



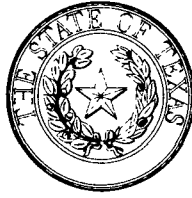
Control Number: 45956



Item Number: 122

Addendum StartPage: 0

# State Office of Administrative Hearings



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Lesli G. Ginn  
Chief Administrative Law Judge

October 18, 2017

**TO: Stephen Journeay, Director  
Commission Advising and Docket Management  
William B. Travis State Office Building  
1701 N. Congress, 7th Floor  
Austin, Texas 78701**

**Via Email**

**RE: SOAH Docket No. 473-16-5739.WS  
PUC Docket No. 45956**

***Application Of The 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***

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

William G. Newchurch  
Administrative Law Judge

Enclosure

xc: All Parties of Record

300 W. 15<sup>th</sup> Street, Suite 504, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)  
www.soah.texas.gov

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**SOAH DOCKET NO. 473-16-5739.WS  
PUC DOCKET NO. 45956**

|  |   |                                |
|--|---|--------------------------------|
| <b>APPLICATION OF THE CITY OF</b>        | § | <b>BEFORE THE STATE OFFICE</b> |
| <b>SCHERTZ TO AMEND A SEWER</b>          | § |                                |
| <b>CERTIFICATE OF CONVENIENCE AND</b>    | § |                                |
| <b>NECESSITY UNDER WATER CODE</b>        | § |                                |
| <b>SECTION 13.255 AND TO DECERTIFY A</b> | § | <b>OF</b>                      |
| <b>PORTION OF GREEN VALLEY</b>           | § |                                |
| <b>SPECIAL UTILITY DISTRICT'S</b>        | § |                                |
| <b>CERTIFICATE RIGHTS IN BEXAR</b>       | § |                                |
| <b>COUNTY</b>                            | § | <b>ADMINISTRATIVE HEARINGS</b> |

**PROPOSAL FOR DECISION OF PHASE 2**

**I. INTRODUCTION**

The city of Schertz (the city) has submitted an application to the Public Utility Commission of Texas (Commission) to amend its sewer certificate of convenience and necessity (CCN) by adding 405 acres of land (Decertificated Area) within the city's corporate limits to the area that the city is certificated to serve. The application also asks the Commission to decertificate the same land from the sewer CCN of Green Valley Special Utility District (Green Valley). Green Valley opposes the application. The Commission Staff (Staff) does not oppose the application.

The Commission referred the case to the State Office of Administrative Hearings (SOAH) for hearing.<sup>1</sup> The Commission also issued an order (Preliminary Order) referring 11 issues to SOAH for consideration in two phases.<sup>2</sup> The SOAH Administrative Law Judge (ALJ) issued a Proposal for Decision of the Phase 1 issues (Phase 1 PFD).<sup>3</sup> After considering the Phase 1 PFD, the Commission issued an interim order (Interim Order) that resolved Issues 8, 9,

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<sup>1</sup> Order of Referral (Aug. 16, 2016).

<sup>2</sup> Preliminary Order (Sep. 12, 2016).

<sup>3</sup> Phase 1 PFD (May 9, 2017).

and 10 and remanded the case to SOAH to address the remaining issues.<sup>4</sup> Except for Issues 2, 3, and 4, the parties agreed to resolutions of the remaining issues.<sup>5</sup> As to the unresolved issues, the ALJ finds:

Issue 2. [D]id Schertz provide written notice to the retail public utility of its intent to provide service to the area for which Schertz seeks certification? [Texas Water Code (TWC)] § 13.255(b) and 16 [Texas Administrative Code (TAC)] § 24.120(b)<sup>6</sup>?

The ALJ finds that the city provided the required notice of intent to Green Valley.

Issue 3. If so, did Schertz wait more than 180 days after providing the written notice before it filed its application with the Commission? TWC [§] 13.255[(b)]<sup>7</sup> and 16 TAC § 24.120[(b)].<sup>8</sup>

The ALJ finds that the city waited more than the required 180 days after providing the notice of intent to Green Valley before the city filed its application with the Commission.

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<sup>4</sup> Interim Order (Jul. 28, 2017).

<sup>5</sup> Green Valley stipulated to resolutions of issues without waiving its pleas to jurisdiction and motions to dismiss or abate that were previously denied.

<sup>6</sup> After the Commission issued the Preliminary Order, 16 TAC § 24.120 was repealed and replaced. 16 TAC § 24.120 *repealed and replaced* 42 Tex. Reg. 2703 (May 19, 2017) (effective May 28, 2017). The ALJ assumes that the Commission intended in the Preliminary Order to refer to the previous version of 16 TAC § 24.120. 16 TAC § 24.120 *adopted* 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014). The previous rule applies in this case. A rule adopted under a code is presumed to be prospective in its operation unless expressly made retrospective and it does not affect the prior operation of the rule or any prior action taken under it or any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it. Tex. Gov't Code §§ 311.002, .022, .031(1), (2).

<sup>7</sup> The Preliminary Order cites to "TWC 13.255(c)," which does not mention a 180-day wait. The ALJ assumes that was a typographical error and the Commission meant TWC § 13.255(b), which does refer to a 180-day wait.

<sup>8</sup> The Preliminary Order cites to "16 TAC § 24.120(c)." The ALJ assumes that was a typographical error and the Commission meant to refer to the previous version of 16 TAC § 24.120(b), because it refers to a 180-day wait and the current and previous versions of subsection (c) do not.

Issue 4. Is Schertz's application administratively complete pursuant to 16 TAC § 24.8?<sup>9</sup>

The ALJ finds that the city's application is administratively complete.

## II. PHASE 2 PROCEDURAL HISTORY

At a prehearing conference on August 10, 2017, the parties agreed that a further hearing on the merits was unnecessary and a Proposal for Decision of the Phase 2 issues (Phase 2 PFD) could be issued based on written submissions.<sup>10</sup> Subsequently, the parties filed the following:

| Date      | Party        | Document  |
|-----------|--------------|---|
| 8/24/2017 | Staff        | Commission Staff's Recommendation on Administrative Completeness  |
| 9/15/2017 | The city     | Joint Agreed Stipulations Concerning Remaining Referred Issues (the Stipulations) <sup>11</sup>           |
| 9/22/2017 | Staff        | Initial Brief   |
| 9/22/2017 | Green Valley | Initial Brief   |
| 9/22/2017 | The city     | Initial Brief   |
| 9/26/2017 | The city     | Second Supplement to Application and First Supplement to Initial Brief (Second Supplement to Application) |
| 9/29/2017 | Green Valley | Reply Brief   |
| 9/29/2017 | Staff        | Reply Brief   |
| 9/29/2017 | The city     | Reply Brief   |

The record closed on September 29, 2017, when reply briefs were due.<sup>12</sup>

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<sup>9</sup> To help determine Issue 4, the Commission also referred Issues 4a and 4b. As discussed below, Issues 4a and 4b have been resolved, but the answers to them do not completely resolve the dispute over Issue 4.

<sup>10</sup> SOAH Order 8 at 3.

<sup>11</sup> The Stipulations are admitted as Ex. 111. The exhibit may be found on the Commission's Interchange as Item 111.

<sup>12</sup> SOAH Order No. 9.

### III. RESOLVED ISSUES

In the Stipulations, the parties unanimously stipulated to all but four Phase 2 issues, and to the admission of related evidence.<sup>13</sup> Later, the city supplemented its application with documents concerning its compliance with Texas Commission on Environmental Quality (TCEQ) requirements for public-drinking-water systems,<sup>14</sup> and the other parties stipulated that the related issue was resolved.<sup>15</sup> Below are the issues that have been resolved by the Interim Order and subsequent stipulations by the parties:

Issue 1. Is the area for which the city of Schertz seeks single certification currently within the certificated service area of a retail public utility?

The area for which the city seeks single sewer certification in the application is currently within the boundaries of Green Valley's sewer CCN No. 20973, and Green Valley is a retail public utility.<sup>16</sup>

Issue 4a. Has Schertz demonstrated that no retail public utility facilities will be rendered useless or valueless to the retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If not, has Schertz included in its application all appraisals required under TWC § 13.255(l) and 16 TAC § 24.120(m)?

In Phase 1, the Commission determined that no Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding.<sup>17</sup>

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<sup>13</sup> Ex. 111.

<sup>14</sup> The city's Initial Brief, attaches. B, C. These are admitted as Exs. 115B and 115C, respectively. The city's Second Supplement to Application. This is admitted as Ex. 116. The exhibits may be found on the Commission's Interchange under Items 115 and 116. No party has objected to these exhibits.

<sup>15</sup> Green Valley Reply Brief at 5; Staff's Reply Brief at 4-5.

<sup>16</sup> The Stipulations at 2.

<sup>17</sup> Interim Order at 9, Finding of Fact (FOF) 59. Issue 4a is a Phase 2 issue, but the parties agree that this finding from Phase 1 partially resolves Issue 4a. The Stipulations at 3.

Because no property would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary.<sup>18</sup>

Issue 4b. Is Schertz requesting the transfer of specified property of a retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If so, has Schertz included in its application all appraisals required under TWC § 13.255(1) and 16 TAC § 24.120(m)?

The city has not requested Green Valley to transfer any property to the city.<sup>19</sup> Because there is no transferred property, no additional appraisals are necessary.<sup>20</sup>

Issue 5. Has Schertz demonstrated that its public-drinking-water systems comply with TCEQ's minimum requirements for public-drinking-water systems? TWC § 13.255(m) and 16 TAC § 24.120(n).

The city complies with TCEQ's minimum requirements for public-drinking-water systems.<sup>21</sup>

Issue 6. Has the retail public utility submitted to the Commission a written list with the names and addresses of any lienholders and the amount of the retail public utility's debt, if any? 16 TAC § 24.120(b)(1).

Green Valley has submitted to the Commission a written list with the names and addresses of any lienholders and the amount of its debt on May 26, 2016.<sup>22</sup>

Issue 7. If any lienholders exist, has the retail public utility notified the lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2)?

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<sup>18</sup> Interim Order at 9, FOF 61C. Issue 4a is a Phase 2 issue, but the parties agree that this finding from Phase 1 partially resolves Issue 4a. The Stipulations at 3.

<sup>19</sup> Interim Order at 9, FOF 60. Issue 4b is a Phase 2 issue, but the parties agree that this finding from Phase 1 partially resolves Issue 4b. The Stipulations at 3.

<sup>20</sup> Interim Order at 9, FOF 60, 61A, 61B, 61C. Issue 4b is a Phase 2 issue, but the parties agree that these findings from Phase 1 partially resolve Issue 4b. The Stipulations at 3.

<sup>21</sup> Exs. 115B, 115C, 116; Green Valley Reply Brief at 5; Staff Reply Brief at 4-5.

<sup>22</sup> The Stipulations at 4.

Green Valley notified the lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2).<sup>23</sup>

Issue 8. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Schertz in this proceeding? TWC § 13.25[5](c).<sup>24</sup>

No Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding.<sup>25</sup>

Issue 9. What property of Green Valley, if any, has Schertz requested to be transferred to it? TWC § 13.25[5](c).<sup>26</sup>

The city has not requested Green Valley to transfer any property to the city.<sup>27</sup>

Issue 10. 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 Schertz has requested be transferred?

The city's appraisal was limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification, of which there is none.<sup>28</sup> Green Valley's appraisal was not limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification.<sup>29</sup> Instead, Green Valley's appraisal improperly included other items that are neither transferred property

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<sup>23</sup> The Stipulations at 4; Ex. 111, attach. C.

<sup>24</sup> The Preliminary Order cites "TWC § 13.254(c)," which is apparently a typographical error. The ALJ assumes the Commission meant to refer to TWC § 13.255(c), because the order elsewhere refers to "TWC § 13.255(c)."

<sup>25</sup> Interim Order at 9, FOF 59.

<sup>26</sup> The Preliminary Order incorrectly refers to "TWC § 13.254(c)," instead of TWC § 13.255(c).

<sup>27</sup> Interim Order at 9, FOF 60.

<sup>28</sup> Interim Order at 9, FOF 61A.

<sup>29</sup> Interim Order at 9, FOF 61B.



nor useless or valueless property.<sup>30</sup> Because there is no transferred property, or property that would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary.<sup>31</sup>

Issue 11. What is the adequate and just compensation to be paid to the retail public utility for any of its facilities that will be useless and valueless to it or that Schertz requests to be transferred? TWC §§ 13.255(c), (g), (g-1) and (1) and 16 TAC § 24.120(c), (g), (h), and (m)?

Nothing. The Commission's determinations concerning Issue Nos. 8-10 in its Interim Order, dated July 28, 2017, render Issue No. 11 moot.<sup>32</sup>

#### IV. UNRESOLVED ISSUES

Green Valley contends that the notice of intent the city provided to Green Valley was defective. According to Green Valley, it follows that the city did not wait 180 days after providing the required notice of intent before applying for single certification of the Decertificated Area and the city's application is administratively incomplete.

The city and Staff contend that the city provided Green Valley with the required written notice of intent to serve the Decertificated Area, the city filed its application more than 180 days after notifying Green Valley of its intent to serve, and the city's application was administratively complete. The ALJ agrees with the city and Staff.

##### A. Notice of Intent

It is undisputed that the city, on October 22, 2015, provided to Green Valley a "Notice of Intent by the City of Schertz to Provide Sewer Service in Its Corporate Limits."<sup>33</sup> Also, it is

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<sup>30</sup> Interim Order at 9, FOF 61B.

<sup>31</sup> Interim Order at 9, FOF 61C.

<sup>32</sup> The Stipulations at 4-5.

undisputed that the city, on May 11, 2016, filed its application with the Commission for single certification of the Decertificated Area.<sup>34</sup> However, Green Valley disputes the sufficiency of the notice of intent.

The notice of intent included a map depicting Green Valley's CCN with a dashed purple line, "Area inside corporate limits to be served by City of Schertz" shaded in blue, and "Area subject to development agreements not in City of Schertz Corporate Limits" shaded in olive.<sup>35</sup> In a cover letter, the city wrote:

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 [sic] annexation ordinances for the Transfer Tracts - the metes and bounds descriptions - are attached as Attachment B.<sup>36</sup>

TWC § 13.255(b) required the city to give Green Valley notice of the city's intent to provide service and to wait 180 days after that notice before filing a single certification application with the Commission. Section 13.255(b) states:

- (b) If an agreement is not executed within 180 days after the municipality, in writing, **notifies the retail public utility of its intent to provide service to the incorporated or annexed area**, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility

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<sup>33</sup> Ex. 111, attach. A.

<sup>34</sup> Ex. 1 at 1.

<sup>35</sup> Ex. 111, attach. A at 2.

<sup>36</sup> Ex. 111, attach. A at 1.

commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. . . .<sup>37</sup>

When the notice of intent was issued, the pertinent part of 16 TAC § 24.120(b) was identical to TWC § 13.255(b).<sup>38</sup> Thus, the content of the notice of intent that the city was required to give Green Valley was minimal: “intent to provide service to the incorporated or annexed area.”

The city’s October 22, 2015, notice of intent to Green Valley provided that notice. The notice of intent described in four ways the area the city requested and intended to serve: (1) an area that overlapped the city’s corporate limits and Green Valley’s CCN service area;<sup>39</sup> (2) an area generally bounded by three identified roads and an identified creek;<sup>40</sup> (3) the area shaded blue within a purple line on an attached map;<sup>41</sup> and (4) the area covered by and described by metes and bounds in the city’s attached annexation ordinances.<sup>42</sup> The notice of intent also included copies of annexation ordinances for the requested area.<sup>43</sup> It stated that the city intended to provide “retail sewer service to the area” and included the city’s contact information.<sup>44</sup>

The current version of 16 TAC § 24.120(c)<sup>45</sup> specifies in greater detail the required content of a notice of intent. Had it been in effect at the time, the city’s notice of intent to Green Valley would have complied with it.

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<sup>37</sup> Emphasis added.

<sup>38</sup> Compare TWC § 13.255(b) with 16 TAC § 24.120(b) adopted 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014).

<sup>39</sup> Ex. 111, attach. A at 1.

<sup>40</sup> Ex. 111, attach. A at 1-2.

<sup>41</sup> Ex. 111, attach. A at 1-2.

<sup>42</sup> Ex. 111, attach. A, at 1, 4-198.

<sup>43</sup> Ex. 111, attach. A at 4-198.

<sup>44</sup> Ex. 111, attach. A at 1.

<sup>45</sup> 16 TAC § 24.120(c) adopted 42 Tex. Reg. 2703 (May 19, 2017) (eff. May 28, 2017).

Yet Green Valley complains that the notice of intent was defective, inaccurate, and misleading because the city provided additional information in the notice of intent. In the notice of intent letter and accompanying map, the city identified additional tracts of land subject to annexation agreements that it anticipated annexing in the future, but the notice of intent specifically stated “this notice of intent letter does not include those . . . areas.”<sup>46</sup>

In briefs, the city explains why it provided Green Valley additional information in the notice of intent concerning tracts for which the city does not currently seek single certification, and Green Valley disputes the city’s explanation.<sup>47</sup> The dispute concerning Green Valley’s reasons for providing that additional information is not relevant to determining the Phase 2 issues.

Neither TWC § 13.255 nor 16 TAC § 24.120 prohibited the city’s providing additional information along with the notice of intent. Further, the ALJ does not find that the city’s providing this additional information rendered the notice of intent misleading. To the contrary, the ALJ finds that the city provided Green Valley a notice of intent that clearly identified, as required, the annexed area that the city intends to serve.<sup>48</sup>

**B. Delay from Notice of Intent to Application**

Because Green Valley believes the notice of intent was and remains defective, Green Valley contends that the notice of intent was not properly given. According to Green Valley, that means the city did not wait 180 days after sending a notice of intent before applying to the Commission for single certification of the Decertificated Area to the city.

Green Valley is incorrect. As discussed above, the notice of intent the city sent to Green Valley on October 22, 2015, was not defective. The 180-day period began on

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<sup>46</sup> Ex. 111, attach. A at 1-2.

<sup>47</sup> Schertz Initial Brief at 7-8; Green Valley Reply Brief at 2-4.

<sup>48</sup> TWC § 13.255(b); 16 TAC § 24.120(b).

October 22, 2015, and ended on March 20, 2016. The city filed its application on May 11, 2016.<sup>49</sup> Thus, Green Valley complied with TWC § 13.255(b) and 16 TAC § 24.120(b) by waiting 180 days after providing Green Valley the notice of intent before filing its application with the Commission.

**C. Administrative Completeness of Application**

The city believes its application is administratively complete. So does Staff.<sup>50</sup>

Because Green Valley believes the notice of intent was deficient, it also believes the Commission may and should reject the city's application and order the city to give a new, corrected notice of intent. Green Valley also complains that a map in the application showing the area within Green Valley's sewer CCN for which the city seeks single certification is different from the map in the notice of intent.<sup>51</sup>

The ALJ finds the city's application is administratively complete. Under Issue 4, the Commission asked:

Is Schertz's application administratively complete pursuant to 16 TAC § 24.8? In making this determination, the following questions should be addressed:

a. Has Schertz demonstrated that no retail public utility facilities will be rendered useless or valueless to the retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If not, has Schertz included in its application all appraisals required under TWC § 13.255(l) and 16 TAC § 24.120(m)?

b. Is Schertz requesting the transfer of specified property of a retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If so, has Schertz included in its

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<sup>49</sup> Ex. 1 at 1.

<sup>50</sup> Staff's Recommendation on Administrative Completeness (Aug. 24, 2017).

<sup>51</sup> Compare Ex. 1, attach. A.1. at 8 with Ex. 111, attach. A at 8. Green Valley refers to an identical copy of the notice of intent attached to Schertz's Initial Brief that the ALJ has not admitted.

application all appraisals required under TWC § 13.255(1) and 16 TAC § 24.120(m)?<sup>52</sup>

The Commission likely asked the additional questions because 16 TAC § 24.8 does not specify the content required to make an application administratively complete. In pertinent part, § 24.8 states:

(b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

...

(d) Applications under subchapter G of chapter 24 [concerning water and sewer CCNs] are not considered filed until the commission makes a determination that the application is administratively complete.

The ALJ does not find the city's application is deficient. As discussed above concerning Issues 4a and b, the Commission determined in Phase 1 that no Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding.<sup>53</sup> Because no property would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary.<sup>54</sup> The city has not requested Green Valley to transfer any property to the city.<sup>55</sup> Because there is no transferred property, no additional appraisals are necessary.<sup>56</sup> Thus, there are no gaps in the application.

Also as discussed above, the notice of intent the city gave Green Valley was not deficient, even though the notice of intent map contained additional, unrequired, clear information about tracts the city plans to annex in the future. The application is not incomplete,

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<sup>52</sup> Preliminary Order at 3.

<sup>53</sup> Interim Order at 9, FOF 59; the Stipulations at 3.

<sup>54</sup> Interim Order at 9, FOF 61C; the Stipulations at 3.

<sup>55</sup> Interim Order at 9, FOF 60; the Stipulations at 3.

<sup>56</sup> Interim Order at 9, FOF 60, 61A, 61B, 61C; The Stipulations at 3.

as Green Valley claims, because the city did not include that same additional, unrequired information in the application.

## V. RECOMMENDATION

The ALJ recommends that the Commission adopt the following Findings of Fact and Conclusions of Law in addition to those it previously adopted in the Interim Order. The proposed findings and conclusions are numbered to fit between those in the Interim Order. The Commission will want to adopt final Ordering Paragraphs that are different from those in the Interim Order. The ALJ suggests final Ordering Paragraphs below.

## VI. FINDINGS OF FACT

2A. The notice of intent included a map depicting Green Valley's CCN with a dashed purple line, "Area inside corporate limits to be served by City of Schertz" shaded in blue, and "Area subject to development agreements not in City of Schertz Corporate Limits" shaded in olive.

2B. In a cover letter for the notice of intent, the city wrote:

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 [sic] 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 [sic] annexation ordinances for the Transfer Tracts - the metes and bounds descriptions - are attached as Attachment B.

2C. The notice of intent described in four ways the area the city requested and intended to serve: (1) an area that overlapped the city's corporate limits and Green Valley's CCN service area; (2) an area generally bounded by three identified roads and an identified creek; (3) the area shaded blue within a purple line on an attached map; and (4) the area covered by and described by metes and bounds in the city's attached annexation ordinances.

- 2D. The notice of intent also included copies of annexation ordinances for the requested area.
- 2E. The notice of intent stated that the city intended to provide “retail sewer service to the area” and included the city’s contact information.
- 2F. March 20, 2016, was 180 days after October 22, 2015.
- 4A. Green Valley has submitted to the Commission a written list with the names and addresses of any lienholders and the amount of its debt on May 26, 2016. 16 TAC § 24.120(b)(1).
- 4B. Green Valley notified the lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2).
- 58A. On May 9, 2017, the ALJ issued a Proposal for Decision of the Phase 1 issues (Phase 1 PFD).
- 58B. After considering the Phase 1 PFD, the Commission issued an interim order (Interim Order) on July 28, 2017, that resolved Issues 8, 9, and 10 and remanded the case to SOAH to address the remaining issues.
- 62. At a prehearing conference before the ALJ on August 10, 2017, the parties agreed that a further hearing on the merits was unnecessary and a Proposal for Decision of the Phase 2 issues (Phase 2 PFD) could be issued based on written submissions.
- 63. Subsequently, the parties filed the following:

| <b>Date</b> | <b>Party</b> | <b>Document</b>   |
|-------------|--------------|---|
| 8/24/2017   | Staff        | Commission Staff’s Recommendation on Administrative Completeness  |
| 9/15/2017   | The city     | Joint Agreed Stipulations Concerning Remaining Referred Issues (the Stipulations)                         |
| 9/22/2017   | Staff        | Initial Brief   |
| 9/22/2017   | Green Valley | Initial Brief   |
| 9/22/2017   | The city     | Initial Brief   |
| 9/26/2017   | The city     | Second Supplement to Application and First Supplement to Initial Brief (Second Supplement to Application) |
| 9/29/2017   | Green Valley | Reply Brief   |
| 9/29/2017   | Staff        | Reply Brief   |
| 9/29/2017   | The city     | Reply Brief   |

- 64. The record closed on September 29, 2017, when reply briefs were due.
- 65. On October 18, 2017, the ALJ issued the Phase 2 PFD.



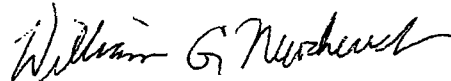
## VII. CONCLUSIONS OF LAW

- 7A. Rule 16 TAC § 24.120 concerns single certification in incorporated or annexed areas.
- 7B. Effective May 28, 2017, 16 TAC § 24.120 was repealed and replaced. 16 TAC § 24.120 *repealed and replaced* 42 Tex. Reg. 2703 (May 19, 2017).
- 7C. A rule adopted under a code is presumed to be prospective in its operation unless expressly made retrospective and does not affect the prior operation of the rule or any prior action taken under it or any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it. Tex. Gov't Code §§ 311.002, .022, .031(1), (2).
- 7D. The previous version of 16 TAC § 24.120 applies in this case. 16 TAC § 24.120 *adopted* 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014).
- 9A. The city provided Green Valley with written notice of the city's intent to provide service to the area for which the city seeks certification. TWC § 13.255(b); 16 TAC § 24.120(b).
- 9B. The city waited more than the required 180 days after providing the notice of intent to Green Valley before the city filed its application with the Commission. TWC § 13.255(b) and 16 TAC § 24.120(b).
31. Because no property would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary. TWC § 13.255(l) and 16 TAC § 24.120(m).
32. Because there is no transferred property, no additional appraisals are necessary. TWC § 13.255(1) and 16 TAC § 24.120(m).
33. Because no Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding and the city has not requested the transfer of any Green Valley property to the city, Green Valley is entitled to nothing in compensation if the city's single certification application is granted. TWC §§ 13.255(c), (g), (g-1) and (1) and 16 TAC § 24.120(c), (g), (h), and (m).
34. The city complies with TCEQ's minimum requirements for public-drinking-water systems. TWC § 13.255(m); 16 TAC § 24.120(n).
35. The city's application is administratively complete. 16 TAC § 24.8.
36. The city's application for single certification of the Decertificated Area should be granted.

**VIII. ORDERING PARAGRAPHS**

1. The application of the City of Schertz is granted.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

**SIGNED October 18, 2017.**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**SERVICE LIST**

**AGENCY:** Public Utility Commission of Texas (PUC)  
**STYLE/CASE:** CITY OF SCHERTZ  
**SOAH DOCKET NUMBER:** 473-16-5739.WS  
**REFERRING AGENCY CASE:** 45956

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ WILLIAM G. NEWCHURCH**

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CITY OF SCHERTZ

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GREEN VALLEY SUD

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