

Hutto Citizens Group News

September 29, 2008

As landfill permit hangs by a thread, WilCo's appeal of Carnes' ruling on the landfill contract appears not to be the real thing

With very little information emerging from members of Williamson County Commissioners Court or the county's information office regarding landfill developments, there are a few things that can be pieced together.

It appears that the negotiations on a revised landfill contract have stalled out and that Waste Management (WMI) won't discuss a contract until the county authorizes permit amendment expansion application 1405-B to move forward at the Texas Commission on Environmental Quality (TCEQ). In the opinion of the Hutto Citizens Group (HCG), moving the permit forward at TCEQ with WMI's name on it as *Operator* or *Site Operator* would be a disaster for the county and its citizens, because TCEQ's approval of the permit amendment in that form would give WMI total control of the landfill, which also would mean that WMI would have no incentive to negotiate seriously on a revised contract that would be more beneficial for the county than the current contract (approved in 2003) now in effect.

In fact, neither the county nor WMI nor any of their lawyers has demonstrated that the 2003 contract REQUIRES the county to proceed with the permit amendment application (1405-B) to expand the landfill. If there is such a clear requirement in the contract--a statement with no ambiguity--then the county and WMI need to cite it. Clearly, the only such mention of an "expansion" in the contract is vague and ambiguous and does not carry the weight of being a mandate for the county.

Even though Williamson County technically has appealed the ruling¹ by District Judge Burt Carnes regarding the county's lawsuit against WMI involving the landfill contract, there is doubt regarding whether the county actually will follow through on the appeal. Media reports, including interviews conducted by reporters with county

1 In September of 2007, Williamson County filed a lawsuit against Waste Management regarding the 2003 landfill contract now in effect, taking the position that there is a legal requirement for the contract to have been publicly bid. In a decision handed down in July of 2008, Carnes ruled that there was no requirement for the contract to be bid, based on the Texas Health & Safety Code, but he did not say that the county couldn't go out for bid on the contract now.

representatives as well as members of the HCG, indicate that the county is simply leaving itself the **option** of following up with a serious appeal, but not committing to do so at the present time. In fact, the motion regarding the appeal passed at commissioners court on September 23 contained the language, “If appeals are granted, then we reserve the right to appeal,”² stopping short of moving forward with a serious appeal. The county's window of opportunity to appeal was opened on Wednesday, September 24, when Judge Carnes ruled that Williamson County and the intervenors in the case (which includes the HCG) still have a time window in which to appeal his ruling because of a clerical error by the District Clerk's office involving notifications of the parties—an error which compromised the deadline to file a timely appeal notice.

However, for the county to preserve the ability to move forward with an appeal without actually pursuing the appeal seriously makes little sense, if that actually is what is happening. What is the upside to a motion which would “reserve the right” to appeal if an appeal isn't going to be seriously pursued? The intervenors are moving forward with their appeal because of a belief that there is excellent legal basis for doing so, and there appears to be no good reason why the county shouldn't do the same.

LCRA caught in trans-line side step

On Thursday, September 11, two commissioners at the Public Utility Commission of Texas (PUC) voted 2-0 to issue an order adopting “Route 24” in the application by the Lower Colorado River Authority (LCRA) and Oncor Energy for the path of transmission lines which will run through Hutto's corporate limits.

Though there are three commissioners at the top of the PUC, Commissioner Donna Nelson recused herself from the vote and issued a statement citing her past relationship with the office of Gov. Rick Perry. The specific connection between her work for the governor and the case being decided at the PUC was not explained.

In addition to rubber-stamping the so-called “fishhook” route which will run along Limmer Loop and proximate to some Hutto ISD facilities, the commissioners also endorsed the location of the much-criticized, transmission-level substation on the west side of Hutto which sits adjacent to a residential subdivision. Noise from the substation facility is

2 Verbage as transcribed from the county clerk's audiodisk of the September 23 commissioners court meeting.

expected to be significant as it is enlarged to handle the higher electric loads.

The City of Hutto and Hutto Citizens Group, who intervened in the case, in addition to Hutto-area citizens, previously had asked the State Office of Administrative Hearings (SOAH), the LCRA, and the PUC to utilize right-of-way on the east side of SH-130 for the route of the lines, using monopole structures. However, when SOAH issued its *Proposal for Decision* (PFD), none of the six proposed routes included the SH-130 scenario.

The omission of the Hutto citizens' preferred route from the PFD occurred despite the major effort to have it included. As explained to the PUC commissioners at the meeting on September 11 by John Gordon, the expert witness for the City of Hutto and the HCG, his testimony regarding the preferred route at the SOAH hearing went without challenge through cross examination, yet Hutto's view was dismissed, and the SH-130 route was not included among the six proposed routes.

Gordon told PUC commissioners that Hutto had determined that monopole structures could be used along SH-130 because there was adequate room in the right-of-way. But when LCRA discussed the matter with the Texas Department of Transportation (TxDot), the impression was conveyed to TxDot that LCRA was proposing *lattice* structures and not monopole structures for that route. The result was a conclusion by TxDot that the east-side, right-of-way route along SH-130 was too narrow to work, an inaccurate conclusion if monopole structures were used. Without knowing what really happened behind the scenes, it's uncertain just how this foul-up occurred, but the information available appears to place the blame at the feet of LCRA.

In a lengthy statement made after the 2-0 vote, Commissioner Kenneth Anderson was sympathetic to Hutto's apparent victimization on the issue and even provided what could be construed as a *sort-of* apology. He emphasized the importance of having "agency staffs" (an apparent reference to LCRA and TxDot) do a better job of communicating with other to avoid such problems. Nonetheless, Anderson voted with Commissioner Barry Smitherman to adopt the route opposed by Hutto, which, in effect, was a denial of Hutto's request to re-study that portion of the route involving the right-of-way on the east side of SH-130 using monopole structures.

The Hutto position on the SH-130 route obviously was given the short-shrift by LCRA, and when the two PUC commissioners made their decision, they simply used what was in the record. As stated by Steven Salfelder, president of the Hutto Citizens Group

(quoted in the *Austin American-Statesman* on September 13), “This was sort of like going to a prize fight knowing that the fix was in.”

This unfortunate result--ignoring the preferred route along SH-130 using monopole structures--didn't occur because Hutto failed to state its case at the SOAH hearing or at the PUC meeting on September 11. Gordon spelled out the situation clearly at SOAH, and at the PUC meeting on Thursday a retinue of speakers re-stated Hutto's position. Those speakers included candidates for state representative from District 52 (Diana Maldonado, Democrat, and Brian Daniel, Republican), a candidate for the position of county attorney in Williamson County (Jaime Lynn, Democrat), the mayor pro-tem of the City of Hutto (David Begier), a Hutto city councilman (Felix Madrid) and the HCG president (Steven Salfelder). In addition to those speakers, also present supporting the Hutto position were Hutto city council members Debbie Holland and Ronnie Quintanilla-Perez, and Ed Broussard, the Hutto city manager.

Absent from the September 11 meeting at the PUC were the Williamson County attorney (Jana Duty), the Williamson County judge (Dan Gattis, Sr.), and the Williamson County Precinct 4 county commissioner (Ron Morrison). In fact, no elected official representing Williamson County was present.

The involvement of Bell County in the transmission line issue presents an interesting contrast to Williamson County. As referenced at the PUC meeting on September 11, Bell County Precinct 2 Commissioner Tim Brown worked successfully to get monopole structures along part of the transmission line route.

This issue involving the SH-130 route isn't over. LCRA still must acquire right-of-way for the route adopted by the PUC, and now that the details have been revealed regarding the mistake which was made, the LCRA directors obviously have a moral obligation to take a look at what can be done to fix what went wrong.

It's certain that the HCG will insist that the LCRA directors look into this matter and provide an answer, including explaining how such an error could have occurred, and what will be done to fix it.

This entire circumstance illustrates how difficult it is for citizens to receive a just and reasonable result when the “system” has been designed to orchestrate a solution driven by the power players. Notwithstanding Commissioner Anderson's acknowledgement of the

problem and Hutto's victimization, the final vote nonetheless deprived Hutto of the route which should have been approved had the process at SOAH taken the relevant facts into account.

The fact that Commissioner Smitherman did not echo Anderson's sentiment is surprising, especially in light of a perspective he deemed important in a book which he authored and which was published in 2005. In Chapter 16, Smitherman wrote that people “must challenge established ways of thinking and acting.” He then added: “Those who are afraid to 'rock the boat' may well find out that the boat is 'sinking'.”³

Yes, siding with the citizens and going against the “system” in this case would have rocked the boat, but despite what he wrote in the book, Smitherman decided to stick with the system this time around.

The Newsletter of the Hutto Citizens Group is published by the HCG as a public service. Questions and comments may be directed to: thehuttocitizens@yahoo.com.

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³ Barry Thomas Smitherman, *If Jesus were an investment banker (or any other type of modern businessman)*, Philadelphia: Xlibris Press, 2005, p. 103.