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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 §
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NECESSITY IN GUADALUPE §
COUNTY §

PUBLIC UTILITY COMMISSION

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COMMISSION STAFF'S INITIAL BRIEF

Respectfully Submitted,

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Dated: February 10, 2017

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COMMISSION STAFF'S INITIAL BRIEF

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Initial Brief, the deadline for which is February 10, 2017. Therefore, this brief is timely filed.

I. Introduction

On March 8, 2016, the City of Cibolo file an application for single certification of an area within its corporate limits and to decertify that portion of Green Valley Special Utility District's (Green Valley) sewer certificate of convenience and necessity in Guadalupe County, under Texas Water Code § 13.255 (TWC) and 16 Texas Administrative Code § 24.120(TAC). On December 9, 2016, a partial Summary Decision was entered based on the uncontested point that the City of Cibolo has not requested Green Valley to transfer any of its property to the City of Cibolo. The remaining issues to be determined 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 has identified spent money and future revenue from future customers as "property" that will be rendered useless or valueless by this proceeding.¹ It is Staff's position that

¹ Agreed Stipulations at 2-3.

these do not qualify as property, and therefore, there is nothing that will be rendered useless or valueless.

II. Argument

A. Green Valley has no property that will be affected by this proceeding.

In a Texas Water Code § 13.255² proceeding, a city would be taking or rendering useless or valueless a utility's existing infrastructure. Arguably, in a straightforward case, TWC § 13.255(g) would entitle the utility to compensation for any impact on existing indebtedness for, "the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service the area in question," impact on future revenues lost from existing customers, and necessary and reasonable legal expenses and professional fees.³ This is not a straightforward case, there is no existing indebtedness, and TWC § 13.255(g) does not apply.

Green Valley has no existing sewer infrastructure within the area to be decertified.⁴ Nor has Green Valley contracted for the design of sewer infrastructure within the area to be decertified.⁵ In fact, Green Valley does not currently operate a sewer system anywhere.⁶ Thus, there is no sewer infrastructure that will be rendered useless or valueless by this proceeding, and Green Valley is not clearly entitled to compensation under TWC § 13.255(g).

As there is no obvious property affected by this proceeding, Green Valley has designed a novel definition for property--spent money. Specifically, Green Valley contends the following expenditures constitute property rendered useless or valueless by this proceeding:

- (a) Dollars spent by GVSUD [Green Valley] for engineering and planning to implement GVSUD's 2006 Wastewater Master Plan allocable to the proposed decertification area;

² Texas Water Code § 13.255 (West 2016) (TWC).

³ TWC § 13.255(g).

⁴ Agreed Stipulations at 3.

⁵ *Id.*

⁶ Tr. at 140:14-16 (Allen Cross).

- (b) Dollars expended by GVSUD to obtain a Texas Pollutant Discharge Elimination System permit from the Texas Commission on Environmental Quality allocable to the proposed decertification area;
- (c) Dollars expended by GVSUD to purchase an approximate 65 acre tract of land allocable to the proposed decertification area;
- (d) Dollars expended by GVSUD for legal fees and appraiser expenses in this docket.⁷

However, none of these expenditures are actually a type of property.

1. Spent money is not property.

Property as used in the Texas Water Code, refers to “every species of valuable right and interest.”⁸ Spent money has no inherent value. A person cannot transfer or acquire spent money. Nor is value based on the amount of money a company has spent during the entirety of its existence. While the price of a property might provide evidence of that property’s value, money once spent is no longer the property of the spender. In other words, spent money is not a form of property because it lacks value.⁹

Green Valley considers its engineering and planning activities to be property, but has not claimed that any resulting designs would be affected by this proceeding.¹⁰ While Staff would agree that designs for a sewer system would be property, engineering activities are merely expenses—spent money—and spent money is not property because it has no value.¹¹

Similarly, money spent unsuccessfully obtaining a Texas Pollutant Discharge Elimination System permit also has no value. While the expenditures might be useful in valuing an obtained permit, the expenditures themselves are merely spent money, and therefore no longer the property

⁷ Agreed Stipulations at 2-3 (Feb. 9, 2017).

⁸ *State v. Pub. Util. Com'n of Texas*, 883 S.W.2d 190, 200 (Tex. 1994)

⁹ *Id.*

¹⁰ Agreed Stipulations at 2-3.

¹¹ *State v. Pub. Util. Com'n of Texas*, 883 S.W.2d 190, 200 (Tex. 1994)

of Green Valley. Like money spent on engineering activities, money spent on in the unsuccessful pursuit of TCEQ permits is completely irrelevant to the present proceeding.

The same is true for Green Valley's expenditures on the 65 acre tract of land. After Green Valley spent money to purchase the land, it lost ownership of the money but gained ownership of the land. The land, not the spent money, is the property of Green Valley, and Green admits that the land will not be rendered useless or valueless by this proceeding.¹²

Legal expenses too are spent money, and are thus, not property. While Staff acknowledges that a SOAH Administrative Law Judge has recently rendered a proposal for decision to the contrary,¹³ the relevant statute, TWC § 13.255(g) only awards legal expenses when "personal property" has been rendered useless or valueless.¹⁴ There is no statutory language stating legal expenses are useless or valueless property. If legal expenses were useless property, there would be no point to the statute explicitly awarding legal expenses.¹⁵

Further, treating legal expenses as property would lead to incongruous results. It could be construed that the government would be conducting a taking every time it engaged in litigation, and would be constitutionally required to reimburse every litigant.¹⁶ Similarly, a utility that had no property rendered useless or valueless by a TWC § 13.255 proceeding but that frivolously incurred legal expenses contesting the proceeding would be entitled to its legal expenses. Legal expenses simply are not property.

2. Future CCN revenues are not property.

In addition to claiming spent money constitutes property, Green Valley also alleges that its expected revenues from its CCN also constitute property that will be rendered valueless or useless by this proceeding. While a business's future revenues might ordinarily be considered property,

¹² Tr. at 106:13-14 (Korman Cross)

¹³ *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*, Proposal for Decision at 36 (Jan. 27, 2017).

¹⁴ See TWC § 13.255(c) authorizing compensation only when property is "rendered useless or valueless" or transferred. TWC § 13.255(g) does not contain any language describing when compensation is necessary. Rather, it is simply the method of determining compensation due under TWC § 13.255(c).

¹⁵ 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."

¹⁶ See U.S. Const. amend. V ("[N]or shall private property be taken for public use, without just compensation.").

future CCN revenues are a unique situation because a CCN is not the property of the CCN holder.¹⁷ As a CCN is not property, it logically follows that the rights that flow from a CCN are not property either.

Furthermore, TWC § 13.255(g) only grants compensation lost revenues from existing customers and Green Valley has no existing customers. While Staff contends that TWC § 13.255(g) is not applicable to this case because Green Valley has no property being rendered useless or valueless, the legislature's decision to limit compensation in these proceedings to future revenues from existing customers suggests that it is not treating revenue from future customers as a property right.

B. To the extent that property of Green Valley is affected by this proceeding, it will not be rendered useless or valueless.

The terms valueless and useless are not specifically defined in the Texas Water Code; thus, they are to be interpreted using their ordinary meaning.¹⁸ Valueless means “being of no value.”¹⁹ 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.”²⁰ Thus, if a property has some use, it has not been rendered useless.

Green Valley contends that some of its property has been rendered useless or valueless in part—in other words devalued.²¹ However, Green Valley has admitted that none of its property (real, personal, and devised) will be rendered completely useless and valueless by this proceeding.²² As Green Valley has effectively admitted that all of its property will retain at least some value, it cannot properly be said to have been rendered useless or valueless.

¹⁷ Tr. at 102:19-23 (Korman Cross)

¹⁸ Tex. Gov. Code Ann. § 312.002 (West 2013).

¹⁹ Webster's Revised Unabridged Dictionary (1913).

²⁰ *Id.*

²¹ Tr. at 100-112 (Korman Cross).

²² *Id.*

C. Green Valley's appraisal includes property that is not rendered useless or valueless by this proceeding.

Unlike the City of Cibolo's appraisal, which correctly identified no property as being rendered useless or valueless by this proceeding,²³ Green Valley's appraisal includes spent money and future revenue from future customers.²⁴ As explained above, neither of these categories are actually property. Thus, Green Valley's appraisal is not limited to the property rendered useless or valueless by this proceeding:

III. Conclusion

For the reasons discussed above, Staff respectfully requests that the presiding officer issue a proposal for decision that recommends that the only property that no Green Valley property will be rendered useless or valueless by this proceeding, and that Green Valley's appraisal includes property outside the scope of this proceeding.


²³ Cibolo Ex. 1.

²⁴ Green Valley Ex. 1.

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CERTIFICATE OF SERVICE

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



Landon J. Lill.