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**SOAH DOCKET NO. 473-16-5296.WS
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**APPLICATION OF 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 §**

**STATE OFFICE OF
PUBLIC UTILITY COMMISSION
ADMINISTRATIVE HEARINGS CLERK**

COMMISSION STAFF'S STATEMENT OF POSITION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Statement of Position. In support thereof, Staff would show the following:

I. Background

Pursuant to Tex. Admin Code § 22.124 (TAC) as Staff has not filed direct testimony, Staff must file its statement of position three working days before start of the hearing. SOAH Order No. 3 set the hearing on the merits for January 17-18, 2017; therefore, Staff's statement of position is due on January 11, 2017. Staff's statement of position is timely filed.

II. Issues

Pursuant to SOAH Order No. 7, the remaining issues to be addressed in this case are:

9. What Property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding?
11. Are the existing appraisals limited to the property that has been determined to have been rendered useless or valueless by decertification?

Green Valley Special Utility District (Green Valley) has identified "investment dollars related to planning and design costs, legal and professional expenses and lost economic

opportunity interests” as “property” that will be rendered useless or valueless.¹ Staff questions whether any these costs qualify as property. Regardless, it does not appear that any of these incurred costs will be rendered useless or valueless.

III. Argument

It is Staff’s understanding that Green Valley is declaring the following “property interests” as rendered useless and valueless by this proceeding:

- legal expenses and professional fees associated with this proceeding;²
- expenses related to TCEQ permit application process for a wastewater treatment plant facility;³
- Green Valley 2006 Wastewater Master Plan;⁴
- 65 Acres of land outside the area to be decertified;⁵ and
- lost revenue.⁶

A. Legal expenses are not property.

Green Valley claims that its legal and professional expenses incurred during this proceeding are property that has been rendered valueless or useless.⁷ Contrary to Green Valley’s assertions, the relevant statute, PURA § 13.255(g)⁸ only awards legal expenses when “personal property” has been rendered useless or valueless.⁹ There is no statutory language stating legal

¹ Green Valley SUD’s Response to City of Cibolo’s Motion for Partial Summary Decision and Commission Staff’s Reply to Cibolo’s Motion at 10 n. 27 (Dec. 5, 2017).

² Direct Testimony of Joshua M. Korman at 13 (Korman Direct).

³ *Id.*

⁴ Green Valley’s Appraisal Report (Jun. 28, 2016).

⁵ *Id.*; Korman Direct at 13.

⁶ Korman Direct at 13.

⁷ *Id.*

⁸ Insert PURA cite

⁹ Public Utility Regulatory Act, Tex. Util. Code Ann. § 13.255(g) (West 2016) (PURA).

expenses are useless or valueless property. If legal expenses were useless property, there would be no point to the statute explicitly awarding legal expenses.¹⁰

Further, if legal expenses could be rendered useless and valueless, one illogical result would be that the government would be conducting a taking every time it engaged in litigation, and would be constitutionally required to reimburse every litigant.¹¹ Legal expenses simply are not valueless or useless property.

B. No other “property” identified by Green Valley will be rendered valueless or useless by this proceeding.

The terms valueless and useless are not specifically defined in the Texas Water Code; thus, they are to be interpreted using their ordinary meaning.¹² Valueless means “being of no value.”¹³ Thus, something which still retains some value is not valueless, even it has been “devalued”—having its value lessened. Similarly, “useless” is defined as “having, or being of, no use.”¹⁴ Thus, if a property has some use, it has not been rendered useless.

Green Valley has admitted that it may continue with its TCEQ permit application for its proposed waste water treatment plant even after the area in this proceeding has been decertified.¹⁵ This should be not unexpected as this proceeding will only decertify 2.315% of the plant’s proposed service area.¹⁶ Furthermore, Green Valley has not been able to identify any expense associated with the TCEQ permit application process that will be rendered entirely useless or valueless.

While Green Valley argues that a portion of its 2006 Wastewater Master Plan will be rendered useless or valueless by this proceeding,¹⁷ it admits that some, if not most, of the plan will

¹⁰ See Tex. Gov. Code Ann. § 311.021 (West 2013) (“In enacting a statute, it is presumed that: . . . the entire statute is intended to be effective.”)

¹¹ See U.S. Const. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

¹² Tex. Gov. Code Ann. § 312.002 (West 2013).

¹³ Webster’s Revised Unabridged Dictionary (1913).

¹⁴ *Id.*

¹⁵ Green Valley’s Response to Cibolo RFA 2-11.

¹⁶ Green Valley Appraisal Report at p. 5.

¹⁷ Korman Direct at 13.

still be useful. Thus, Green Valley has tacitly admitted that the entire plan is neither useless nor valueless.

Green Valley states that it spent \$325,000 dollars to acquire property for the construction of a wastewater facility. Green Valley multiplies \$325,000 by 2.315% to get \$7,524 to which it claims it is entitled. However, in an RFA response, Green Valley admits that no portion of the land will actually be rendered useless or valueless by this proceeding.¹⁸

Finally, Green Valley claims that the lost revenue resulting from the decertification is a property interest that has been rendered useless or valueless. Staff questions whether or not the revenue stream associated with a CCN is property; however, even if it is, Green Valley would only be losing 2.315% of its revenue;¹⁹ thus, the revenue “right” associated with Sewer CCN No. 20973 could not be said to have been rendered useless or valueless, because it still has some value.

C. Green Valley’s existing appraisal is not limited to property that has been rendered useless or valueless.

Green Valley does not have any property that will be rendered useless or valueless by this proceeding. Thus, all property and financial interests identified in Green Valley’s appraisal are outside the scope of this proceeding.

IV. Conclusion

Although it may appear inequitable to Green Valley, Texas law is clear that TWC § 13.255 only entitles utilities to compensation when decertification results property being transferred or rendered valueless or useless. Though the decertification sought in this proceeding may affect the value and usefulness of Green Valley’s property, it cannot be said to render any of it completely valueless or useless.

¹⁸ Green Valley’s Response to Cibolo RFA 2-10.

¹⁹ Green Valley Appraisal Report at p. 4.

DATE: January 10, 2017

PUBLIC UTILITY COMMISSION
LEGAL DIVISION

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 10, 2017, in accordance with P.U.C. Procedural Rule 22.74.

Landon J. Lill