

DOCKET NO. 2022-0763-UCR-E

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

**CITY OF AMES’ REPLY TO CITY OF LIBERTY’S RESPONSE TO
AMES’ INITIAL BRIEF TO MODIFY THE COMMISSION’S EMERGENCY ORDER**

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

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

**I.
THE COMMISSION’S ORDER IS A RESULT OF LIBERTY’S ACTIONS**

In its Response, Liberty states that the “core problem” at issue in this matter is “Ames’ neglected sewer system.” Liberty’s Response at 1. The issue in this matter is Liberty’s January 5, 2022 letter to Ames (the “Suspension Letter”) where Liberty threatened to “cease accepting wastewater flows” and the resulting environmental issues that would result from that action by Liberty. Liberty’s actions, not Ames’, have created this situation. Liberty started overcharging Ames in violation of the “Liberty – Ames Waste Water Disposal Contract (As Amended)” (the “Contract”) between the parties. Then, when Ames would not pay the illegal overcharges, Liberty sued Ames in District Court. When Ames challenged the merits of Liberty’s lawsuit, namely showing that Liberty is misinterpreting the Contract, Liberty sent the Suspension Letter to Ames.

The reason the TCEQ became involved in this dispute was Liberty's threat to cut off Ames from wholesale wastewater service, not because of any neglect or problem with Ames' sewer system.

Liberty has no evidence that Ames has "neglected" its sewer system. To the contrary, Ames has continually allocated funds in the past to efforts to address any issues with its system, and it recently requested and was granted \$2,000,000 in Cares Act Funding directed at improvements and rehabilitation of Ames' sanitary sewer system. This could hardly be classified as neglect. Moreover, Liberty has repeatedly attempted to claim Ames has inflow and infiltration ("I&I") issues with its sewer system, yet it has offered the Commission no actual evidence indicating that Ames' system has such I&I issues. Liberty only points to peak flows which could just as easily be due to increased demand from within Liberty's own Certificate of Convenience and Necessity ("CCN").

Liberty contends that "TCEQ should maintain its focus on regulatory compliance and issue an Emergency Order that supports compliance with state and federal law and points to ongoing Texas Pollutant Discharge Elimination System ("TPDES") permit compliance." Liberty's Response at 2. TPDES compliance is not at issue in this matter. Ames' request for the emergency order was not due to a TPDES permit issue. It was not due to any TCEQ violation. This matter is wholly the result of Liberty's threats to cut off service to Ames, which in Ames' view would have created an environmental and public health issue that required TCEQ intervention/involvement.

II.

AMES' REQUEST IS TO PROTECT THE PUBLIC AND THE ENVIRONMENT

Ames' request for an emergency order from TCEQ was to protect the public and the environment, not to have the TCEQ rule on a contract dispute. Liberty claims that Ames "asks TCEQ to make a contract determination." Liberty's Response at 2. Liberty states, "TCEQ would be required to accept Ames' argument that there is no longer a live Contract between Liberty and

Ames (despite TCEQ's Emergency Order requiring Liberty to continue accepting flows, as required under the Contract), and then as a result, speculate on which of Ames' current retail customers might Ames decide to cut off, under the theory that Ames would no longer have an obligation to serve retail customers in the absence of a Contract." Liberty's Response at 2. This completely mischaracterizes Ames' Initial Brief and Reply.

Ames is not threatening to cut off any of its current customers. The whole point of Ames' request for an emergency order was to avoid any of its customers being cut off from wastewater service (and the resulting dangers to the public and the environment) due to Liberty's termination of the Contract threatened by its Suspension Letter. In direct contrast to Liberty's actions, Ames has not sent any notifications to its own retail customers (including those located within Liberty's CCN) that it intends to cut off retail wastewater services. Ames highlighted the issue of its service to customers within Liberty's CCN for two reasons: (1) it makes it impossible for Ames to seek alternative wholesale wastewater service; and (2) it creates a statutory issue that may require Ames to cease retail service within Liberty's CCN.

First, as a practical matter, Ames cannot seek alternative wholesale wastewater service if it does not know its future service obligations. Roughly a quarter of Ames' system is dedicated to serving its customers located within Liberty's CCN. Ames must know whether it is going to have to continue to serve within Liberty's CCN before it can estimate its future wastewater flows, number of customers, etc. Liberty's Suspension Letter essentially places the initial burden on itself to notify the TCEQ, Public Utility Commission of Texas ("PUC"), and Ames of its intentions/plans with regard to retail service within the area covered by Liberty's CCN and the Ames-Minglewood WSC CCN.

Second, Liberty's termination/suspension of the Contract creates a statutory issue that potentially makes it impossible for Ames to serve within Liberty's CCN under the TCEQ Order. Ames' authority to serve within Liberty's CCN was solely due to its Contract with Liberty. If Liberty has now terminated the Contract, Ames can no longer serve within Liberty's sewer CCN No. 20056. Liberty now has the legal obligation to provide retail sewer service to this area. *See* Tex. Water Code § 13.250. A CCN grants a CCN holder the exclusive right to provide retail sewer utility service to the identified geographic area. Liberty states, "Ames' Brief requires the TCEQ to accept the fundamental premise that *Ames* will shut off its own retail customers." Liberty's Response at 3. To the contrary, Ames briefing asks the TCEQ to consider the legal reality that (absent the Contract) Ames is prohibited from serving its current retail customers located within Liberty's CCN.

Liberty now attempts to claim it never intended to "terminate" service, and instead only intended to temporarily suspend or disconnect service as allowed under the Contract pursuant to its Suspension Letter. *See* Liberty's Response at 3. This contradicts Liberty's own prior briefing in this matter. In its initial brief, Liberty states, "[a]fter waiting until just two weeks before the July 1, 2022 **termination** deadline, Ames filed a request for an Emergency Order to the TCEQ on June 16, 2022." Liberty's Initial Brief at 2, para. 3 (emphasis added). Therefore, before Ames brought up the issue of service within Liberty's CCN, Liberty certainly considered this a termination (and not a temporary suspension or disconnection) of service. Still, this is a distinction without much (if any) of a difference. Even if Liberty only temporarily disconnects or suspends service, the same legal and practical problems remain. Liberty would essentially be disconnecting or suspending retail service for customers located within its own CCN, which is not allowed under the law. Ames would need Liberty to declare and explain its retail service plans so that Ames could temporarily

obtain alternative service. Any path under the TCEQ Order begins with Liberty having to state how it plans to serve the retail customers within Liberty's CCN.

Ames is not threatening to cut off its customers. Liberty is. Ames is not trying to terminate the Contract. Liberty is. Ames is not statutorily responsible for serving retail customers within Liberty's CCN. Liberty is. The burden should be on Liberty to provide the Commission and Ames with its plans associated with retail service, and then Ames will be able to determine how to address its future wholesale wastewater service needs.

III. INVESTIGATION OF ALTERNATIVE SERVICE

In its prior briefing, Liberty claimed that Ames has a viable alternative option for wholesale wastewater service. Liberty claimed that Ames could "arrange for a pump and haul service to collect and transport Ames' wastewater." Liberty's Response to Ames' Request for Emergency Order at 2-3. At the prior Commission Agenda Meeting on this matter, the TCEQ Commissioners requested that Ames explore this option, so Ames has attempted to investigate it as an alternative.

Ames obtained an estimate from one such service that quoted a price for pump and haul wastewater service per truck as costing \$2,000 per day. The load each truck could hold would be a maximum of 6,000 gallons. Ames reviewed its prior month flows and determined that it averaged approximately 50,000 gallons per day. This means that Ames would have to purchase a service including a minimum of 9 trucks per day, which would cost Ames \$18,000 per day, \$540,000 per month, or \$6,480,000 per year. Due to the extreme cost of such a service, Ames does not view it as a viable option.

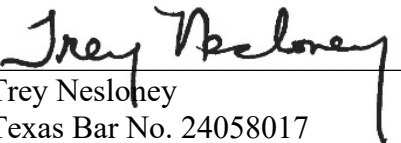
Additionally, the key aspect of the “pump and haul” service cannot be determined by Ames at this time. Ames cannot identify a destination where it can haul its wastewater to for disposal. Ames is not aware of another wastewater treatment plant in the area with capacity to accept its flows.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Ames respectfully requests that the TCEQ deny the modifications proposed by Liberty to the Order in its Initial Brief and Response, 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 August 12, 2022, to the following:

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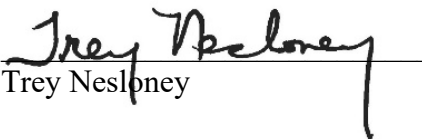
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