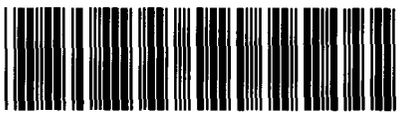

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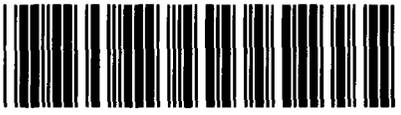

Item Number: 148

Addendum StartPage: 0

PUC DOCKET NO. 45702
SOAH DOCKET NO. 473-16-5296.WS

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	§	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

GREEN VALLEY'S INTERIM APPEAL OF SOAH ORDER NO. 12

TO THE HONORABLE COMMISSIONERS:

COMES NOW Green Valley Special Utility District ("Green Valley" or "GVSUD") and files this Interim Appeal of a portion of SOAH Order No. 12 Memorializing Prehearing Conference; Denying Motion to Dismiss or Abate; Adopting Procedural Schedule; and Stating Record Close Date ("Appeal"). Specifically, Green Valley appeals the portion of Order No. 12 denying Green Valley's August 9, 2017 Supplemental Plea to the Jurisdiction, Motion to Dismiss, and, in the Alternative, Motion to Abate. In support of its Appeal, Green Valley would show as follows.

I. BACKGROUND

This docket ("Cibolo Docket") involves a TWC § 13.255 application by the City of Cibolo ("Cibolo") seeking partial decertification of Green Valley's sewer certificate of convenience and necessity ("CCN") service area.[1] In its June 30, 2016 Preliminary Order in the Cibolo Docket, the Commission addressed, *inter alia*, the following threshold issue:

> May the Commission deny a municipality's application seeking single certification under Texas Water Code (TWC) § 13.255 solely on the basis that a

[1] In pending PUC Docket No. 45956, *Application of City of Schertz for Single Certification in Incorporated Area and to Decertify Portions of Green Valley Special Utility District Sewer Certificate of Convenience and Necessity in Guadalupe County*, the City of Schertz ("Schertz") filed a similar TWC § 13.255 application against Green Valley.

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> retail public utility that holds a CCN for all or part of the requested area is also a holder of a federal loan made under section 1926(a) of the Federal Consolidated Farm and Rural Development Act? In answering this issue, please address whether the Commission has authority to determine whether a federal statute preempts state law.[2]

The Commission determined in the Cibolo Preliminary Order that, at that time, it did not have authority to determine whether federal law preempts the statutory scheme under Texas Water Code § 13.255.[3] Noting that "Green Valley is seeking a federal district court ruling on whether § 1926(b) of the Federal Consolidated Farm and Rural Development Act bars Cibolo from applying to this Commission for single certification to provide sewer service in a portion of Green Valley's service area," the Commission stated as follows:

> Unlike the Commission, that [federal court] forum has the authority to determine whether federal law preempts a statute enacted by the Legislature. Unless Cibolo withdraws its application here – *or a court orders otherwise* – the Commission must comply with the statutory duties and timelines mandated by the Legislature."[4]

Since the Commission's rulings, a number of events have transpired in the federal court proceeding referenced by the Commission in the Cibolo Preliminary Order. Most notably, on August 2, 2017, the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") issued an opinion reversing the United States District Court for the Western District of Texas's ("District Court") dismissal of Green Valley's federal complaint and remanding to the lower court for further proceedings consistent with the Fifth Circuit's decision.[5]

This new Fifth Circuit decision leads Green Valley to anticipate that the District Court will ultimately grant Green Valley's requested declaratory and injunctive relief premised on

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[2] Cibolo Preliminary Order (June 30, 2016) at 2 (Docket Item No. 53).

[3] *Id.* at 4.

[4] *Id.* (emphasis added).

[5] *Green Valley Special Util. Dist. v. City of Cibolo*, Cause No. 16-51282 in the United States Court of Appeals for the Fifth Circuit (Aug. 2, 2017). A copy of the Fifth Circuit's decision is attached hereto as **Exhibit A**, and may be found at 2017 U.S. App. LEXIS 14205.

federal 7 U.S.C. § 1926(b) ("§ 1926(b)")[6] service area protection and prohibit Cibolo from further prosecution of its Application in this TWC § 13.255 proceeding, Thus, Green Valley submits that dismissal is now appropriate for lack of jurisdiction[7] under federal law in light of the Fifth Circuit's new clarification of § 1926(b) under the precise facts of this case. In the alternative, Green Valley submits that judicial economy favors abatement of this proceeding pending the federal district court's anticipated grant of Green Valley's complaint for injunctive and declaratory relief against Cibolo to prevent a need to unwind decertification granted here. The new Fifth Circuit decision compelled Green Valley to file a Supplemental Plea to the Jurisdiction, Motion to Dismiss, and, in the Alternative, Motion to Abate ("Motion to Dismiss") with the presiding SOAH Administrative Law Judge ("ALJ") on August 9, 2017. This Appeal of that portion of the ALJ's August 14, 2017 Order No. 12 denying Green Valley's Motion to Dismiss is timely filed pursuant to PUC PROC. R. 22.123(a)(2). Moreover, jurisdictional issues such as those raised by Green Valley in this Supplemental Plea and Motion to Dismiss may be raised at any stage and before any forum presiding over the case. Green Valley's Appeal on jurisdictional grounds is thus properly within the Commission's authority to revisit in this docket.[8]

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[6] "The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event." 7 U.S.C. § 1926(b); **Exhibit A** at 2-3.

[7] 16 TAC § 22.181(d)(1).

[8] *E.g., City of Allen v. Public Util. Comm'n*, 161 S.W.3d 195, 199 (Tex. App. – Austin 1995, no pet.) ("The question of jurisdiction is fundamental and can be raised at any time in the trial of a case or on appeal.") (citing *Public Util. Comm'n v. J.M. Huber Corp.*, 650 omitted).S.W.2d 951, 955 (Tex. App. – Austin 1983, writ ref'd n.r.e.)).

II. INTERIM APPEAL

A. The Commission Should Reverse the ALJ's Denial of Green Valley's Plea to the Jurisdiction and Motion to Dismiss and Grant the Requested Relief

Green Valley agrees with the ALJ's summary of the issues raised by Green Valley's Plea to the Jurisdiction and Motion to Dismiss ("Motion to Dismiss"). GVSUD disagrees with and appeals the ALJ's denial of its Motion to Dismiss. The ALJ's denial was based solely on the ALJ's presumed lack of jurisdiction to grant the requested relief of dismissal on the grounds asserted because of a preliminary Commission decision in this case prior to the new Fifth Circuit decision. SOAH Order No. 12 states, "[t]he ALJ concluded she lacks jurisdiction to rule on the merits of issues raised in the Motion because they are outside the scope of the issues the Commission referred to SOAH."[9] However, the Commission recognized in the Cibolo Preliminary Order that dismissal would be appropriate if "***a court orders otherwise***."[10] The Commission concluded in the Cibolo Preliminary Order that "it does not have authority to determine whether § 1926(b) of the Federal Consolidated Farm and Rural Development act [*sic*] federally preempts TWC § 13.255."[11] Green Valley respectfully submits that the Fifth Circuit decision satisfies the Commission's pre-condition to dismissal and Cibolo's Application must now be dismissed for lack of jurisdiction in recognition of the Fifth Circuit's statement clarifying § 1926(b) law in this circuit as applied to the specific facts of this Cibolo Docket.

Neither the ALJ nor Commission need to decide whether Green Valley's sewer CCN service area is protected under § 1926(b from Cibolo's encroachment in violation of same. The Fifth Circuit has now made that decision. Thus, the Commission's prior reasoning that it cannot decide this federal issue is no longer a valid basis for declining to grant Green Valley's requested

[9] SOAH Order No. 12 at 3.

[10] Cibolo Preliminary Order at 4 (emphasis added).

[11] *Id.*

relief. The Commission's prior reasoning that no authority was cited "requiring the Commission to conduct its own inquiry and application of federal-loan law in a Commission proceeding under TWC § 13.255"[12] is no longer germane. Green Valley simply requests that the Commission give effect to the new Fifth Circuit decision and follow the law.

Other Commission statements in the Cibolo Preliminary Order, made to justify denying Green Valley's prior plea to the jurisdiction, were wrong at the time they were decided. The Cibolo Preliminary Order relied, at least in part, on the Commission's inability "to locate a provision within the Texas Water Code permitting the Commission to abdicate statutory duties regarding service-area certification based upon federal-preemption concerns."[13] The Texas Water Code explicitly gives deference to federal preemption principles where it provides that "[a] rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body."[14] In the Cibolo Preliminary Order, the Commission also wrongly relied on a *different* statutory provision not applicable to Cibolo's requested decertification in this docket, TWC § 13.254(a-1), for the proposition that "the only TWC certification provisions that make mention of the federal-rural-loan programs expressly *prohibit* the Commission from denying applications to revoke all or part of a CCN...on the basis that a certificate holder is a borrower of a federal loan program."[15] Not only is that statutory provision (TWC § 13.254(a-1)) not applicable here, but the absence of similar language in TWC § 13.255, the provision that *is* germane to Cibolo's application, should reasonably lead the Commission to conclude that qualified federal indebtedness of a CCN holder protected by § 1926(b) *is* a bar to a TWC§ 13.255 decertification. If § 1926(b) does not provide protection against decertification requests under federal law, then

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[12] Cibolo Preliminary Order at 4.

[13] *Id.*

[14] TWC § 13.181(b).

[15] Cibolo Preliminary Order at 4.

the TWC § 13.254 provision purporting to bar the Commission from such considerations, in addition to being unlawful, would be moot. Why would the legislature attempt to prohibit the Commission from exercising authority that, according to the Cibolo Preliminary Order, it does not have in the first place?

Regardless, the Fifth Circuit has now determined that Green Valley's indebtedness under a federal rural development loan protects its CCN area from municipal encroachment under 7 U.S.C. § 1926(b), finding that "§ 1926(b)'s plain language does not limit the statute's protection to services that have received federal financing."[16] As set forth in its briefing on its prior plea to the jurisdiction and motion to dismiss,[17] and as recognized by the Fifth Circuit, Green Valley (1) is an "association" within the meaning of §1926; (2) has a qualifying federal loan outstanding; and (3) has made service available to the disputed area sought by the City. In reaching its determination to reverse the lower court's dismissal of Green Valley's complaint, the Fifth Circuit noted that Cibolo did not dispute either that Green Valley was an association or that it had a qualifying federal loan,[18] thus satisfying the first two of the three prerequisites to § 1926 protection.[19] The Fifth Circuit's decision squarely addressed the third prong: whether Green Valley has made service available to the disputed area. On this issue, the Fifth Circuit decision has now specifically rejected Cibolo's theory that Green Valley is not protected by § 1926(b) because its loan was secured by and funded only Green Valley's water service and not its sewer

[16] **Exhibit A** at 7.

[17] Green Valley incorporates herein by reference for all purposes the following filings in this Cibolo Docket (Docket No. 45702): (1) April 29, 2016 Plea to the Jurisdiction and Motion to Dismiss; (2) June 6, 2016 Initial Brief on Threshold Legal/Policy Issues; and (3) June 14, 2016 Reply Brief on Threshold Legal/Policy Issues. Green Valley further incorporates herein by reference for all purposes the following filings in the Schertz Docket (Docket No. 45956): (1) May 26, 2016 Motion to Intervene, Plea to the Jurisdiction, and Motion to Dismiss with Debt Information Listing; (2) June 22, 2016 Reply in Support of its Plea to the Jurisdiction and Motion to Dismiss; and (3) July 7, 2016 Reply to Schertz's July 1, 2016 Filing.

[18] **Exhibit A** at 3-4 (citing *North Alamo Water Supply Corp. v. City of San Juan*, 90 F3d 910, 915-916 (5th Cir. 1996) (per curiam)).

[19] *North Alamo*, 90 F.3d at 915-916.

service.[20] The Fifth Circuit held that a CCN holder's duty under Texas law to provide continuous and adequate service satisfies the third prong and that § 1926(b) protection is not limited to the specific service, *i.e.*, water or sewer service, funded by the federal loan.[21]

As a result of the Fifth Circuit's decision that § 1926(b) renders Green Valley's sewer CCN area "sacrosanct,"[22] the federal preemption issue that the Commission sought to avoid earlier in this docket has been *de facto* decided. If federal law protects Green Valley's sewer CCN area from municipal encroachment, then granting Cibolo's application would violate the Supremacy Clause of the United States Constitution, which provides that: "This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land . . . anything in the Constitution or Laws of any State to the Contrary notwithstanding."[23] There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress.[24] "There is . . . preemption of any local or state law that purports to take away from an indebted rural water association any territory for which the association is entitled to invoke the protection of §1926(b)."[25] The Fifth Circuit has now reaffirmed its stance on § 1926(b) previously expressed in *North Alamo* and decided that protection specifically applies to Green Valley's sewer CCN service area. The Fifth Circuit was provided an opportunity to take a different approach and did not.

Green Valley anticipates that Cibolo will argue, based on its counsel's representations at the August 10, 2017 prehearing conference before the SOAH ALJ, that "nothing has changed" as

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[20] **Exhibit A** at 8 ("We decline the city's invitation to read adjectives into § 1926(b).").

[21] *Id.* at 3, 7.

[22] *North Alamo*, 90 F.3d at 915 ("[t]the service area of a federally indebted association is sacrosanct").

[23] U.S. CONST. art. VI, cl. 2.

[24] *In re Grand Jury Proceedings*, 607 F. Supp. 2d at 806 (citing *Rose v. Arkansas State Police*, 479 U.S. 1, 4, 107 S. Ct. 334, 93 L. Ed 2d 183 (1986))

[25] *Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 715-716 (10th Cir. 2004) (citations omitted).

the result of the Fifth Circuit's decision. While it is true that the federal court proceedings are not final, it is also true that the law of the case and Fifth Circuit has now been determined. Thus, on remand, the federal district court will be bound to follow this decision. Similarly, the Commission should follow the Fifth Circuit's determination by granting Green Valley's plea to the jurisdiction. Given the Fifth Circuit's determination that Green Valley's sewer CCN service area is protected from municipal encroachment, granting Cibolo's requested decertification would constitute a direct violation of federal law.

The SOAH ALJ's sole reasoning for denying Green Valley's Motion to Dismiss was that "she lacks jurisdiction to rule on the merits of issues raised in the Motion because they are outside the scope of the issues the Commission referred to SOAH."[26] While that may be technically correct, Green Valley would like the Commission to reconsider its prior ruling in light of the new Fifth Circuit decision. The Commission must now simply follow the law as set forth in that decision rather than decide the § 1926(b) protection issue itself. The Commission should dismiss Cibolo's application now to prevent a need to unwind a Commission approval of the Cibolo application later.

B. Alternatively, the Commission Should Reverse the ALJ's Denial of Green Valley's Motion to Abate.

Green Valley submits that, given the Fifth Circuit's pronouncement of the law of the case, the anticipated outcome of the federal court proceeding is the granting of Green Valley's requested injunctive and declaratory relief. However, Green Valley acknowledges that its requested relief is not yet granted. Thus, in the alternative to its plea to the jurisdiction and motion to dismiss, Green Valley appeals the ALJ's denial of its Motion to Abate, and seeks that the Commission enter an order reversing SOAH Order No. 12 on this point and staying any

[26] SOAH Order No. 12 at 3 (Aug. 14, 2017).

Commission consideration on the merits of Cibolo's decertification application in this docket pending final judgment in the federal district court proceeding. Any other approach at this juncture would result in a tremendous waste of resources for all involved and could quite possibly lead to further litigation involving not only the parties, but also the Commission.

At the time that the Commission denied Green Valley's prior request to abate the proceeding, the federal court proceedings were at a very early stage. Moreover, the Commission cannot now reasonably rely on the statutory mandate to follow the deadlines set forth in TWC § 13.255 as grounds for denying Green Valley's previous requests for relief[27] as it did at the time of the Cibolo Preliminary Order. The Cibolo proceeding was initiated in March 2016. Green Valley has vigorously pursued its requested federal relief during the entire eighteen months of the Commission proceedings in this docket, but federal proceedings are lengthy by their nature. The Fifth Circuit's August 2, 2017 decision changes the context in which Cibolo's application and the propriety of Commission action on that application must be viewed. The Commission should not continue moving this docket toward a final order that would likely require unwinding to the detriment of all involved. Given that 18 months have passed, and the Commission has yet to even make a determination on administrative completeness or sufficiency of notice in this docket, abating final consideration of Cibolo's application will result in no discernable harm or prejudice to the parties pending final resolution of the federal court proceedings.

Absent outright dismissal of Cibolo's application, judicial economy favors abatement. In contrast, proceeding to a final grant of Cibolo's application despite the Fifth Circuit's pronouncement that Green Valley's service area is federally protected from municipal encroachment would result in unnecessary expense to all parties as well as consumption of additional Commission resources that could easily be avoided. Moreover, the final decision in

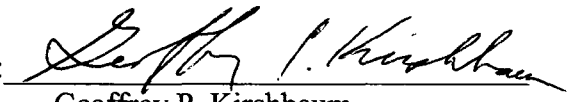
[27] Cibolo Preliminary Order at 4 ("...the Commission must comply with the statutory duties and timelines mandated

federal court confirming that § 1926(b) preempts TWC § 13.255 will be binding not only on Green Valley and Cibolo, the parties to that litigation, but on the Commission and its officials. Short of dismissal, abatement is the superior alternative to a forced unwinding process following decertification of Green Valley's federally protected sewer CCN service area.

III. CONCLUSION AND PRAYER

Green Valley Special Utility District hereby respectfully requests: (1) that the Commission reverse SOAH Order No. 12's denial of GVSUD's Plea to the Jurisdiction and Motion to Dismiss and enter an order granting its Plea and Motion; (2) that, in the alternative, the Commission reverse SOAH Order No. 12's denial of GVSUD's alternative Motion to Abate and issue an order abating further Commission consideration of Cibolo's application in this docket pending a final decision in the pending federal Fifth Circuit and District Court proceeding; and (3) for all other and further relief to which Green Valley is justly entitled at law or in equity.

Respectfully submitted,

By: 

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ATTORNEYS FOR GREEN VALLEY SPECIAL UTILITY DISTRICT

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by the Legislature.").

CERTIFICATE OF SERVICE

I hereby CERTIFY that on August 21, 2017, 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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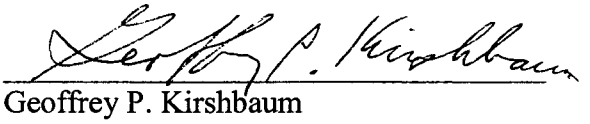


Geoffrey P. Kirshbaum

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-51282

United States Court of Appeals
Fifth Circuit
FILED
August 2, 2017
Lyle W. Cayce
Clerk

GREEN VALLEY SPECIAL UTILITY DISTRICT,

Plaintiff–Appellant,

versus

CITY OF CIBOLO, TEXAS,

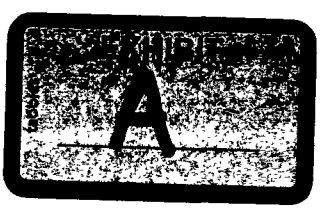
Defendant–Appellee.

Appeal from the United States District Court
for the Western District of Texas

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

Green Valley Special Utility District ("Green Valley") seeks an injunction, claiming that 7 U.S.C. § 1926(b) prohibits the City of Cibolo from encroaching on its sewer service. Because the district court's interpretation is inconsistent with the statute's plain language, we reverse and remand its dismissal of the complaint.



I.

The Public Utility Commission of Texas ("PUC") issues certificates of convenience and necessity ("CCNs"), which give holders the exclusive right to provide water or sewer service within particular service areas.[1] Green Valley is a special utility district[2] with a service area encompassing parts of Guadalupe, Comal, and Bexar Counties. Green Valley holds two CCNs: one for water service and one for sewer service. In 2003, Green Valley obtained a $584,000 loan from the United States to fund its water service. That loan, which remains outstanding, is secured by Green Valley's water utility revenues.

The city is a municipality located in Guadalupe and Bexar Counties. In March 2016, it applied for a CCN to provide sewer service to all of Cibolo, including portions within Green Valley's service area. Granting the application would require the PUC to strip Green Valley of the right to provide sewer service to those areas of Cibolo currently within Green Valley's service area. The application is for sewer service only; if granted, it would not disturb Green Valley's water service.

Section 1926 is the statute governing the U.S. Department of Agriculture's water and sewer utility loan program. Green Valley claims that the application violates § 1926(b), which prohibits municipalities from encroaching on services provided by utilities with outstanding loans:

> The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to

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[1] *See* TEX. WATER CODE § 13.242(a) (setting forth the general requirement that utilities obtain CCNs before providing water or sewer service).

[2] *See id.* § 65.011 (providing for the creation of special utility districts).

> secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

§ 1926(b).

In May 2016, Green Valley sued for injunctive and declaratory relief, alleging that § 1926(b) protects both its sewer and water service from municipal encroachment. The city moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), claiming that § 1926(b)'s protection extends only to services secured by an association's federal loan—in this case, only Green Valley's water service. The district court dismissed though rejecting the city's interpretation of the statute. It found that "§ 1926(b) protects only the service for which the loan was made—the funded service—regardless of what secures the loan." The court gave Green Valley an opportunity to amend its complaint to specify which of its services are funded by federal loan proceeds.

In August 2016, Green Valley filed an amended complaint in which it explained that the federal loan funded only its water service and elaborated on its earlier theories for why § 1926(b) should be interpreted to prohibit municipalities from encroaching on any services made available by federally indebted utilities. The city filed a second motion to dismiss, which the court granted.

II.

This is a tight question of statutory interpretation. Section 1926(b) prohibits the curtailment or limitation of "[t]he service provided or made available through any such association." § 1926(b). Where a CCN imposes a duty on a utility to provide a service, that utility has "provided or made available" that service under § 1926(b),[3] and both sides agree that Green Valley qualifies as

[3] *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915–16 (5th Cir. 1996) (per curiam).

an "association." The dispute is over the meaning of "service," which the statute does not define. Green Valley claims that § 1926(b)'s protection extends to any service made available by a federally indebted utility. The district court decided, to the contrary, that § 1926(b) applies only to services that are funded by federal loans. We have never considered a case with these facts, though we have held that § 1926(b) "should be liberally interpreted to protect [federally] indebted rural water associations from municipal encroachment."[4] The only circuit that has considered this issue found that § 1926(b) applies only to "the type of service financed by the qualifying federal loan."[5]

"When interpreting statutes, we begin with the plain language used by the drafters."[6] The plain language of § 1926(b) is dispositive.

The statute refers to "[t]he service provided or made available through any such association." The parties urge us to read "service" in one of the following three ways: (1) as a noun that refers to a combined water-and-sewer service; (2) as a noun that refers to a specific service—either a water service or a sewer service—made available by a federally indebted utility; or (3) as a noun that refers to a specific service made available by a federally indebted utility and financed through the federal loan program. Green Valley favors the first two readings; the city, the district court, and the Eighth Circuit adopt the third. The trouble with the third reading is that the statute does not include any language limiting "service" to those services that have received federal

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[4] *Id.* at 915.

[5] *See Pub. Water Supply Dist. No. 3 v. City of Lebanon*, 605 F.3d 511, 520 (8th Cir. 2010). The court did not clarify what it meant by "financed," explaining that "we need not decide whether it is the type of service which provides the collateral for the loan or the type of service for which the loan was made that is entitled to protection." *See id.* at 520 n.9.

[6] *United States v. Uvalle-Patricio*, 478 F.3d 699, 703 (5th Cir. 2007) (quoting *United States v. Williams*, 400 F.3d 277, 281 n.2 (5th Cir. 2005)).

financing. The statute refers just to "[t]he service." *See* § 1926(b).

Under either of the first two readings, Green Valley wins. If "service" encompasses what Green Valley describes as its "integrated" water-and-sewer service, then § 1926(b) protects its sewer service from municipal encroachment.[7] If "service" refers to a specific service made available by a federally indebted utility, it must encompass Green Valley's sewer service, which is a "service provided or made available" by a federally indebted utility.

The city claims that Congress's use of the definite article "the" before "service," combined with the use of the singular form of the noun, implies that the statute is referring to a specific service—the service "provided or made available by the federal debt."[8] We disagree.

The presence of a definite article can affect a statute's meaning.[9] But, for two reasons, Congress's use of "the" in § 1926(b) is not decisive. First, it is consistent with "service" referring to an integrated water-and-sewer service. Second, if "service" refers to a specific service, it must be possible to read it as referring to more than one service. Otherwise, if an association received federal loans for both its water and sewer service, only one of them would be able to receive § 1926(b)'s protection. If "service" refers to a specific service but can be used iteratively, then both Green Valley's water and sewer service can be examples of "[t]he service made available through any such association." Thus, the use of "the" in § 1926(b) is consistent with all three readings of "service."

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[7] Green Valley notes that its water and sewer services share employees, a board of directors, a general manager, and an operating account.

[8] The city's claims track the Eighth Circuit's reasoning in *Public Water Supply*, 605 F.3d at 519–21.

[9] *See, e.g., Brooks v. Zabka*, 168 Colo. 265, 269 (1969) ("It is a rule of law well established that the definite article 'the' particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.'").

Congress used both "service" and "services" throughout § 1926. The city claims that if Congress wanted to safeguard all services made available by a federally indebted utility, it would have used "services," not "service," in § 1926(b). But though "each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole,"[10] it is not evident what conclusions we can draw from Congress's various uses of "service" and "services" in § 1926. The statute uses "service" seven times outside § 1926(b): three times as part of a proper noun,[11] twice as a verb ("service the loan"),[12] once as an apparently countable noun,[13] and once as an apparently uncountable noun.[14] The statute refers to "services" four times, but none of those references is obviously describing water or sewer services: The word is used twice to refer to broadband services,[15] once to refer to "small-scale extension services" for water and sewer projects,[16] and once to refer to "services . . . of local governments and local economic development organizations."[17] None of this sheds much light on the meaning of "service" in § 1926(b).

The city points out that § 1926(b) prohibits "the granting of any private franchise for *similar service* within such area during the term of such loan." § 1926(b) (emphasis added). It urges the court to read that prohibition in

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[10] *Uvalle-Patricio*, 478 F.3d at 703 (quoting *Williams*, 400 F.3d at 281 n.2).

[11] *See* 7 U.S.C. § 1926(a)(9) ("Public Health Service Act"); *id.* § 1926(a)(13) ("Soil Conservation Service"); *id.* § 1926(a)(22)(A)(ii) ("Rural Utilities Service").

[12] *See id.* § 1926(a)(24)(B)(i); *id.* § 1926(a)(24)(B)(ii).

[13] *See id.* § 1926(a)(20)(E) ("local broadband service").

[14] *See id.* § 1926(a)(4)(B) (defining "project" to "include facilities providing central service or facilities serving individual properties, or both.").

[15] *See id.* § 1926(a)(20)(E) (referring to "common carrier facilities and services" and "affordable broadband services").

[16] *See id.* § 1926(a)(2)(B)(i)(II).

[17] *See id.* § 1926(a)(23)(A).

tandem with the prohibition on municipal encroachment on federally indebted utilities' service areas. The city claims that "similar service" should be understood to refer to a similar variety of a specific service—that is, a water service is similar to another water service, and a sewer service is similar to another sewer service—and claims that the "similar service" requirement must apply to municipalities as well as to private entities. But that logic assumes that "service" refers to the federally financed service. If "service" refers to any service made available by a federally indebted utility, then "similar service" refers to any services that are similar to those provided by the utility.

Section 1926(b) has two purposes: "(1) to encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and (2) to safeguard the viability and financial security of such associations . . . by protecting them from the expansion of nearby cities and towns."[18] Green Valley's interpretation is consistent with those purposes. A utility that is protected from municipal encroachment will be able to achieve greater economies of scale, thereby decreasing its per-user costs, and will be less vulnerable to financial disruptions than would a utility that is not protected from municipal encroachment.

It is possible that Congress intended to limit § 1926(b)'s protection to services directly financed by a federal loan. Such a policy would provide federally indebted utilities with substantial benefits while, at the same time, allowing other service providers to compete with federally indebted utilities in the provision of non-federally financed services. But § 1926(b)'s plain language does not limit the statute's protection to services that have received federal financing.

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[18] *N. Alamo*, 90 F.3d at 915.

III.

We decline the city's invitation to read adjectives into § 1926(b). The judgment of dismissal is REVERSED and REMANDED.[19]

[19] Because both of the readings of "service" that Green Valley favors are consistent with the plain language of the statute, we do not decide which one to adopt.