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**P.U.C. DOCKET NO. 45702
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	§ § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**COMMISSION STAFF'S RESPONSE TO GREEN VALLEY'S INTERIM
APPEAL OF SOAH ORDER NO. 12**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Green Valley's Interim Appeal of SOAH Order No. 12:

I. Background

On March 8, 2016, The City of Cibolo (Cibolo) filed an application for single certification of an area within its corporate limits and to decertify that portion of the Green Valley Special Utility District's (Green Valley) sewer certificate of convenience and necessity (CCN) in Guadalupe County. On May 27, 2017, Green Valley filed a complaint in the Western District of Texas seeking to enjoin Cibolo from decertifying Green Valley's sewer CCN.¹ Green Valley alleges that because it has federal funding for its water system, its sewer CCN is protected from decertification by 7 U.S.C.A § 1926(b).²

On October 3, 2016, the Western District dismissed Green Valley's complaint, reasoning that 7 U.S.C.A. § 1926(b) only protected the certificated area of the federally financed service.³

¹ Plaintiff's Original Complaint, *Green Valley Special Util. Dist. v. City of Cibolo*, No. 1:16-cv-00627 (W.D. Tex. May 27, 2017).

² *Id.* at 2-5.

³ *Green Valley Special Util. Dist. v. City of Cibolo*, A-16-CA-627-SS, 2016 WL 5793797 (W.D. Tex. Oct. 3, 2016), *rev'd and remanded sub nom. Green Valley Special Util. Dist. v. City of Cibolo*, 16-51282, 2017 WL 3276554 (5th Cir. Aug. 2, 2017).

In the case of Green Valley, as only its water system has federal financing, only its water system would be protected.⁴ As Cibolo is only seeking to decertify the Green Valley's sewer CCN, the Western District dismissed Green Valley's complaint.⁵

On Aug. 2, 2017, the Fifth Circuit Court of Appeals reversed the Western District's dismissal.⁶ The Fifth Circuit disagreed with the Western District's narrow interpretation of 7 U.S.C.A § 1926(b).⁷ The Fifth Circuit interpreted the protected service to include Green Valley's sewer CCN.⁸ The Fifth Circuit's interpretation makes it clear that 7 U.S.C.A. § 1926(b) prohibits the decertification of Green Valley's sewer CCN. On August 16, 2017, the District filed a petition for rehearing *en banc*.⁹

On August 21, 2017, Green Valley filed a motion to dismiss or in the alternative to abate. Staff has until August 28, 2017, to respond. This response is therefore timely filed.

II. Response

Green Valley's motion can be addressed in at least three ways. It could deny Green Valley's appeal, it could dismiss the case, or it could abate the case. Below is a brief discussion of each option.

A. Denying the Appeal

The preliminary order reasons that Texas Water Code § 13.255 (West 2016) (TWC) does not grant the Commission the discretion to deny Cibolo's application, even if federal law prohibits the decertification.¹⁰ Should the Commission adopt this approach, Green Valley will be left to seek protection only in federal court.

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Green Valley Special Util. Dist. v. City of Cibolo*, 16-51282, 2017 WL 3276554 (5th Cir. Aug. 2, 2017) (petition for rehearing filed).

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Preliminary Order* at 3-4 (Jul. 1, 2016).

While this approach prevents the Commission from having to opine on matters of federal law, it carries the possibility of unnecessary work. Cibolo's decertification of Green Valley's sewer CCN is nearly complete and will likely be finished before there is a final ruling in federal court. If Green Valley ultimately prevails, the Commission may be ordered to undo its decertification of Green Valley's sewer CCN.

B. Dismissal

At this time, it appears that Green Valley has a reasonable chance of prevailing in federal court. Dismissing this case without prejudice could preclude unnecessarily expending time and resources. However, the parties would have to recreate the first phase of this proceeding in the event that Cibolo ultimately prevails.

C. Abatement

Should the Commission decide to abate this case, this would prevent any loss of time and resources from occurring in the event that Green Valley prevails in federal court. In the event that Cibolo prevails, none of the efforts of the parties that were already completed would be lost. However, it is unclear how long it will take the federal courts to ultimately resolve this case. Staff estimates it could range from a few months to several years.

III. Conclusion

Staff does not take a position as to the appropriate treatment of Green Valley's appeal.


DATE: August 28, 2017

PUBLIC UTILITY COMMISSION
LEGAL DIVISION

Respectfully Submitted,

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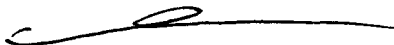


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 28, 2017, in accordance with P.U.C. Procedural Rule 22.74.



Landon J. Lill