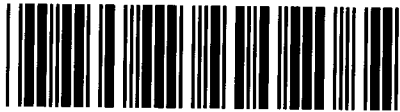




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Addendum StartPage: 0

RECEIVED

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

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PUBLIC UTILITY COMMISSION  
 OF TEXAS

2016 MAY 27 AM 11:42  
 PUBLIC UTILITY COMMISSION  
 OF TEXAS

### ORDER REQUESTING BRIEFING ON THRESHOLD LEGAL/POLICY ISSUES

On March 8, 2016, the city of Cibolo filed an application, under Texas Water Code (TWC) § 13.255 and 16 Texas Administrative Code (TAC) § 24.120, requesting single certification of a sewer service area within Cibolo's corporate limits and decertification of that portion of Green Valley Special Utility District's sewer certificate of convenience and necessity (CCN) in Guadalupe County.

On April 22, 2016, Green Valley filed a motion to intervene. That motion was granted in Order No. 3. On April 29, 2016, Green Valley filed a pleading styled as a plea to the jurisdiction and motion to dismiss, arguing, *inter alia*, that Cibolo's application must be dismissed for lack of jurisdiction because Green Valley holds a United States Department of Agriculture (USDA) rural-development loan, and therefore section 1926(b) of the Federal Consolidated Farm and Rural Development Act bars municipal encroachment of Green Valley's sewer CCN.<sup>1</sup>

On May 4, 2016, the director of the Commission Advising and Docket Management division issued an order, requiring Cibolo, and inviting other interested parties, to file a list of issues to be addressed in this proceeding. Cibolo, Green Valley, and Commission Staff each timely filed lists of issues. Cibolo's list proposed in part that the Commission should determine it is not necessary for Cibolo to show compliance with the Texas Commission on Environmental Quality (TCEQ) minimum requirements for public drinking water because Cibolo is seeking certification

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<sup>1</sup> Green Valley Special Utility District's Plea to the Jurisdiction and Motion to Dismiss at 2-3, *citing* 7 U.S.C.A. § 1926(b) (Apr. 29, 2016).

only for sewer service. Green Valley's list included proposed threshold issues, including issues regarding the effect of section 1926(b) of the Federal Consolidated Farm and Rural Development Act.<sup>2</sup>

On April 19, 2016, Commission Staff and Cibolo filed separate replies to Green Valley's motion to dismiss. Commission Staff responds in part that Green Valley failed to show the Commission lacks jurisdiction to determine whether section 1926(b) of the Federal Consolidated Farm and Rural Development Act applies.<sup>3</sup> Cibolo argues, among other points, that any existence of federal debt or application of section 1926(b) of the Federal Consolidated Farm and Rural Development Act is outside the scope of this proceeding.<sup>4</sup> Cibolo also asserts that the protection provided under section 1926(b) of the Federal Consolidated Farm and Rural Development Act is inapplicable to the service area included in Green Valley's sewer CCN.<sup>5</sup>

To develop a statement of Commission policy, precedent, and/or position on threshold legal or policy issues relevant to this proceeding, any interested party may file briefs that address the following issues:

1. May the Commission deny a municipality's application seeking single certification under TWC § 13.255 solely on the basis that a retail public utility that holds a CCN for all or part of the requested service 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.

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<sup>2</sup> Green Valley's List of Issue at 2 (May 12, 2016).

<sup>3</sup> Commission Staff's Response to Green Valley's Plea to the Jurisdiction and Motion to Dismiss at 1 (May 19, 2016).

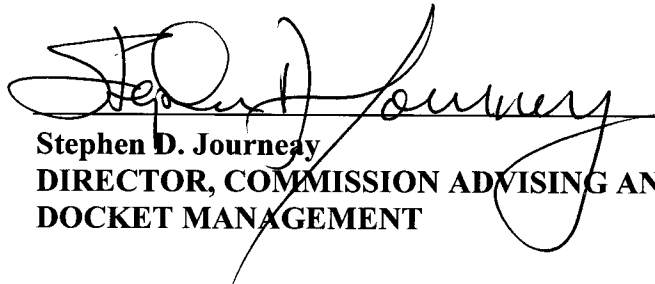
<sup>4</sup> The City of Cibolo's Response to Green Valley's Plea to the Jurisdiction and Motion to Dismiss at 8-9 (May 19, 2016).

<sup>5</sup> *Id.*

2. Must a municipality seeking single certification under TWC § 13.255 demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems even if the certification sought is solely to provide sewer service?

Briefs on these issues are due on June 6, 2016. Reply briefs are due on June 14, 2016. After considering the briefs on the issues, the Commission will consider and possibly adopt a preliminary order on June 29, 2016 that will include its rulings on these threshold issues and any additional issues to be addressed in this docket.

**SIGNED AT AUSTIN, TEXAS the 27<sup>th</sup> day of May 2016.**



**Stephen D. Journey**  
**DIRECTOR, COMMISSION ADVISING AND**  
**DOCKET MANAGEMENT**