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Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
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APPLICATION OF THE CITY OF
CIBOLO FOR SINGLE
CERTIFICATION IN
AND 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

**COMMENTS OF THE TEXAS MUNICIPAL LEAGUE REGARDING
ORDER REQUESTING BRIEFING**

NOW COMES the Texas Municipal League (TML) and files our comments regarding the Public Utility Commission of Texas (Commission) Order Requesting Briefing on the question of "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."

TML is a non-profit association of over 1,140 incorporated cities that provides legislative, legal, and educational services to the elected and appointed officials of its member cities. Most of TML's member cities operate water and sewer utilities, and those cities have an important interest in maintaining their authority to lawfully provide service to customers.

Rather than provide lengthy and duplicative comments, TML concurs with the comments of the City of Cibolo. The position of the Green Valley Special Utility District (SUD) appears to be this:

1. We have a federal loan to assist us with providing water service.
2. We provide no sewer service whatsoever.
3. We think that the federal loan should prevent a city from providing the sewer service, even though we can't.

That is a strange position indeed, and it doesn't take a seasoned water law attorney to see the flaws in the SUD's logic.

In any case, TML's position is that the Commission has no authority in relation to this application to determine whether Section 13.255 is preempted by 7 U.S.C. 1926(b). That decision is one for the judicial branch to decide. The Commission's mandate is to comply with state law as prescribed by the legislature.


Section 13.255(c) clearly provides that, assuming the proper notice and procedural aspects are met, the Commission "shall grant single certification to the municipality." The city complied with those requirements, and nothing in Section 13.255 grants to the Commission the authority to determine whether a federal law preempts it.

A state agency may "exercise only those powers the law confers upon them in clear and express statutory language and those reasonably necessary to fulfill a function or perform a duty that the Legislature has expressly places with the agency." *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004). The legislature has not conferred on the Commission the authority to act as the SUD requests. The appropriate body to determine the SUD's nonsensical preemption argument is a district court. *See City of Mont Belvieu v. Enter. Products Operating, LP*, 222 S.W.3d 515, 519-520 (Tex. App. – Houston [14th Dist.] 2007).

The SUD here is attempting to avail itself of 1926(b) protection without having to prove the facts and law required to do so.

For the above reasons, TML's position is that the Commission has no authority over the applicability of 1926(b) to the present application. TML hereby incorporates by reference the comments of the City of Cibolo, and respectfully asks the Commission to consider these comments.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'SH Houston', followed by a long horizontal line.

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June 14, 2016

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 14, 2016, in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, appearing to read "SH", followed by a long horizontal line.

Scott N. Houston