

**TCEQ DOCKET NO. 2023-0955-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>SOUTH CENTRAL WATER COMPANY</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>FOR</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>TPDES PERMIT NO. WQ0016060001</b>	<b>§</b>	

**APPLICANT’S RESPONSE TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

South Central Water Company (“Applicant”) files this Response to Hearing Request pursuant to 30 Tex. Admin. Code § 55.209 on the application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016060001 (“Application”).

**I. Review Standard**

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;
- distance restrictions or other limitations imposed by law on the affected interest;
- whether a reasonable relationship exists between the interest claimed and the activity regulated;
- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- likely impact of the regulated activity on use of the impacted natural resource by the person; and
- whether the requester timely submitted comments on the application which were not withdrawn.

30 TAC § 55.203(c).

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided. 30 Tex. Admin. Code 55.201(d). The request must also substantially comply with the following:

- give the name, address, daytime telephone number, and where possible, fax number of the person who files the request;
- identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- request a contested case hearing; and
- list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request.

## **II. Evaluation of Hearing Requests**

The Commission received seventeen hearing requests on the Application. Fifteen of those hearing requests are from individual landowners and two are from organizations—the Greater Edwards Aquifer Alliance and the Bulverde Neighborhood Association.

### Individual Landowners

Patricia Graham, Jennifer Johnson, Michele Molina, and Tim Williford (on behalf of Texas Water Utilities) each identify interests relating to properties located greater than five miles away from the facility and discharge route. Based on that distance, it is not possible to find any reasonable relationship between their claimed interest and the regulated activity as required by 30 TAC § 55.203(c)(3). The hearing requests for those individuals should be denied on that basis. Bethann Erhardt resides at 30732 Blueberry Ridge Drive, Edith Isaacks resides at 6050 Circle Oak Drive, Carlton Sundbeck resides at 6035 Circle Oak Drive, Jacqueline Sundt resides at 6208 Circle Oak Drive, and Kelly Douglas resides at 5231 Honeysuckle Branch, each of which is

approximately 1.5 miles or more from the facility and the discharge route. That distance also represents a significant disconnect between the interests of those individuals and the regulated activity, and the concerns they raise do not indicate they will be adversely affected at that distance in a manner not common to members of the general public (as required by 30 TAC § 55.201(d)(2)). Similarly, Steve Hunsicker (31227 Sunlight Drive) and Eric Evans and Anit Kaur (30819 Sunlight Drive) are each approximately .5 miles east of the facility and approximately the same distance removed from the discharge route. Despite residing closer in distance to the facility and the discharge route, they are still separated from the facility and the discharge route by .5 miles and several intervening properties. It is not reasonable to expect that they would be affected by the facility or the discharge at that distance in a manner that is not common to members of the general public (noting, for example, that neither of the individuals owns or operates groundwater wells to support concerns raised regarding potential impact to area groundwater).

Margie Hastings failed to provide a property address as necessary to assess whether she will be affected by the proposed Facility. In the absence of that information, she cannot be identified as an affected person pursuant to 30 TAC 55.203(c), and her hearing request should be denied on that basis. Asa Dunn and Coquita Dunn failed to submit comments during the public comment period prior to filing the request for hearing on July 8<sup>th</sup> and July 14<sup>th</sup> as required by Texas Water Code § 5.115(a-1)(2)(B) and 30 TAC § 55.201(c). Their hearing requests should be denied on that basis.

#### Organizations

The Applicant declines to take a position on whether the Greater Edwards Aquifer Alliance and the Bulverde Neighborhood Association have satisfied the procedural and substantive requirements prerequisite to the granting of a hearing.

### **III. Evaluation of Request for Rehearing**

In addition to the hearing requests, the Commission received one request for rehearing, from the City of Bulverde. Each of the concerns the City of Bulverde identifies in its request for rehearing were raised in comments on the application and were properly evaluated by the Commission as set forth and discussed in the Commission's Response to Comments (to the extent those concerns are subject to the jurisdiction of the TCEQ). The request for rehearing did not identify any new issues that would support reconsideration of the recommendation. Accordingly, the applicant asserts the request for rehearing should be denied.

### **IV. Other Considerations**

The Applicant provides the following responses addressing 30 Tex. Admin. Code § 55.209 to the extent the Commission decides to refer this case to SOAH.

- *which issues raised in the hearing request are disputed;*

The Applicant disputes all issues raised in the hearing requests, none of which the Applicant asserts supports referral to SOAH for a contested case hearing. To the extent the Commission determines there are one or more valid hearing requests, the Applicant asserts there is a single issue in dispute that should be adjudicated at SOAH: whether the discharge from the facility will adversely affect surface water quality.

- *whether the dispute involves questions of fact or of law;*

The Applicant believes that whether the discharge from the facility will adversely affect surface water quality will involve only disputed questions of fact and not questions of law.

- *whether the issues were raised during the public comment period;*

The Applicant states that the issue of whether the discharge from the facility will adversely affect surface water quality was raised within the timeframe of an applicable public comment period.

- *whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;*

The Applicant is not aware that any comments at issue were withdrawn.

- *whether the issues are relevant and material to the decision on the application; and*

The Applicant asserts that the issue of whether the discharge from the facility will adversely affect surface water quality, if referred, is relevant and material to the decision on the application.

- *a maximum expected duration for the contested case hearing.*

If the Commission decides to refer this case to SOAH, then the applicant recommends that the maximum duration of the hearing be 150 days.

Respectfully submitted,

**Gregg Law PC**



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**CERTIFICATE OF SERVICE**

By my signature above, I certify that on October 16, 2023 the foregoing document was serviced via first class mail and/or email to the parties of record in the docket.