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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 SUR-REPLY TO GREEN VALLEY'S RESPONSE 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 Sur-reply to Green Valley's Response to Cibolo's Motion for Partial Summary Decision. In support thereof, Staff would show the following:

I. Background

On November 8, 2016, The City of Cibolo (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 Administrative Law Judge (ALJ) set December 5, 2016 as the deadline for Staff and Green Valley to respond. On December 2, 2016 Staff filed a response in support of Cibolo's summary judgment early with the intention of providing an opportunity for Green Valley to specifically state what property it contends will be rendered useless or valueless by this proceeding.

Green Valley responded to Cibolo's motion and Staff's reply on December 5, 2016. Staff wishes to bring two mischaracterizations contained in Green Valley's Response to the ALJ's attention:

II. Argument

A. The Commission's procedural rules do not require the admission of *record evidence* before an ALJ may consider a motion for summary decision.

Green Valley argues under 16 Tex. Admin. Code § 22.182(a) (TAC), motions for partial summary decision can only be supported record evidence.¹ Green Valley misreads the rule which states:

The presiding officer may grant a motion for summary decision on any or all issues to the extent that pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show there is no genuine issue as to any material fact . . . on the issues set forth in the motion.

As the rule is written “of record” only modifies the word “evidence.” To the extent this is not clear from the text of 16 TAC § 11.182(a) itself, it becomes so after examining 16 TAC § 22.182(b), which requires any motion for summary decision to be filed before the close of the hearing on the merits. Under Green Valley’s interpretation, motions for summary decision could only be filed during the hearing itself. As the Commission is known to grant motion for summary decision before any hearing on the merits,² Green Valley’s position is incorrect.

B. Staff does not attempt to limit the meaning of property to tangible facilities.

Green Valley misleadingly accuses Staff of “attempt[ing] to limit the meaning of ‘property’ to tangible ‘facilities.’”³ Staff agrees with Green Valley that the Texas Water Code defines “facilities” to include “all tangible and intangible real and personal property without limitation.”⁴ Staff is relying on this definition of “facilities” in interpreting Green Valley’s response to Cibolo Request for Information (RFI) 1-10. In that RFI response, Green Valley has admitted that it has no facilities within the area to be decertified and that its only asset supporting the area to be decertified is an undeveloped piece of real estate.⁵ Green Valley’s RFI response can only mean

¹ Green Valley SUD’s Response to City of Cibolo’s Motion for Partial Summary Decision and Commission Staff’s Reply to Cibolo’s Motion at 4-6 (Dec. 5, 2016) (Green Valley Reply).

² See, e.g., *Appeal of Brazos Electric Power Cooperative, Inc. and Denton County Electric Cooperative, Inc. d/b/a/ CoServ Electric from an Ordinance of The Colony, Texas, and, in the alternative, Application for a Declaratory Order*, Docket No. 45175, Order on Appeal of SOAH Order No. 7 at 1 (Jul. 25, 2016) (affirming in part a motion for summary decision granted by the SOAH ALJ) and *Complaint of CTMGT Frisco 113, LLC against Oncor Electric Delivery Company, LLC and Rock Hill Enterprises, LTD*, Docket 42444, Final Order (Dec. 18, 2016) (granting Oncor’s summary judgment.).

³ Green Valley Reply at 9.

⁴ Texas Water Code § 13.002(9) (West 2016) (TWC).

⁵ *Id.*

that Green Valley has no tangible or intangible real or personal property interests within the area to be decertified.⁶

III. Conclusion

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

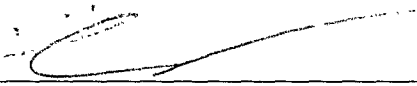
⁶ See Staff's Response at 2 (discussing Green Valley's response to Cibolo RFI 1-10).

PUBLIC UTILITY COMMISSION
LEGAL DIVISION

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

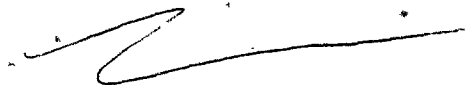


Landon J. Lill
State Bar No. 24092700
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)
Landon.Lill@puc.texas.gov

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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 7, 2016, in accordance with P.U.C. Procedural Rule 22.74.



Landon J. Lill