

Control Number: 45702



Item Number: 5

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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

PUBLIC UTILITY COMMISSION: 42

OF TEXAS UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S COMMENTS ON COMPLETENESS

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Comments on Completeness in response to Order No. 1. In support thereof, Staff would show the following:

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 March 10, 2016, the Administrative Law Judge (ALJ) issued Order No. 1 requiring staff to file comments on the administrative completeness of the application and to propose a procedural schedule.

II. Applicable Legal Standards

The Texas Water Code¹ and the Texas Administrative Code² allow municipalities to apply for single certification in annexed or incorporated areas when:

- (1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Chapter 65, Water Code, or a fresh water supply district under Chapter 53, Water Code; or 75

¹ Texas Water Code Ann. § 13.255 (West Supp. 2016) (TWC).

² 16 Texas Admin. Code § 24.120 (TAC).

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(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.³

The Texas Administrative Code lays out the following process:

“If an application for single certification is filed, the commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

- (1) submit to the commission a written list with the names and addresses of the lienholders and the amount of debt; and
- (2) notify the lienholders of the decertification process and request that the lienholder provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.⁴

“The commission shall grant single certification to the municipality” and determine “whether single certification would result in property of a retail public utility being rendered useless or valueless to the retail public utility.”⁵ This determination, along with amount of appropriate compensation must be determined “no later than the 90th calendar day after the date on which the commission determines that the municipality’s application is administratively complete.”⁶

III. Comments on Notice

Pursuant to TAC § 24.120(b), Cibolo was required to notify Green Valley in writing of its intent to provide service to the annexed area prior to filing its application for single certification. Staff has reviewed the notice Cibolo sent to Green Valley on August 18, 2015, and believes that it meets the § 24.120(b) notice requirement. However, 16 TAC § 22.55(b) allows the presiding

³ TWC § 13.255(j).

⁴ TAC § 24.120 (b).

⁵ TAC § 24.120 (c).

⁶ TAC § 24.120 (h)

officer to require a party to provide reasonable notice to affected persons. Cibolo has not indicated whether it has served on Green Valley notice of its application. Staff recommends Cibolo be required to provide notice of the application to Green Valley and submit proof of service to the Commission.

IV. Comments on Administrative Completeness

Staff has reviewed Cibolo's application and recommends that it be deemed deficient. Cibolo's application must include information necessary for the Commission to be able to make a determination of whether any of Green Valley's property will be rendered useless and valueless and to determine just compensation if necessary. Therefore, the parties should complete the process described in TAC § 13.120(m) before the application is resubmitted.

Staff recommends that the Cibolo be given 30 days to correct the deficiencies identified above. Staff further recommends that Staff be required to file a supplemental recommendation regarding administrative completeness and to propose a procedural schedule by May 23, 2016, in order to permit additional time to review any supplemental information provided by Cibolo.

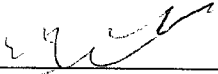
V. Conclusion

Staff respectfully requests the entry of an order consistent with the above discussion.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

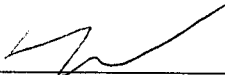
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 7, 2016, in accordance with P.U.C. Procedural Rule 22.74.



Landon J. Lill