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# OPEN MEETING COVER SHEET

SEATTLE COUNTY COMMISSION  
CLERK

**MEETING DATE:** July 20, 2016

**DATE DELIVERED:** July 13, 2016

**AGENDA ITEM NO.:** 5

**CAPTION:** Docket No. 45702 - 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

**ACTION REQUESTED:** Discussion and possible action with respect to Supplemental Preliminary Order

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PUBLIC UTILITY COMMISSION  
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***Public Utility Commission of Texas***

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Davida Dwyer ~~PP~~  
Commission Advising

RE: July 20, 2016, Open Meeting Agenda Item No. 5  
Draft Supplemental Preliminary Order, PUC Docket No. 45702, *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*

DATE: July 13, 2016

Please find enclosed the draft supplemental preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft supplemental preliminary order at the July 20, 2016 open meeting. Parties shall not file responses or comments addressing this draft supplemental preliminary order.

Any modifications to the draft supplemental preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 20, 2016 open meeting.

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PUC DOCKET NO. 45702

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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  
FILING CLERK

**DRAFT SUPPLEMENTAL PRELIMINARY ORDER**

On March 8, 2016, the city of Cibolo initiated this proceeding by filing an application seeking 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), under Texas Water Code (TWC) § 13.255 and 16 Texas Administrative Code (TAC) § 24.120.

At an open meeting on June 29, 2016, the Commission voted to adopt a preliminary order in this proceeding, after considering proposed lists of issues filed by Cibolo, Green Valley, and Commission Staff, as well as briefing on threshold issues from Cibolo, Green Valley, Commission Staff, and the Texas Municipal League.

During the same open meeting in which the Commission adopted the preliminary order in this proceeding, the Commission also decided in a different proceeding, Docket No. 45679,<sup>1</sup> that TWC § 13.254(d) explicitly tasks the Commission with determining what property has been rendered useless or valueless by decertification.<sup>2</sup> To make this factually intensive determination, the Commission concluded that the proceeding must be referred to the State Office of

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<sup>1</sup> *Zipp Road Utility Company LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679 (pending).

<sup>2</sup> Open Meeting Tr. at 35-38 (Jun. 29, 2016); Docket No. 45679, Order on Rehearing (Jul. 7, 2016). See also Docket No. 45679, Memorandum from Chairman Donna L. Nelson (Jun. 28, 2016).

Administrative Hearings (SOAH) for a hearing on the merits.<sup>3</sup> After the Commission identifies what facilities, if any, are rendered useless or valueless by decertification in a proceeding under TWC § 13.254, then a proper appraisal process can occur, even if the timeframes outlined in TWC § 13.254 and 16 Texas Administrative Code (TAC) § 24.113 cannot be met.<sup>4</sup>

Although Cibolo's application in this proceeding is brought under a different provision of the Texas Water Code, TWC § 13.255, there are some analogous statutory requirements in both TWC § 13.254 and TWC § 13.255. Both sections expressly task the Commission with the duty of determining what property, if any, is rendered useless and valueless by decertification.<sup>5</sup> Both sections require that the decertified utility be compensated for its property that is rendered useless or valueless by the decertification.<sup>6</sup> And both sections also set forth processes for appraisal by one or more qualified independent appraisers.<sup>7</sup>

Further, the Commission's reasoning in establishing a phased process for proceedings under TWC § 13.254 equally applies to proceedings under TWC § 13.255: the Commission is bound to comply with applicable law; and determining what property, if any, is rendered useless and valueless by decertification will likely be fact intensive, lending itself to the contested-case process at SOAH.

However, the Commission notes there are several important distinctions between the appraisal processes set forth under TWC §§ 13.254 and 13.255, three of which need to be addressed here. First, if the parties cannot agree on an independent appraiser in a proceeding brought under one of the subsections of TWC § 13.254, the third appraiser's valuation of property rendered

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<sup>3</sup> Docket No. 45679, Order on Rehearing at 1.

<sup>4</sup> See Docket No. 45679, Memorandum from Chairman Nelson at 1, "[D]etermination of what property has been rendered useless or valueless needs to occur before the parties either agree on an appraiser or select their own appraisers."

<sup>5</sup> TWC §§ 13.254(d) and 13.255(c).

<sup>6</sup> *Id.*

<sup>7</sup> TWC §§ 13.254(f), (g-1) and 13.255(l).

useless or valueless is not binding on the Commission.<sup>8</sup> In contrast, the third appraiser's valuation of property in a proceeding brought under TWC § 13.255 is binding on the Commission.<sup>9</sup> Therefore, not all of the process contemplated by the Commission in Docket No. 45679 will necessarily be appropriate for proceedings, such as this one, brought under TWC § 13.255. Second, under TWC § 13.255(c), the municipality may also request the transfer of specific property. If such a request is made, the Commission must also determine the adequate and just compensation to be paid for such property.<sup>10</sup> Third, the Commission has previously determined that an application under TWC § 13.255 cannot be administratively complete unless it includes any necessary appraisals.<sup>11</sup> Consistent with that precedent, the Commission included in its preliminary order in this case, an issue and sub-issues regarding administrative completeness.<sup>12</sup> However, in light of the Commission's decision that the Commission should first determine what property, if any, must be addressed in any necessary appraisals, the Commission explicitly notes that administrative completeness should not be addressed by the SOAH ALJ during this phase of the proceeding.

Consistent with the discussion above, the Commission concludes it is appropriate to supplement the issues to be addressed in this proceeding and refer the case to SOAH for a determination of what property, if any, will be rendered useless or valueless to the decertified retail public utility as a result of the decertification, and what property, if any, has the municipality requested be transferred to it. After the Commission issues an interim order identifying any such property, based on consideration of a proposal for decision from SOAH, the appraisal process under TWC § 13.255(l) can be taken up.

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<sup>8</sup> TWC § 13.254(g-1). *See also* Docket No. 45679, Memorandum from Chairman Nelson at 1, "Whereas the Commission is explicitly bound by the determination of an independent appraiser agreed on by the parties, there is no such binding language for when the Commission appoints a third appraiser."

<sup>9</sup> TWC § 13.255(l).

<sup>10</sup> TWC § 13.255(c).

<sup>11</sup> *Application of City of Heath to Amend a Certificate of Convenience and Necessity to Decertify Portion of Forney Lake Water Supply Corporation's Service Area in Rockwall County*, Docket No. 44541, Order on Appeal of Order No. 4 (Aug. 24, 2015).

<sup>12</sup> Preliminary Order at 5-6, Issue 4 (Jul. 1, 2016).

The Commission is aware that appraisals have already been submitted in this matter, but it is not clear that those appraisals are limited to valuing property, if any, that Cibolo has requested be transferred or would be rendered useless or valueless due to the proposed decertification. That is not surprising given that the Commission has not yet identified that property. After the Commission identifies in this first phase what property has been requested to be transferred or would be rendered useless or valueless, the appraisal process may be concluded, including if necessary additional appraisals by Cibolo's and Green Valley's selected appraisers.

This is the first case of this type to be referred to SOAH. While it is unlikely that SOAH can complete a hearing and issue a proposal for decision (PFD) within the directory timeframe provided in the statute, the Commission requests that the case be expedited to the extent possible. After appropriate discovery, the SOAH administrative law judge (ALJ) should hold a hearing on the first phase of this docket and determine what property has been requested to be transferred and what property would be rendered useless or valueless by decertification. The ALJ should issue a PFD on those issues and allow the Commission to make the determinations required under TWC § 13.255(c). The Commission will then issue an interim order to memorialize that determination.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>13</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed during this phase of this proceeding:

9. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding? TWC § 13.254(c).

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<sup>13</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008).

10. What property of Green Valley, if any, has Cibolo requested be transferred to it?  
TWC § 13.254(c).
11. Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification and the property that Cibolo has requested be transferred?

This list of issues is not intended to be exhaustive. The parties and the SOAH ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the SOAH ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the SOAH ALJ in the future any additional issues or areas that must be addressed.

## **II. Effect of Preliminary Order**

The Commission's discussion and conclusions in its preliminary order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, the Commission's preliminary order and this supplemental preliminary order are preliminary in nature and entered without prejudice to any party expressing views contrary to those orders before the SOAH ALJ. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of the Preliminary Order and Supplemental Preliminary Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from the preliminary order and supplemental preliminary order may be appealed to the Commission. The Commission will not address whether the preliminary order and supplemental preliminary order should be modified except upon its own motion or the appeal of an ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.



SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of July 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**