

**DOCKET NO. 2022-0763-UCR-E**

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

**CITY OF LIBERTY’S REPLY BRIEF TO AMES’ RESPONSE BRIEF TO  
LIBERTY’S BRIEF TO MODIFY TCEQ’S PROPOSED EMERGENCY ORDER**

COMES NOW, the City of Liberty, Texas, (“Liberty”), and files this reply brief to the City of Ames’ (“Ames”) Response to Liberty’s Brief to Modify the Texas Commission on Environmental Quality’s (the “TCEQ’s”) Proposed Emergency Order (the “Response Brief”) (collectively, “Reply Brief”). In a letter accompanying the Emergency Order, TCEQ provided Liberty and Ames an opportunity to brief TCEQ on requests to affirm, modify, or set aside the Emergency Order, with reply briefs due by August 12, 2022. Therefore, this Reply Brief is timely filed. Liberty files this Reply Brief to request TCEQ deny Ames’ proposed modifications to the Emergency Order, accept Liberty’s proposed modifications to the Emergency Order, and in support thereof, shows as follows:

**I. AMES’ FLOW METER SHOWS AMES’ EXCESS FLOWS  
ORIGINATE FROM AMES**

Ames is responsible for the wastewater flows it sends Liberty, and it cannot evade such obligations by pointing elsewhere. Liberty uses Ames’ own flow meter to measure wastewater flows from Ames.<sup>1</sup> Ames argues—without citing to any evidence—that “Liberty’s issues with its [Texas Pollutant Discharge Elimination System (“TPDES”)] permit could be due to its own

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<sup>1</sup> *Liberty-Ames Waste Water Disposal Contract* (“Contract”) at 10, (“AMES shall purchase and install at the point of discharge an electromagnetic flow meter capable of recording total throughput on a daily basis for at least a week’s time to record flows, including peak daily flows.”).

infiltration and inflow issues, or from its contract with the City of Hardin.”<sup>2</sup> Ames’ own measurements of excess flows (tracked and calculated daily) reveal its contributions to peak flows and monthly capacity at Liberty’s wastewater treatment plant (“WWTP”). TCEQ should recognize Ames’ finger-pointing for what it is and include Liberty’s proposed revisions to the Emergency Order to support a lasting solution to excess flows and continued TPDES permit compliance.

## **II. AMES IS RESPONSIBLE FOR ITS SYSTEM AND CANNOT SHIFT BLAME TO OTHERS**

Ames must be held accountable for the connections it serves within its sewer collection system and cannot escape responsibility by blaming certain retail customers. Ames is obligated to provide services to the Ames-Minglewood Water Supply Corporation (“Ames-Minglewood WSC”).<sup>3</sup> Ames’ claims that development within the Ames-Minglewood WSC “*could* simply be due to increased demand on Ames’ system” and that “Liberty’s problem *could* be due to development within its own [certificate of convenience and necessity (“CCN”)]...”<sup>4</sup> Ames’ statements are speculative at best, but miss the point: the Emergency Order does not parse out certain Ames retail customers. Nor should it. Liberty consents to Ames’ wastewater service for a few customers that are on Ames’ wastewater collection system that are located within Liberty’s CCN. Ames has served those customers, and continues to serve those customers, and the TCEQ’s Emergency Order need not address hypothetical scenarios regarding a subset of Ames’ retail customer base.

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<sup>2</sup> City of Ames’ Resp. to City of Liberty’s Br. to Modify TCEQ’s Proposed Emergency Order 2.

<sup>3</sup> Contract at 12 (“The primary purpose of this contract is to provide sewer service to the CITY OF AMES and to allow AMES to provide sewer service within AMES’ extraterritorial jurisdiction and the territory encompassed in the AMES-MINGLEWOOD WATER SUPPLY CORPORATION certificate of convenience and necessity.”).

<sup>4</sup> *Id.*

Liberty is also not immune to Ames' blame-shifting approach. Ames conveniently mischaracterizes Liberty's service suspension and portrays Ames as an innocent victim. To the contrary, Ames had six months from Liberty's suspension letter to take action. It did not do so, as evidenced at the June 29, 2022 hearing at TCEQ's Agenda (Ames conceded that it had not even considered other treatment options at that time). As previously stated, TCEQ need not deep dive into issues at play in the contract litigation, but should require Ames to identify long-term solutions. While Liberty would prefer resolution outside of the Emergency Order, it now becomes necessary to request TCEQ to force Ames to action through this vehicle.

### **III. THE TCEQ SHOULD ACCEPT LIBERTY'S PROPOSED MODIFICATIONS TO THE EMERGENCY ORDER**

Liberty proposes to modify the Emergency Order to require Ames to identify alternative wastewater treatment options within 90 days of the date of the Emergency Order because of multiple years of infiltration and inflow driving substantial wastewater flows into Liberty's WWTP. Ames' negligence towards its collection system and refusal to repair or rehabilitate the collection system (and to point blame at others, including its own retail customers, along with Hardin and Liberty) is an ongoing problem, and a mere 120-day extension of Liberty's service does not address the root cause of Ames' excess flows. Ames should be prepared to implement other sources of transport and treatment of its sewage as a condition of TCEQ's Emergency Order.

### **IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Liberty respectfully requests that the Commission deny Ames' Initial Request to Modify the TCEQ's Emergency Order. Liberty respectfully requests that the TCEQ accept Liberty's proposed modifications to the Emergency Order. Liberty also requests any and all relief to which it may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR THE  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to the following attorneys via TCEQ's electronic filing case management system and electronic mail on the 12th day of August, 2022:

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