

DOCKET NO. 2022-0763-UCR-E

**IN THE MATTER OF THE
REQUEST BY THE CITY OF AMES
UNDER TEXAS WATER CODE
§ 13.041 FOR AN EMERGENCY
ORDER TO COMPEL THE CITY
OF LIBERTY TO PROVIDE
SEWER SERVICE**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

CITY OF AMES' RESPONSE TO CITY OF LIBERTY'S BRIEF TO MODIFY TCEO'S PROPOSED EMERGENCY ORDER

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the City of Ames, Texas, (“Ames”), and files this Response to City of Liberty’s (“Liberty”) Brief to Modify (“Brief”) the Texas Commission on Environmental Quality’s (“TCEQ”) Emergency Order (“Order”) of June 29, 2022, and shows the following:

I. RESPONSES TO LIBERTY'S ALLEGED FACTS

In its Brief, Liberty states that Ames, “has refused to pay amounts due for the excess quantities.” Liberty Brief at 1. These amounts Liberty seeks are not “due” under the *Liberty-Ames Waste Water Disposal Contract (As Amended)* (the “Contract”). As explained in Ames’ Initial Brief, the Contract only requires Ames to pay an Additional Service Charge under Section 5.2(c) when Ames’ flows meet two conditions: (1) greater than 200,000 gallons per day, **AND** (2) an aggregate of 6,000,000 gallons per month. See Ames’ Initial Brief to Modify the Commission’s Emergency Order at 2-3. The TCEQ should not allow Liberty to purposefully misinterpret the plain language of the Contract, attempt to overcharge Ames, and then attempt to terminate the Contract when Ames will not give in and overpay for wholesale wastewater service based on Liberty’s misinterpretation.

Liberty also claims that “Ames excessive wastewater flows result from infiltration and inflow into Ames’ collection system.” Liberty’s Brief at 2. Yet Liberty has offered no evidence that Ames exceedances are due to infiltration and inflow. Liberty’s issues with its TPDES permit could be due to its own infiltration and inflow issues, or from its contract with the City of Hardin. The fact that Liberty has simultaneously sued both Ames and the City of Hardin indicates that Liberty does not know for certain the source of the infiltration and inflow effecting its system, IF infiltration and inflow is present and IF it is coming from one of Liberty’s wholesale customers at all.

Liberty’s alleged exceedances by Ames could simply be due to increased demand on Ames’ system since the Contract was executed in 2001. Ames has detailed that a significant portion of its demand comes from inside Liberty’s sewer Certificate of Convenience and Necessity (“CCN”) No. 20056. *See* Ames’ Initial Brief to Modify the Commission’s Emergency Order at 6-7. Many of the homes around Cardinal Drive and Bobwhite Drive in Liberty’s CCN near the Magnolia Ridge County Club, which Ames’ was allowed to provide retail sewer service to under the Contract, were built after 2001 when the flow conditions in the Contract were established. In short, Liberty’s problem could be due to development within its own CCN, which it is ultimately responsible for addressing and serving.

Liberty rebukes Ames for being on notice of these issues for years and waiting until two weeks before the suspension letter deadline to request TCEQ intervention. *See* Liberty’s Brief at 2. However, Liberty itself has offered no plan (or even an acknowledgement of the situation) regarding how its own residents, those located in Liberty’s CCN No. 20056 being served by Ames pursuant to the Contract, are going to receive retail wastewater service after the termination deadline it imposed. Liberty seems more concerned with using the termination deadline to apply

pressure on Ames to pay unwarranted Additional Service Charges than addressing the service issues that result from such termination, namely that a good number of its own residents within its CCN may be left without retail sewer service.

II.

RESPONSE TO LIBERTY'S PROPOSED MODIFICATIONS OF THE ORDER

Liberty proposes several modifications to the TCEQ's Order focused on requiring Ames to identify alternative wastewater treatment options before the current expiration date of the Order. Ames contends that it should not be forced to find another wholesale option until Liberty first provides information on how it plans to provide retail sewer service to customers that are located within Liberty's CCN No. 20056 (those that Ames is currently serving). It is impossible for Ames to seek an alternative wholesale provider or treatment option if Ames does not know how many customers it will have or what Ames' potential wastewater demand will be in the future. Once Ames knows its future wastewater demand, which can be calculated only after Ames is aware of how many of its current customers Liberty is immediately prepared to serve, it can fully explore the costs and feasibility of alternatives to dispose of its wastewater.

Liberty suspended the Contract effective July 1, 2022. Liberty is only providing wholesale water service to Ames pursuant to the Commission's Order. Therefore, Ames no longer has contractual authority to serve within Liberty's sewer CCN No. 20056; instead, Liberty now has the legal obligation to provide retail sewer service to this area. *See Tex. Water Code § 13.250* (Liberty is now required, by law, to "render continuous and adequate service" to those areas which are within its CCN). Therefore, Liberty should already have a plan in place as to how Liberty is going to provide retail sewer services to customers currently served by Ames within Liberty's CCN. That plan should be clearly communicated to Ames and the TCEQ before any deadlines are put in place for Ames to attempt to find an alternative wastewater treatment option. For these

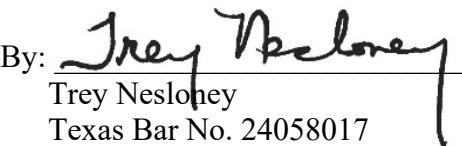
reasons, Liberty's proposed revisions outlined in its Brief should not be included in the TCEQ Order. *See* Liberty's Brief at 2-3.

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Ames respectfully requests that the TCEQ deny the modifications proposed by Liberty to the Order in its Brief, and include Ames' proposed revisions as outlined in Ames' Initial Brief to Modify the Commission's Emergency Order. Ames also requests any such further relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email and first-class mail on July 29, 2022, to the following:

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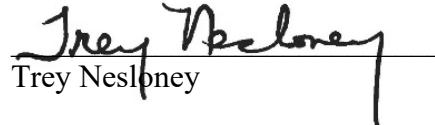
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