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DOCKET NO. 45702

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PUBLIC UTILITY COMMISSION
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APPLICATION OF THE 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

**CITY OF CIBOLO'S RESPONSE TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S EMERGENCY MOTION TO ABATE AND RESPONSE TO THE CITY'S
MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

COMES NOW the City of Cibolo (the "City"), by and through its undersigned attorneys of record, and files its Response ("Response") to Green Valley Special Utility District's (the "District") Emergency Motion to Abate and Response to the City's Motion to Establish a Procedural Schedule ("Motion to Abate") in the above-referenced matter, and would respectfully show the following:

I. BACKGROUND/ PROCEDURAL HISTORY

On March 8, 2016, more than 180 days after the City provided the District with notice of its intent to provide retail wastewater service to certain portions of its corporate limits that are within the boundaries of the District's sewer certificate of convenience and necessity ("CCN") No. 20973, the City filed its application (the "Application") for single sewer CCN certification to such areas under Tex. Water Code ("TWC") § 13.255 and 16 Tex. Admin. Code ("TAC") § 24.120 at the Public Utility Commission (the "Commission"). This docket ensued. On May 27, 2016, the City filed its Response to Order No. 4 and Motion to Establish a Procedural Schedule

CITY OF CIBOLO'S RESPONSE TO THE DISTRICT'S EMERGENCY MOTION TO ABATE
AND RESPONSE TO THE CITY'S MOTION TO ESTABLISH A PROCEDURAL SCHEDULE

in this docket, reporting to the Commission that the City and District could not agree on a single, qualified individual or firm to serve as an independent appraiser in this matter, and, consequently, that an impasse exists.¹

The fact that an impasse exists is significant under TWC § 13.255(l) and 16 TAC § 24.120(m) because the existence of an impasse obligates each party to appoint its own appraiser. The City, in its May 27, 2016 Response, memorialized to the Commission and the District that it had appointed its independent appraiser. Additionally, the City's Response to Order No. 4 and Motion to Establish a Procedural Schedule requested that the Commission establish a procedural schedule for the upcoming short-term deadlines according to Texas Water Code § 13.255(l) and 16 TAC § 24.120(m). Specifically, the City recommended that the Commission submit the identity of its independent appraiser by Tuesday, June 7, 2016, and that the City and District's independent appraisers meet by June 21, 2016. These deadlines are consistent with the deadlines in Texas Water Code § 13.255(l) and 16 TAC § 24.120(m). It is important to note that the City's proposed deadline to appoint an independent appraiser is 6 weeks after the date that the City requested the District to appoint a joint appraiser, and nearly 2 months after the date that the City served the District with a copy of the Application.

Also on May 27, 2016, the Commission issued an Order Requesting Briefing regarding the District's Plea to the Jurisdiction and Motion to Dismiss, with deadlines for briefs to be filed by June 6, 2016, and for reply briefs to be filed by June 14, 2016, regarding two issues. The

¹ On April 26, 2016, the City provided a letter to counsel for the District requesting whether the District would agree on Mr. Jack Stowe to serve as the single, independent appraiser in this matter. One month later, on May 26, 2016, counsel for the District delivered a letter to counsel for the City that it declined the appointment of the City's proposed independent appraiser.

Commission indicated in that Order that it will consider the briefs and possibly adopt a preliminary order on these two issues on June 29, 2016.

It its “emergency” Motion to Abate, filed on June 2, 2016, the District claims that the Commission should abate all deadlines in this case due to a complaint filed by the District against the City- not against the Commission - in federal court regarding whether 7 U.S.C.A. § 1926(b) is applicable to the Application. For the reasons discussed herein, the Motion to Abate should be denied.

II. REPLY TO THE DISTRICT’S MOTION TO ABATE

The City opposes the District’s Motion to Abate, and such Motion should be denied because the District has not cited an applicable Commission regulation justifying the requested action, and the complaint in federal court has no bearing on the Commission’s processing of the Application. Since the City filed its Application, the sum of the District’s actions and allegations amount to a general attempt to stop or hinder the processing of the Application. The Motion to Abate is just the latest in a series of delay tactics, all of which have little or no merit. Here, the District’s Motion to Abate fails to prove that an abatement is warranted. Accordingly, the City reiterates its request for the Administrative Law Judge (“ALJ”) to set the procedural schedule recommended in the City’s May 27, 2016 filing.

A. The District’s Motion to Abate Is Inappropriate at this Time

The Motion to Abate fails to cite any Commission regulation that would support granting this Motion. That is because no such regulation exists. Commission rule 16 TAC § 22.79 addresses a request for a Motion for Continuance, but it is not applicable to the case at bar

because (1) a continuance is not agreed to by all parties and (2) procedurally, the Motion does not pertain to delaying a hearing on the merits. Commission rule 16 TAC § 22.79 is provided below for the Commission's reference and convenience:

Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits shall be in writing and shall be filed not less than five days prior to the hearing. Motions for continuance shall set forth the specific grounds for which the moving party seeks continuance and shall make reference to all other motions for continuance filed by the moving party in the proceeding. The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance at issue. Continuances will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party. The presiding officer shall grant continuances agreed to by all parties provided that any applicable statutory deadlines are extended as may be necessary. Motions for Continuances agreed to by all parties may be filed within five days of the hearing on the merits, and shall state suggested dates for rescheduling of the hearing.

B. The District's Plea to the Jurisdiction and Complaint in Federal Court Do Not Justify an Abatement of this Docket

Neither the District's plea to the jurisdiction nor its complaint filed against the City in federal court warrants an abatement of this Docket. The District, the movant, cites no law or Commission regulation justifying such abatement request; and, the City contends that there is no law or regulation providing that the Commission must or may abate the processing of an application for these reasons. A plea to the jurisdiction does not abate a pending application at the Commission, and a lawsuit filed against an applicant in federal court does not abate a pending application at the Commission. The Commission has jurisdiction over TWC § 13.255

applications, and it should process such applications without delay, regardless and without consideration of a complaint filed in federal court against the applicant- especially when the claims have no merit. Thus, the proceeding against the City in federal court- in which the Commission is not a party- should not result in the Commission halting its processing of the Application.

III. REQUEST TO SET PROCEDURAL SCHEDULE

The City reiterates its request for the ALJ to set the procedural schedule requested in the City's May 27, 2016 brief. As discussed in Section I of this Response, the City has provided the District with ample time to locate and procure an independent appraiser. The City requests that deadlines be set to prevent the District from unnecessarily delaying the City's application through inaction.

IV. CONCLUSION AND PRAYER

The City respectfully requests that the Commission (1) deny the District's Motion to Abate; (2) set a procedural schedule based on the need for the Commission and parties' obligation to continue processing the Application in accordance with TWC § 13.255 and 16 TAC § 24.120; and (3) to grant such other and further relief in this matter to which it may be entitled.

Respectfully submitted,

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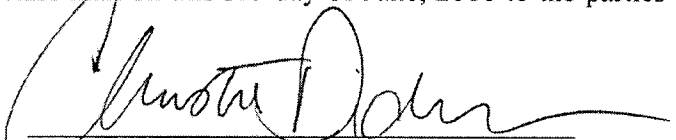


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ATTORNEYS FOR THE CITY OF CIBOLO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 3rd day of June, 2016 to the parties of record.


Christie L. Dickenson