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SOAH DOCKET NO. 473-16-5739.WS
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APPLICATION OF CITY OF SCHERTZ §
TO AMEND A SEWER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
UNDER WATER CODE SECTION 13.255 §
AND TO DECERTIFY A PORTION OF §
GREEN VALLEY SPECIAL UTILITY §
DISTRICT'S CERTIFICATE RIGHTS IN §
BEXAR COUNTY §

STATE OFFICE OF PUBLIC UTILITIES
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S INITIAL BRIEF

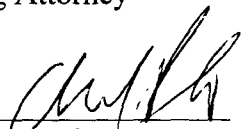
Dated: September 22, 2017

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF
TEXAS 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 September 22, 2017, in accordance with 1 22.74.



Alexander Petak

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**STATE OFFICE OF
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COMMISSION STAFF'S INITIAL BRIEF

Commission Staff of the Public Utility Commission of Texas files its Initial Brief. In support of its Initial Brief, Staff states the following:¹

I. Introduction and Summary of Position

On September 15, 2017, the City of Schertz, Commission Staff (Staff), and Green Valley Special Utility District (GVSUD) (Collectively, the Parties) filed Joint Agreed Stipulations Concerning Remaining Referred Issues (Joint Stipulations). In particular, the Parties submitted a stipulation concerning each of the remaining referred issues in this matter, Preliminary Order Issues 1-7 and 11 of the Commission's September 12, 2016 Preliminary Order. The disposition of Preliminary Order Issues 1, 6, 7 and 11 were agreed to in the Joint Stipulation. The remaining issues involve the adequacy of notice that Schertz served upon GVSUD (Preliminary Order Issues 2 and 3), whether the application is administratively complete (Preliminary Order Issue 4), and whether Schertz has demonstrated that its public-drinking-water system complies with the Texas Commission on Environmental Quality's (TCEQ's) minimum requirements (Preliminary Order Issue 5).

Staff recommends that Schertz's notice to GVSUD be found to comply with the requirements of Tex. Water Code § 13.255(b) (TWC) and that Schertz's application be found to be administratively complete. Additionally, Schertz has demonstrated that its public-drinking-water system complies with the TCEQ's minimum requirements.

¹ The deadline for parties' initial briefs is September 21, 2017. Commission Staff's Initial Brief is timely filed.

II. Notice is Sufficient (Preliminary Issues 2 and 3)

Staff recommended that the proof of notice of the application to GVSUD was sufficient in its Recommendation on Administrative Completeness. Schertz was required to notify GVSUD, in writing, of its intent to provide service to the incorporated or annexed area 180 days before filing an application with the Commission for single certification.² There are no specific guidelines as to the form of notice in TWC § 13.255(b) or 16 Tex. Admin. Code § 24.120(b) (TAC)³. Schertz sent this notice on October 22, 2015 and provided proof of that notice on May 11, 2016 and May 25, 2016. In the proof of notice, Schertz provided the actual notice given to GVSUD.⁴ GVSUD agreed in the Joint Stipulations that it did receive the notice on October 22, 2016, but did not agree that the notice was adequate.⁵ The notice included a cover page, a map, and a metes a bound description for the transfer area.⁶

The notice clearly described the areas that Schertz wished to serve:

In accordance with Texas Water Code § 13.255, the City hereby provides Green Valley SUD with notice that the City intends to provide retail sewer service to the areas within its corporate limits that overlap with Green Valley SUD's sewer CCN service area ("Transfer Tracts"), which are depicted as portion of the blue areas that are within the purple dashed line on the map attached hereto as Attachment A. These areas are generally bounded by Lower Seguin Road to the north, Cibolo Creek to the east, United States Interstate Highway 10 to the south, and Farm to Market Road 1518 to the east. For your convenience, the pertinent portions annexation ordinances for the Transfer Tracts - the metes and bounds descriptions - are attached as Attachment B. To be clear, this notice of intent to serve does not include the portions of those metes and bounds descriptions that are outside the purple dashed line.

Please also note that the olive areas depicted in Attachment A are additional tracts that are subject to annexation agreements with the City; and while the City anticipates annexing those areas in the future, this notice of intent to serve letter does not include those olive areas,

² TWC 13.255(b).

³ 16 TAC § 24.120 has since been repealed and replaced, with the new version put into effect May 28, 2017. Both require written notice to be sent to the CCN holder 180 days before the application for single certification is filed.

⁴ Application, Attachment B at 14 (May 11, 2016).

⁵ Joint Stipulations Concerning Remaining Referred Issues at 2-3 (Sept. 15, 2017) (Joint Stipulations).

⁶ Application, Attachment B at 15-25.

While the map provided included shaded areas outside of the GVSUD's CCN, it clearly showed the tracts of land within GVSUD's service area that Schertz intends to serve. In addition, GVSUD had ample opportunity to request clarification from Schertz if it was confused as to which tracts Schertz was intending to provide service. GVSUD has not demonstrated that any attempt was made to obtain this clarification after the notice was given on October 22, 2015.

Schertz also provided notice and proof of notice of its application on May 25, 2016. GVSUD has not challenged the adequacy of this notice, and Staff recommends it also be found to be sufficient.

III. The Application Should be Deemed Administratively Complete (Preliminary Issue 4)

Staff recommended that the application was sufficient in its Recommendation on Administrative Completeness, filed August 24, 2017. In the Joint Stipulations, the Parties agreed that the Commission has already determined in its Interim Order that Schertz demonstrated that no retail public facilities will be rendered useless or valueless to GVSUD and that Schertz was not requesting the transfer of any property of GVSUD.⁷ Schertz has included all the information necessary for a sufficient application pursuant to TWC § 13.255 and 16 TAC § 24.120, and the answers to Preliminary Issue 4 require no additional findings for sufficiency.

IV. Schertz's Public-Drinking-Water System Complies With the TCEQ's Minimum Requirements (Preliminary Issue 5)

Schertz has demonstrated compliance with the Commission's minimum requirements for public drinking water systems pursuant to TWC § 13.255(m). The TCEQ Central Registry database shows all violations for the public-drinking-water system associated with the City have been resolved.⁸

V. Conclusion

Schertz provided sufficient notice of their application to GVSUD, Schertz provided all

⁷ Joint Stipulations at 3, Interim Order, Conclusions of Law Nos. 28 and 29 (July 28, 2017).

⁸ TCEQ Central Registry Notice of Violations for RN101239168.

information necessary to show that their application is administratively complete, and their public-drinking-water-system is in compliance with minimum drinking water standards.