SOAH DOCKET NO. 582-24-21738
TCEQ DOCKET NO. 2023-1566-MWD

APPLICATION BY PRESERVE HUTTO LLC FOR NEW TPDES PERMIT NO. WQ0016145001	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

CITY OF HUTTO'S REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS:

The SOAH ALJs recommend denial of the application filed by Preserve Hutto, LLC ("Preserve Hutto") on the basis that Preserve Hutto failed to meet its burden of proof regarding the Commission's Regionalization Policy. The ALJs did not err in their fact finding or their recommendations. The applicant here, Preserve Hutto, seeks to provide wastewater service to an area that is within Hutto's service area, as provided in Hutto's Certificate of Convenience and Necessity ("CCN") and failed to provide sufficient justification for a new wastewater treatment plant in an area already served by a regional plant.

I. BACKGROUND

The exceptions filed by Preserve Hutto, LLC ("Preserve Hutto") and the Executive Director simply reiterate the arguments that they made during the hearing and in their post-hearing briefs— that granting a permit to Preserve Hutto would not run be contrary to the Commission's Regionalization Policy and the statutorily required considerations of need[1] and the promotion of regional/area-wide systems.[2] As found by the ALJs, Preserve Hutto's application failed to meet the Commission's Regionalization Policy because Preserve Hutto failed to justify the construction of a stand-alone plant inside the CCN of another provider, and failed to show that a stand-alone plant was more economical than obtaining service from a neighboring provider.

It is the policy of this state to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens[3] and to consider the issue of "need" when issuing a wastewater permit.[4] It is also the policy of this state to establish a comprehensive regulatory system to regulate retail public

[1] Tex. Water Code § 26.0282.
[2] Tex. Water Code § 26.081.
[3] Tex. Water Code § 26.003
[4] Tex. Water Code § 26.0282.

utilities,[5] in part to prevent duplication of services.[6] While the first policy is assigned to the Commission to implement and the second to the PUC, the two policies (and the two agencies) should work together to avoid the unnecessary proliferation of wastewater systems and to avoid disrupting the "comprehensive regulatory system" applied to retail public utilities. If the PUC has already determined who should provide sewer service in an area, the Commission should not disrupt the PUC's comprehensive plan by purporting to allow another sewer provider to serve the same or by intruding into the PUC's exclusive jurisdiction to determine whether a retail public utility has "denied" service,[7] nor should TCEQ spend its resources on a permit that is not needed.

II. REPLIES

A. Reply to Preserve Hutto's Exceptions

1. The PFD does not err in concluding that District annexation is not denial of service

Preserve Hutto argues that the ALJs erred by failing to recognize that "annexation" is the equivalent to a denial of service, which would end the Regionalization analysis. Preserve Hutto argument misconstrues the ALJ's position and the law. The ALJs found that the Commission's Regionalization Policy requires an analysis to determine whether the "special conditions" offered by the responding utility are so onerous, based on the conditions of the offer, that the offer is effectively a denial. The ALJs further found that, based on the facts of this case, the "annexation" condition proposed by the Williamson County Water, Sewer, and Irrigation District No. 3 (the "District") were not so onerous as to be a denial of service.

In deciding that the conditions offered by the District did not amount to a denial of service, ALJs properly considered the fact that Preserve Hutto had previously requested annexation into the District, and that Preserve Hutto backed out of obtaining service from the District not because of the annexation requirement, but because of the impact fee issue (which was not linked to annexation). The ALJs also properly considered the fact that annexation by a district is not equivalent to annexation by a municipality. As explained in the Protestant's testimony, "annexation" into a district is more akin to becoming a member of a water supply corporation than it is to being annexed into a city limits. Yes, there are costs involved, but all of the costs go to the

[5] Tex. Water Code §13.001.
[6] Tex. Water Code §13.241.
[7] Tex. Water Code §§ 13.041(a) $ 13.139; 16 TAC §24.161(Response to Request for Service).

pay for the provision of utility service. Also, by being annexed into a district entails having to comply with the district's service rules, the same is true if any other utility was to provide service. All utilities have service requirements in their tariffs. The fact that Preserve Hutto would have to meet the District's service rules is not different than what would happen if any utility was to serve. If having to comply with the neighboring utility's service rules is a "special condition" that should be viewed as a denial of service, then the Regionalization Policy is meaningless because all utilities will impose service conditions. The test must be whether those conditions are so onerous (so at odds with standard utility practice) that they amount to a denial of service. The ALJs here found that the facts did not support such a position.

2. The PFD does not err in concluding that service from the District is not so much more expensive as to justify not using the regional plant

The ALJs conclude that based on the evidence in the record that the Preserve Hutto's costs per apartment/connection are essentially the same regardless of whether Preserve Hutto connects to the District for service or constructs its own treatment plant. Based on that conclusion, the ALJ's recommend denial of the application because Preserve Hutto failed to meet its burden to show that the permit should be granted.

According to Commission's application form and its Regionalization Policy, the answer to whether an applicant should be granted a permit when the area to be served is inside another's CCN or if a neighboring utility is willing to serve is determined by a cost analysis[8] or a cost-benefit analysis.[9] The odd thing about Regionalization Policy is that it contains no standards for conducting such an analyses. How are benefits considered? What costs are considered? At what degree of difference in costs does the Commission prefer a stand-alone solution versus a regional solution? No guidance exists that answer these questions. Neither Mr. Tuckfield on behalf of Preserve Hutto, nor the ED's witness Mr. Martinez could articulate any standards for these analyses. According to Mr. Tuckfield, it is a "developing area," and he did not know if a one dollar difference or a substantial difference was required before TCEQ would approve a stand-alone plant.[10] Mr. Martinez likewise was unable to articulate a standard other than Best Professional Judgment.[11] Curiously, Mr. Martinez' "best professional judgment" appears to be

[8] APP Ex. 2-04 at APP EX-2 117.
[9] APP Ex. 2-03 at APP EX-2.
[10] Tr. 228:21-229:25.
[11] Tr. 270:9-271:11.

based on a few applications where the only information reviewed was that provided by the applicant and where he had never concluded that the difference was substantial enough.[12]

Likewise, neither Mr. Tuckfield nor Mr. Martinez could explain exactly what costs/benefits should be considered in the required analysis. According to Mr. Tuckfield there is so little guidance and so little case law that he could not provide a definitive answer, but that he thought the value of the rental units lost because of the need to construct a WWTP and the costs of removing the area from Hutto's CCN, obtaining a CCN, and the cost of the contested case hearing on the TPDES application could be included.[13]

The facts here show that the cost analysis reviewed by the ED failed to consider all costs associated with the construction of Applicant's proposed wastewater plant. In particular, the evidence in the record is that Preserve Hutto will lose 20% of its expected bedrooms served by having to construct a WWTP.[14] Preserve Hutto will generate 60,000 gallons per day of wastewater if no WWTP is build, and 48,000 gallons per day if the WWTP is built. This loss of rental capacity will be a significant cost of building a stand-alone plant, yet that cost is not included in the cost analysis. Additionally, the analysis does not include the cost of getting out of Hutto's CCN, the cost of obtaining a CCN, and the cost of this contested case hearing.

The ALJs took all of the evidence on costs and concluded that, on a cost per apartment/connection basis, obtaining service from the District ($3 million for 310 apartment/connections - $9,677/connection) would be lower than the cost of building its own treatment plant ($2.6 million for 244 apartment/connections - $10,656/connection), despite the higher absolute cost of obtaining service from the District. This conclusion is fully supported by the evidence in the record.

Preserve Hutto argues that the ALJs did not consider the effect of inflation on the District's cost estimates. Preserve Hutto, however, did not provide testimony on inflation on the cost of obtaining service from the district. Additionally, even with the inflation numbers made up in Preserve Hutto's exceptions, the differences in the cost per apartment/connection would not be significant.

[12] Tr. 271:12-272:10.
[13] Tr. 230:1-231:8
[14] Tr. 148:5-149:23.

Preserve Hutto makes additional stabs at the ALJs' analysis based on the lack of consideration of other costs, such as taxes and the use of the cost per apartment/connection basis. None of these complaints are sufficient to change the PFD. As the ALJs recognized, Preserve Hutto failed to include other costs as part of the cost of building its own plant, such as the cost of this proceeding and the concurrent proceeding at the PUC regarding whether Preserve Hutto can legally serve the property. Additionally, Preserve Hutto's argument that the ALJs' use of the cost per apartment/connection approach is improper because it avoids a consideration of overall "expenditures" makes no sense in the context of the Regionalization Policy. Because of the difference in the volume and apartment/connections between obtaining service from the District and constructing the plant, the methodology used by the ALJs is the only methodology that would provide an "apples-to-apples" analysis.

Preserve Hutto also argues that an "annexation" condition should automatically be viewed as a "denial of service" under Commission precedent and policy. This argument goes too far. No prior regionalization determination by the Commission has determined that district annexation is per se denial of service. Rather than make "per se" findings, the Commission should review each annexation requirement to determine whether it is effectively a denial of service (either financially or on some other basis). To the extent that the Commission wants to make annexation a per se denial, Hutto suggests that the Commission should do so through rulemaking or other legitimate method of setting statewide policy.

3. The PFD promotes the Regionalization Policy

Preserve Hutto argues that the PFD frustrates the policies underpinning regionalization because denying Preserve Hutto's application would put Preserve Hutto at a disadvantage in contract negotiations with the District. The problem with Preserve Hutto's argument is that it does not recognize that Preserve Hutto helped to create the current situation by not providing a justification or cost-analysis in its application. Had Preserve Hutto been forthcoming in its application that the District had agreed to provide service and provided the required cost benefit analysis, then the ED and the Protestants could have evaluated and commented on the analyses. Instead, Preserve Hutto misrepresented the fact that the property is inside Hutto's CCN and misrepresented the District's willingness to serve. Preserve Hutto frustrated the policies underpinning regionalization by not exploring and giving serious consideration to connection to such to neighboring utilities. Preserve Hutto simply ignored reality and submitted an application

with incorrect and incomplete information simply to the "check the boxes" of the Regionalization Policy.

Finally, the Commission needs to recognize that the encouragement of regionalization required by statute is more than just a consideration of the applicant's economics. Regionalization is intended to consider not only the applicant's financial interests but also the general public's interests in health, safety, and the environment – "prevent pollution and maintain and enhance the quality of water in the state."[15] Here, where District is willing to expand its capacity and accept Preserve Hutto's wastewater, the Commission should not grant the permit, even if obtaining service from a neighboring utility costs more, without an explanation of why the cost-savings to the applicant outweighs the benefits to the public. Such an explanation is needed to provide some meaning to Texas Water Code §§ 26.0282 and 26.081, and to TCEQ's Regionalization Policy. An explanation is also needed to avoid an arbitrary result. A decision without an articulated standard runs the risk of being arbitrary.

B. Reply to the ED's Exceptions

The ED provides no basis for amending the PFD. The ED argues that the fact that Preserve Hutto's proposed service area is inside Hutto's CCN is irrelevant to whether Preserve Hutto's application should be granted. First, the ED argues that the issue is irrelevant because Preserve Hutto represented that its service area would not be within the CCN of another utility. This argument flies in the face of the undisputed facts in this case – Preserve Hutto's proposed service area is in Hutto's CCN. The ED's argument also ignores the relevant statutory provision,[16] Commission rules,[17] application form,[18] and Regionalization Policy, all of which make the fact that the applicant is not the CCN holder highly relevant. The PFD treats the fact that the proposed service area is in Hutto's CCN by requiring that Preserve Hutto demonstrate a justification and a cost analysis to support the issuance of a new permit when service could be obtained from a neighboring provider.

[15] Tex. Water Code § 26.081.
[16] Tex. Water Code § 26.0282 (if the applicant cannot legally provide service, there is no need for a new treatment plant); Tex. Water Code § 26.081 (the state policy to encourage and promote the development of regional and area-wide systems is a companion provision to Chapter 13 of the Water Code the purpose of which is to establish a ***comprehensive regulatory system*** retail sewer utilities.
[17] 30 TAC § 281.5
[18] Domestic Wastewater Permit Application, Domestic Technical Report 1.1.

The ED does not directly respond to the PFD position that Preserve Hutto failed to establish that the cost of obtaining service from the District represents a denial of service. The ED does not address the PFD's use of a cost comparison based on a cost per apartment/connection basis. Instead, the ED relies solely on expert testimony provided by the ED's witness that was reviewed and rejected by the ALJs in the PFD, with no explanation as to how the ALJs erred.

C. Other Issues

As recognized in the PFD, the ALJs did not consider the following issues because the ALJs concluded that Preserve Hutto's application should be denied on the basis that Preserve Hutto failed to meet its burden of proof based on economics:

- Whether Preserve Hutto's cost information should not be considered because it was not part of the Administrative Record that the ED was to consider in making its recommendation.[19]
- Whether Preserve Hutto's application should be denied because the service area is inside Hutto's CCN and Preserve Hutto failed to provide "justification" as to why the Commission should grant a permit that Preserve Hutto legally cannot use.[20]

If the Commission decides to reverse the ALJs' conclusions on the regionalization issue based on economics, Hutto requests that the Commission remand the matter to SOAH to allow the ALJs' to address these additional issues. If the Commission decides not to remand, Hutto requests that the Commission review its Closing Arguments and Replies to Closing Arguments regarding these other issues.

III. CONCLUSION

For the foregoing reasons, the City of Hutto requests that the Commission accept the PFD without modification and deny Preserve Hutto's application.

Dated: September 29, 2025

Respectfully submitted,

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[19] City of Hutto's Closing Arguments at 9-10.
[20] City of Hutto's Closing Arguments at 6-7.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been e-filed and served on the following counsel/persons by regular electronic mail or by electronic filing on September 29, 2025.

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