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PUBLIC UTILITY COMMISSION
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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

**COMMISSION STAFF'S REPLY TO CIBOLO'S
MOTION FOR PARTIAL SUMMARY DECISION**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Reply to The City of Cibolo's (Cibolo) Motion for Partial Summary Decision. In support thereof, Staff would show the following:

I. Background

On July 20, 2016, the Commission issued a Supplemental Preliminary Order bifurcating this proceeding into two parts. The first part of the proceeding is to address the following preliminary issues:

9. What Property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding?
10. What property of Green Valley, if any, has Cibolo requested to be transferred to it?
11. Are the existing appraisals limited to the property that has been determined to have been rendered useless or valueless by decertification and the property that Cibolo has requested to be transferred?

In SOAH Order No. 2, the Administrative Law Judge (ALJ) assigned the burden of proof at both stages of the case to Cibolo. On November 8, 2016, Cibolo filed a Motion for Partial Summary Decision against Green Valley Special Utility District (Green Valley) related to issues 9 and 10. In SOAH Order No. 4, the ALJ set December 5, 2016 as the deadline for Staff's response. Therefore, Staff's response is timely filed.

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II. Argument

A. Cibolo demonstrated that no property of Green Valley will be rendered useless or valueless.

Green Valley has no existing sewer infrastructure within the area to be decertified.¹ Nor has Green Valley contracted for the design of sewer infrastructure within the area to be decertified.² In fact, Green Valley does not currently operate a sewer system anywhere.³ Thus, there is no sewer infrastructure that will be rendered useless or valueless by this proceeding.

Furthermore, there are no facilities that will be rendered useless or valueless by this proceeding. Green Valley has admitted that its only facility that could hypothetically support a sewer system in the area to be decertified is an undeveloped piece of property.⁴ The property is located outside of the area to be decertified,⁵ and Green Valley has admitted that it will not be rendered useless or valueless.⁶ Thus, no facilities will be rendered useless or valueless.

B. Green Valley has not specifically identified any property that will be rendered useless or valueless.

Green Valley has never specifically identified any property that will be rendered useless or valueless by this proceeding. Instead, Green Valley consistently refers to its appraisal report.⁷ For example, Green Valley witness David “Pat” Allen states that the purpose of his testimony is to answer what property is rendered useless or valueless,⁸ but his answer consists only of the following statement: “I believe that the appraisal report submitted to the Commission on June 28, 2016, properly identifies property that should be the basis for compensation under TWC § 12.255.” The Testimony of Stephen H. Blackhurst contains a similar deflection: “[T]he Green Valley

¹ Cibolo RFA 1-2, 2-21, 2-23

² Cibolo RFA 2-24

³ Cibolo RFA 1-4, 1-5, 1-6

⁴ Cibolo RFA 1-10

⁵ *Id.*

⁶ Cibolo RFA 2-10

⁷ See Cibolo RFIs 3-3, 4-1, 4-3, 4-5, 4-7, 4-9, 4-11, 4-12, 4-13, and 4-14; Direct Testimony of Blackhurst 7:16-19 (Nov. 2, 2016) (Blackhurst Direct) *referencing* Green Valley Special Utility District’s Appraisal (Jun. 28, 2016) (Green Valley Appraisal).

⁸ Direct Testimony of Allen at 4:19-5:5 (Jun. 28, 2016).

Appraisal report . . . has properly identified the Green Valley property interests that would be rendered useless or valueless by the decertification.”⁹

Further, the Green Valley Appraisal does not state that any of Green Valley’s property has been rendered valueless or useless. The only Green Valley property discussed in the entire Appraisal is an undeveloped tract of real estate and the CCN itself.¹⁰ Green Valley has admitted that the referenced real estate will not be rendered valueless or useless by this proceeding.¹¹ And, the CCN is not the property of Green Valley as the Third Court of Appeals has specifically ruled that CCNs are not the property of the CCN holder.¹² Thus, Green Valley has not presented any evidence showing that any of its property will be rendered useless or valueless by this proceeding.

As Cibolo has proven that Green Valley has no property that is rendered useless or valueless by this proceeding, and Green Valley has been unable to specifically identify any property that is rendered useless or valueless, there is no genuine issue of material fact on this issue. And Cibolo is entitled to a summary decision as to preliminary issue nine in accordance with 16 Tex. Admin. Code § 22.182 (TAC).

C. Cibolo has not requested the transfer of any Green Valley property.

The parties agree that Cibolo has not requested the transfer of any of Green Valley’s property as part of this proceeding.¹³ As there is no genuine issue of material fact and there is agreement among the parties, Green Valley is entitled to a summary decision as to preliminary issue ten.

III. Conclusion

Staff respectfully requests that Cibolo’s Motion for Partial Summary Decision be granted.

⁹ Blackhust Direct 16:13-16.

¹⁰ Green Valley Appraisal at 3.

¹¹ Cibolo RFA 2-10

¹² *Texas General Land Office v. Crystal Clear*, 449 S.W.3d 130, 145 (Tex. App.—Austin 2014, pet. denied) (“[A] CCN, which confers the exclusive right to serve a designated area, is not a vested property right entitled to due-process protection.”); *Creedmoor-Maha Water Supply Corp. v. Texas Comm’n on Evtl. Quality*, 307 S.W.3d 505, 525-26 (Tex. App.—Austin 2010, no pet); *See also* TWC § 26.029(c) (West 2016) (“[A] permit does not become a vested right in the permittee.”).

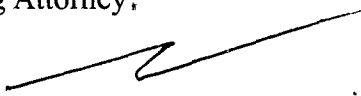
¹³ Cibolo RFA 2-29, 2-30

PUBLIC UTILITY COMMISSION
LEGAL DIVISION

Respectfully Submitted,

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Managing Attorney,

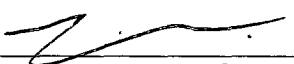


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 2, 2016, in accordance with P.U.C. Procedural Rule 22.74.



Landon J. Lill