

TCEQ DOCKET NO. 2025-1041-MIS

APPEAL BY CLYDE JOHNSON AND SONS HEREFORD RANCH, LTD. OF THE DECISION BY THE BOARD OF DIRECTORS OF JOHNSON RANCH MUNICIPAL UTILITY DISTRICT PURSUANT TO TITLE 30 TEXAS ADMINISTRATIVE CODE § 293.180	§ § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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PETITIONER’S OMNIBUS REPLY TO ALL RESPONSES

TO COMMISSIONERS OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Responses filed in this proceeding contain four principal arguments. As shown below, all four of these responsive arguments are without merit.

1. This Appeal is Authorized by the Plain Language of the Applicable Statutes

The relevant provision in the Texas Water Code is § 54.239:

“APPEAL TO THE COMMISSION OF DECISION OF BOARD REGARDING FACILITIES. A person aggrieved by a decision of a board involving the . . . use of facilities may appeal the decision to the commission by filing a petition with the commission”

The related provision in the Texas Administrative Code is § 293.180:

“A person aggrieved by a decision of a board of directors of a Municipal Utility District operating under the Water Code, Chapter 54 may appeal a decision that involves the . . . use of improvements constructed by a developer for the district to the commission

A petition signed by the present or former property owners affected by the decision of the district board of directors must be filed with the chief clerk”

Neither of the quoted statutes restrict denial-of-use claims to the exclusive benefit of districts. To the contrary, TAC § 293.180 requires the petition to be signed by the “*property owners affected*

by the decision.” For eleven months, the Board has failed and refused to permit Petitioner the use of the facilities constructed by the developer. Petitioner is the property owner affected by the Board’s denial of the use of water and wastewater facilities for the development of Petitioner’s property. Aside from being a property owner in the District, Petitioner is also a “developer” in that it is seeking use of utility facilities for a multi-family development.¹ Thus, regardless of whether this appeal is mandatory or permissive, the TCEQ’s jurisdiction is authorized by statute.

2. TCEQ has Jurisdiction Over District’s Denial of Use of Facilities

As detailed in the Appeal, Petitioner is challenging the actions of a rogue MUD Board acting outside of its statutory authority to deny Petitioner use of District facilities. It is undisputed that the MUD’s facilities have adequate water and sewer capacity for this proposed development. The only alleged involvement of a contract in this dispute is the Board’s strained reliance on land-use provisions in the Johnson Ranch Master Development Agreement as an excuse for its actions. The Agreement specifically provides that land-use restrictions are determined by the City of Bulverde, which has approved the Petitioner’s land use. The Agreement gives the Board no role in connection with land use in the District. Petitioner’s core argument before the Commission is not that its planned development complies with the Agreement (which it does), but rather that the Board does not have the authority to inflict serious economic harm on Petitioner by adjudicating land-use issues to deny use of facilities without statutory authority, due process, or guiding rules.

The argument that the TCEQ does not have power to determine contractual issues related to a MUD Board’s decisions is addressed in *Appeal by 308 Furman, Ltd.*, TCEQ DOCKET NO. 2018-0414; SOAH DOCKET NO. 582-18-3270. Ironically, in *Furman*, the same law firm representing the District in this case represented Furman against the Harris County WCID. The

¹ E.g., TWC § 49.2127 and TAC § 24.161

same attorneys successfully argued in three years of proceedings before the TCEQ, and another several years in Texas courts,² that the TCEQ has concurrent jurisdiction to determine the parties' rights under a contract. In *Furman*, as in this case, the Petitioner was not seeking damages, but rather declarations of the parties' rights and responsibilities. The Texas Supreme Court has now denied the WCID's Petition for Review, upholding the TCEQ's jurisdiction and the *res judicata* effect of its decision. *See Harris Cnty. Water Control & Improvement Dist. No. 89 v. 308 Furman, Ltd.*, No. 01-23-00177-CV, 2024 WL 5249161 (Tex. App.—Houston [1st Dist.] Dec. 31, 2024, pet. denied).

3. “No Decision is, in Itself, a Decision”³

In practice, real estate contracts do not last forever. Petitioner has a pending multimillion-dollar contract to sell its property. Over seven meetings and six straight months, the Board placed Petitioner's application on its agenda, then refused to have a public hearing outside of executive session. The Board's clear strategy is to wait until the deal is dead. Accordingly, Petitioner wrote to the Board:

*“In view of our extensive communications about MUD services for this planned multifamily residential development, including last week's mediation, a decision must be made by the Board without further delay. If no action is taken by the Board on or before **June 10, 2025**, we will proceed as though our request for utility services has been denied.”*

The Board met in executive session on June 10, 2025, and once again declined to have a public hearing and vote on Petitioner's application. Instead, it voted for its President to send an unspecified letter to Petitioner. No meeting minutes were posted until after this appeal was filed. The letter to the Petitioner concluded:

² At some point in *Furman*, Coats Rose was replaced by another firm.

³ William James, American Philosopher and Psychologist

“Johnson Ranch MUD is unable to approve plans in violation of the Development Agreement to which you, and Johnson Ranch MUD are parties.”

The District has a statutory obligation under the Texas Water Code to provide utility services to properties within its boundaries. Texas law recognizes that a failure to act may constitute a material breach of obligation. The Texas Supreme Court has noted five factors significant in determining whether a failure to perform is material: 1) the extent to which the injured party will be deprived of the benefit which it reasonably expected; 2) the extent to which the injured party can be adequately compensated for the part of that benefit of which it will be deprived; 3) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; 4) the likelihood that the party failing to perform or to offer to perform will cure its failure, taking account of the circumstances including any reasonable assurances; and 5) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 199 (Tex. 2004).

Here, Petitioner will lose the pending real estate contract, as well as the opportunity for an equivalent sale or development of its land in the future. The Board’s demurral to act on Petitioner’s application for use of District water and wastewater facilities persisted for at least six months before the appeal and has now continued for another five months. The District has offered no compensation for stonewalling the development and sale of Petitioner’s land and is fighting Petitioner’s damages claims in court. The District has communicated its intention to never approve use of its facilities for this development. The Board’s delay tactics, its secretive decision-making process, and its ever-changing arguments for denial indicate a lack of good faith and fair dealing.

4. TCEQ's Authority Over this Issue Not Supplanted by PUC

The District's claim that this dispute belongs before the Public Utilities Commission is an *ex post facto* attempt to invoke Chapter 24 of the Texas Administrative Code to further delay relief to Petitioner. The legislative action taken to transfer certain functions from the TCEQ to the PUC, was explicitly intended to migrate only "economic regulations of water and sewer utilities" to capitalize on the PUC's ratemaking expertise.⁴

In *Furman*, discussed above, the District's current attorneys successfully invoked the TCEQ's jurisdiction in 2020 under TWC 54.239 and TAC 293.180. They are now making the inconsistent claim that TCEQ's jurisdiction was ceded to the PUC in 2014. The District makes no attempt to demonstrate that it, as a water utility, made any attempt to comply with PUC regulations in this dispute. It makes no claim that it fully informed Petitioner of the cost of initiating service.⁵ It did not promptly conduct an investigation and report its findings to Petitioner.⁶ It did not give Petitioner the opportunity for a review under its customer service rules.⁷ It failed to advise Petitioner of recourse through the PUC complaint process.⁸ In this proceeding, the District has not claimed that its denial of the use of utility facilities is based on its own customer-service rules or any state or municipal regulations for water and sewer service.⁹ Finally, the District did not notify Petitioner in writing of the opportunity to file a complaint with the PUC.¹⁰

⁴ According to TCEQ website, "The TCEQ transferred responsibility for the following programs to the Public Utility Commission of Texas in 2014: the sale, transfer and merger program; the water utility rate program; and the certificate of convenience and necessity program. This transfer was required by the PUC's Sunset legislation (HB 1600) adopted in 2013.

⁵ TAC § 24.153.

⁶ TAC § 24.153.

⁷ TAC § 24.155.

⁸ TAC § 24.153.

⁹ TAC § 24.157.

¹⁰ TAC § 24.157.

WHEREFORE, PREMISES CONSIDERED, Petitioner, Clyde Johnson and Sons Hereford Ranch, Ltd., respectfully requests that the Texas Commission on Environmental Quality (i) determine whether or not it has jurisdiction over this appeal, and if so, (ii) find that the Board of the Johnson Ranch Municipal Utility District erred in its decision to deny Petitioner's use of water and sewer facilities for the Homestead Lot in the District, and (iii) direct the District to cooperate with Petitioner to provide utility service for development of the Homestead Lot, including the planned multifamily development, and (iv) order the District to reimburse Petitioner's reasonable attorney fees, costs, and deposit incurred in pursuing its right to use the District's utility facilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document has been forwarded to the following counsels of record via TCEQ's e-filing system on this the 12th day of November 2025 and a copy was mailed or emailed to all counsels of record on the attached mailing list.

/s/ /Ray B. Jeffrey

Ray B. Jeffrey

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