

Control Number: 45956



Item Number: 136

Addendum StartPage: 0

**P.U.C. DOCKET NO. 45956
SOAH DOCKET NO. 473-16-5739.WS**

**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
ADMINISTRATIVE HEARINGS**

2017 DEC 27 AM 11:46
RECEIVED

**COMMISSION STAFF'S RESPONSE TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S MOTION FOR REHEARING**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Green Valley Special Utility District's Motion for Rehearing. In support thereof, Staff shows the following:

I. Background

On November 17, 2017, the Commission issued a final order in this matter. On December 12, 2017, Green Valley Special Utility District (Green Valley) timely filed a Motion for Rehearing. Pursuant to Tex. Govt. Code § 2001.146(b), a party must file a reply to a motion for rehearing not later than the 40th day after the date the decision or order that is the subject of the motion is signed. Therefore, this reply is timely filed by December 27, 2017.

II. Staff's Reply

Staff supports the Commission's decision in this proceeding. The Commission's Order is supported by substantial evidence, is in the public interest, and, is in compliance with the law. The Motion for Rehearing filed by Green Valley is without merit, fails to raise any new substantive issues, and should be denied on all accounts except for Point of Error No. 8, which points out that the Commission's Final Order granting the application did not include any final mapping. Staff recommends that Green Valley's Motion for Rehearing be granted for the sole purpose of adding the final map filed by Commission Staff on November 17, 2017.

The Commission has already considered Green Valley's arguments regarding 7 U.S.C.A § 1926(b) at the outset of this case in the Preliminary Order,¹ where it stated that the issue as to whether the Commission is pre-empted by federal law from considering the City of Schertz's single certification due to 7 U.S.C.A. §19.26(b) was not to be addressed. It made this decision based on its decision in Docket 45702,² where the Preliminary Order went into detail regarding why the Commission "may not deny an application under TWC § 13.255 solely on the basis that a retail public utility that holds a CCN for all or part of the requested service area is also a holder of a federal loan made under section 1926(a) of the federal act."³ The Commission did not choose to revisit this issue when Green Valley made an Interim Appeal of SOAH Order No. 8 regarding the progress of the case in federal court.⁴ The Commission has already determined its position on this issue and Green Valley has made no new persuasive argument as to why it should reverse course at this late stage. This claim should be denied.

Green Valley's Points of Error Nos. 2-4⁵ are similar to arguments made in Green Valley's Exceptions to the Proposal for Decision in the first phase of this proceeding.⁶ These exceptions were not adopted by the ALJ nor the Commission in the Interim Order.⁷ The Commission first made clear its stance in relation to these issues in the City of Celina case,⁸ and has not deviated from that position in this docket. Responsive to Point of Error No. 2 ("the Commission erred in determining that Green Valley's dollars spent in planning and design of facilities allocable to the area to be decertificated do not constitute property rendered useless or valueless under TWC § 13.255), the Commission found that expenditures made by the utility are not the property of the utility, and money has no property interest once spent to obtain products or services.⁹ Responsive to Point of Error No. 3 (the Commission erred in determining that Green Valley is not entitled to

¹ Preliminary Order at 5.

² *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*, Docket No. 45702, Preliminary Order (July 1, 2016).

³ *Id.* at 4.

⁴ Green Valley's Interim Appeal of SOAH Order No. 8 (Aug. 21, 2017); The Open Meeting Notice stating that no Commissioner has voted to add the Appeal of SOAH Order No. 8 to the open meeting agenda (Aug. 31, 2017).

⁵ Green Valley Special Utility District's Motion for Rehearing (Dec. 12, 2017) at 9-17 (Green Valley's Motion for Rehearing).

⁶ Green Valley Special Utility District's Exceptions to the Proposal for Decision (May 25, 2017).

⁷ Recommendations Regarding Proposal for Decision (June 14, 2017); Interim Order (July 28, 2017).

⁸ *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County, Order on Rehearing*, (June 29, 2017).

⁹ *Id.* at 7-9.

compensation for necessary and reasonable legal expenses and professional fees), the Commission found that expenditures relating to legal and professional services did not constitute property for the same reason, and therefore could not be given a value.¹⁰ Responsive to Point of Error No. 4 (the Commission erred by determining that lost net revenues resulting from decertification are not property), the Commission found that the legislature did not intend lost economic opportunity, or future revenue from future customers, to be included as property.¹¹ These claims should be denied.

In regards to Point of Error No. 5 (the Commission erred by failing to address Green Valley's claim for compensation for net increased costs¹²), Green Valley argues that the net present value of higher service fees, even if not considered property, were still compensable under Tex. Water Code (TWC) § 13.255(g).¹³ However, TWC §13.255(c) only allows for compensation for the property of a retail public utility being rendered useless or valueless by the granting of the certificate. Only items considered property can be compensable, and the Commission stated that no property of Green Valley will be rendered useless or valueless to Green Valley by the decertification.¹⁴ This claim should be denied.

Green Valley's Point of Error No. 6 (the Commission erred by engaging in improper rulemaking through an adjudicative decision¹⁵), is without merit. The Preliminary Order stated that this case would have 2 phases, one to determine what property, if any, is appropriate for compensation, and one to determine the value of that property.¹⁶ The Commission did not, as Green Valley claims, improperly establish new rules or requirements, but rather enacted a process to best make the determination required by an existing statute. This claim should be denied.

Green Valley's Point of Error No. 7 (the Commission erred by finding that Schertz's notice of intent was sufficient to provide notice to Green Valley of the tracts sought to be decertified¹⁷), raises no new arguments that were not argued and briefed in phase 2 of this proceeding. Green Valley bases their argument on the fact that the accompanying map to the notice provided by the City of Schertz identified certain additional mapping information in addition to the actual parcels

¹⁰ *Id.* at 9.

¹¹ *Id.* at 10.

¹² Green Valley's Motion for Rehearing at 18.

¹³ *Id.*

¹⁴ Interim Order at 12, Conclusion of Law 28.

¹⁵ Green Valley's Motion for Rehearing at 19.

¹⁶ Preliminary Order at 2.

¹⁷ Green Valley's Motion for Rehearing at 22.

sought to be decertified.¹⁸ However, as the PFD for phase 2 noted, the Commission rules and TWC statutes do not prohibit the City of Schertz from providing additional information in the notice for intent, and that the information provided by the City of Schertz was not misleading.¹⁹ The inclusion of more detailed mapping information regarding the surrounding area does not make the notice deficient, and this claim should be denied.

Green Valley's Point of Error No. 8 points out that the Commission did not issue a map in its final order.²⁰ Commission Staff produced a map on the same day as the Commission Order, and this map should be included in an Order on Rehearing.

III. Conclusion

For the above stated reasons, Staff recommends that the Motion for Rehearing be granted for the narrow purpose of attaching a final map to the Order.

¹⁸ *Id.*

¹⁹ Proposal for Decision of Phase 2 at 10 (Oct. 18, 2017).

²⁰ Green Valley's Motion for Rehearing at 23.

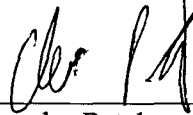
DATE: December 27, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

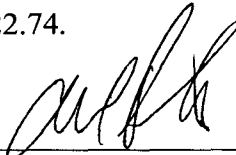


Alexander Petak
State Bar No. 24088216
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7377
(512) 936-7268 (facsimile)
Alexander.Petak@puc.texas.gov

**P.U.C. DOCKET NO. 45956
SOAH DOCKET NO. 473-16-5739.WS**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 27, 2017, in accordance with P.U.C. Procedural Rule 22.74.



Alexander Petak