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APPLICATION OF THE CITY OF §
CIBOLO FOR SINGLE §
CERTIFICATION IN INCORPORATED §
AREA AND TO DECERTIFY §
PORTIONS OF GREEN VALLEY §
SPECIAL UTILITY DISTRICT'S §
SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
GUADALUPE COUNTY §

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
OF
FILING CLERK

ADMINISTRATIVE HEARINGS

**GREEN VALLEY SUD'S RESPONSE TO STAFF'S SUR-REPLY ON CIBOLO'S
MOTION FOR PARTIAL SUMMARY DECISION**

Green Valley Special Utility District ("Green Valley") files this its Response to Staff's Sur-Reply on the City of Cibolo's Motion for Partial Summary Decision, and in support thereof, respectfully submits as follows:

I. ARGUMENT

Green Valley files this Response to Staff's Sur-Reply in order to clarify Green Valley's position with regard to the two issues raised by Staff in its December 7, 2016 Sur-Reply.

A. Consideration of Cibolo's Motion would be Premature.

Regarding Staff's assertion that the Commission's procedural rules do not require the admission of *record evidence*, Green Valley acknowledges that the Commission's rules, including PUC PROC. R. 22.182, are open to interpretation, including the interpretation offered by Staff. That said, the essence of Green Valley's argument is that there is an insufficient record at this juncture of the proceeding to consider summary disposition of the central issues in this case, and that to do so would be inconsistent with the Commission's stated intent when it referred the proceeding to SOAH and directed the ALJ to "*hold a hearing* on the first phase of this docket" and to "issue a PFD

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on those issues and *allow the Commission* to make the determinations required under TWC § 13.255.¹ Green Valley submits that the development of a full record, including a hearing on the merits allowing the parties to test the theories and opinions of proffered witnesses, would aid the ALJ and Commission in reaching a sound decision on the fundamental issues raised in this “first case of this type to be referred to SOAH.”²

B. Staff’s Position on “Facilities” is Conflicting and Misconstrues Green Valley’s RFI Response.

While Staff asserts in its Sur-Reply that it agrees that “facilities”, as defined by TWC § 13.002(9), includes “intangible property,” Staff’s precise argument in its December 2, 2016 Reply was that “there are no *facilities* that will be rendered useless or valueless by this proceeding” and that “Green Valley has admitted that its only facility that could hypothetically support a sewer system *in the area to be decertified* is an undeveloped piece of property.”³ The discovery request on which Staff relies asked for a listing of “sewer facilities *within* the area [to be decertified].”⁴ The context of the discovery request makes clear that the question was seeking information regarding tangible assets within a precise physical location. Yet, Staff uses this discovery response to conclude that “Green Valley’s RFI response can only mean that Green Valley has no tangible or intangible real or personal property interests within the area to be decertified.”⁵ In other words, Staff would insist that the discovery request be read as asking that Green Valley identify *intangible* property within a physical location. Such a reading defies logic as intangible assets are incapable of having a physical

¹ Supplemental Preliminary Order at 4 (emphasis added).

² *Id.*

³ Staff’s Reply at 2.

⁴ Staff Sur-Reply at 2, citing Green Valley’s Response to Cibolo 1-10.

⁵ *Id.* at 2-3.

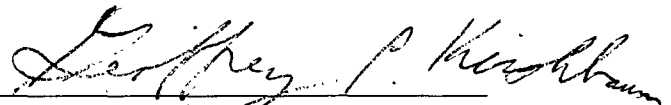
location. Thus, while Green Valley appreciates that Staff acknowledges that facilities and property can consist of both tangible assets and intangible assets, the ALJ should reject Staff's assertion that Green Valley somehow acknowledged that it has no intangible property that would be rendered useless and valueless if decertification is granted in this proceeding.

II. CONCLUSION AND PRAYER

For the reasons set out above, Green Valley Special Utility District respectfully requests that the Honorable Administrative Law Judge: (1) deny the City of Cibolo's Motion for Partial Summary Decision on all grounds as to Preliminary Issue No. 9; (2) grant Cibolo's Motion as to Preliminary Issue No. 10; (3) proceed with the hearing on the merits as currently scheduled; and (4) grant all other relief to which Green Valley shows itself to be entitled.

Respectfully submitted,

By: _____



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CERTIFICATE OF SERVICE

I hereby CERTIFY that on December 7, 2016, a true and complete copy of the above was sent by the method indicated to counsel of record at the following addresses in accordance with P.U.C. PROC. R. 22.74:

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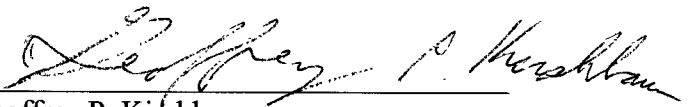
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