen the record in the case. The Motion is proper and permissible under the TCEQ rules and, by filing the Motion with the Exhibit, Alton is not in any way circumventing the process.

Furthermore, Mission is not prejudiced by the inclusion of Exhibit 1 with Alton's Motion. Exhibit 1 is a publicly available document and Alton's efforts to obtain financing are known to Mission, the other parties in the case, and are clearly described in the record. Exhibit 1 is merely a furtherance of the information that is already before the Commission. Nevertheless, as with non-jury cases, the Commission, like a district court judge,¹ is fully capable of evaluating the information in the Motion and deciding whether to grant the Motion or not. If the Commission decides to not grant the Motion, Alton has no doubt that the Commissioners will disregard the information in their evaluation and analysis of this case, just as a district court judge would do.

Mission also complains that the evidence has not undergone the same scrutiny as other evidence in this case. If the Commission grants the Motion, however, Mission will have the same rights to cross-examination and other procedural protections as it has had throughout this proceeding, and will have the opportunity to raise its objections at that time.

In its Motion, Mission goes on to suggest that the information is "draft" and, thus, is not "reliable." The TWDB will consider for approval the draft 2011 Intended Use Plan ("Plan") on September 23, 2010. At that time, the Plan will no longer be a "draft" plan.

¹ See TEX. GOV'T CODE ANN. § 2001.081(a).

Mission also claims that the information is “collateral.” This is simply incorrect. The ALJ specifically analyzed Alton’s financial capabilities considering possible loans from the TWDB and made findings about Alton’s financial capabilities based on information regarding Alton’s funding requests from TWDB. See proposed Findings of Fact Nos. 41.b., 45, and 46. The new information, which was not available at the time of hearing, directly addresses and is contrary to, those findings.

WHEREFORE PREMISES CONSIDERED, Alton respectfully requests that the Commission deny Mission’s Motion to Strike and grant Alton’s Motion to Reopen the Record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this 24th day of August, 2010, a true and complete copy of the foregoing was sent to the following by facsimile, hand-delivery, or by first class mail:

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