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State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

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

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**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. 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

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

<p>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</p>	<p>§ § § § § § § § §</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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**SOAH DOCKET NO. 473-16-5739.WS
PUC DOCKET NO. 45956**

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

PROPOSAL FOR DECISION OF PHASE 1

I. INTRODUCTION

The City of Schertz (City or Schertz) has submitted an application (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 within the City's corporate limits to the area that the City is certificated to serve. The application also asks the Commission to decertify the same land from the sewer CCN of Green Valley Special Utility District (GVSUD). The City is entitled to the single certification upon paying GVSUD adequate and just compensation for GVSUD's property, if any, that would be transferred to the City or rendered useless or valueless to GVSUD, as determined by the Commission.¹

It is undisputed that the City has not requested transfer of any GVSUD property to the City. The City submitted an appraisal showing no property of GVSUD would be rendered useless or valueless by the decertification; hence, no compensation would be due GVSUD.² However, GVSUD submitted an appraisal calculating that its property worth \$331,862 would be rendered useless or valueless by the decertification.³

¹ Tex. Water Code § 13.255.

² Ex. 69, Stowe R-C.

³ Ex. 56, GVSUD-1 at 200000-07.

The Commission referred the case to the State Office of Administrative Hearings (SOAH) for consideration of 11 issues. However, the Commission asked that the Administrative Law Judge (ALJ) first hold a hearing and prepare a Proposal for Decision (PFD) on a subset of those issues, so that the Commission could make determinations on them before considering the other issues. Accordingly, the PFD concerns the following three referred issues:

8. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Schertz in this proceeding?⁴
9. What property of Green Valley, if any, has Schertz requested to be transferred to it?⁵
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?⁶

The City, GVSUD, and the staff (Staff) of the Commission are the parties in this case. The City filed a motion for summary decision of Issues 8 and 9, and Staff supported the motion. GVSUD opposed the motion for summary decision.

The ALJ granted the motion for partial summary decision. He concluded, under the Commission's summary decision rule,⁷ that the evidence prefiled by the parties and other material that may be considered showed that there was no genuine issue as to any material fact and that Schertz was entitled to a summary decision in its favor as to Issues 8 and 9, as a matter of law.

⁴ Ex. 36 at 4. The preliminary order also includes a citation to "TWC § 13.254(c)," which is apparently a typographical error. The ALJ assumes the Commission meant to refer to Tex. Water Code § 13.255(c), because the order elsewhere refers to "TWC § 13.255(c)."

⁵ Ex. 36 at 4. This provision also refers to "TWC § 13.254(c)," instead of Tex. Water Code § 13.255(c).

⁶ Ex. 36 at 4.

⁷ 16 Tex. Admin. Code § 22.182(a).

The ALJ concludes that no property will be rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding. It is undisputed that Schertz has not requested GVSUD to transfer any property to Schertz. Given the conclusions as to Issues 8 and 9, the ALJ also concludes that Issue No. 10 is moot, because there is no need for an appraisal when no property will be rendered useless or valueless or transferred.

II. NOTICE, JURISDICTION, AND BURDEN OF PROOF

Shortly after the case was filed, GVSUD filed a plea to the Commission's jurisdiction.⁸ The Commission determined that the plea raised an issue of federal law that the Commission did not have authority to address, and the Commission did not refer the issue to SOAH.⁹

Otherwise notice and jurisdiction are not disputed. The findings of fact and conclusions of law address those matters without further discussion here. The City has the burden of proof.¹⁰

III. EVIDENCE ADMITTED AND MATTERS OFFICIALLY NOTICED

The City and GVSUD prefiled direct-case evidence, and the City prefiled rebuttal evidence. The ALJ overruled all objections and admitted all of the prefiled evidence.¹¹ To minimize confusion, the ALJ has assigned to each item of the prefiled evidence an exhibit number that is the same as the item number assigned to it on the Commission's Interchange. Accordingly, the following are in evidence:

⁸ Ex. 6.

⁹ Ex. 36 at 5.

¹⁰ 16 Tex. Admin. Code § 24.12; 1 Tex. Admin. Code § 155.427.

¹¹ SOAH Order Nos. 4-6.

EX. NO.	DATE FILED	FILING PARTY	DESCRIPTION
53	11/17/2016	The City	Direct Testimony of Robert F. Adams, D.E., P.E.
56	12/15/2016	GVSUD	Direct Testimony and Exhibits of Joshua M. Korman
57	12/15/2016	GVSUD	Garry Montgomery Prefiled Testimony and Exhibits
58	12/15/2016	GVSUD	Pat Allen Prefiled Testimony and Exhibits
59	12/15/2016	GVSUD	Steve Blackhurst Prefiled Testimony and Exhibits
69	2/14/2017	The City	Rebuttal Testimony of Jack E. Stowe
70	2/14/2017	The City	Rebuttal Testimony of Robert F. Adams, D.E., P.E.

Additionally, for the purpose of ruling on the City’s motion for partial summary disposition, the ALJ takes official notice of the following undisputed filings referred to in the motion and responses.¹² To ease reference and, again, to minimize confusion, the ALJ has assigned to each officially noticed item an exhibit number that is the same as the item number assigned to it on the Commission’s Interchange. Accordingly, the following are officially noticed:

EX. NO.	DATE FILED	FILING PARTY	DESCRIPTION
1	5/11/2016	The City	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
3	5/13/2016	PUC CADM	Public Notice
4	5/18/2016	PUC CADM	Acknowledgment of Receipt
5	5/25/2016	The City	Proof of Service of its Application and Request for Appraiser
6	5/26/2016	GVSUD	Motion to Intervene, Plea to the Jurisdiction, and Motion to Dismiss with Debt Information Listing
9	6/15/2016	The City	Response To GVSUD’s Motion to Intervene, Plea to Jurisdiction and Motion to Dismiss
10	6/21/2016	PUC CADM	Order No. 2, Establishing Timeline and Requiring Filings
21	7/11/2016	The City	Notice of Meeting

¹² Tex. Gov’t Code § 2001.090; 16 Tex. Admin. Code §§ 22.182(a), .222. Any objection to official notice should be filed as an exception to the PFD.

EX. NO.	DATE FILED	FILING PARTY	DESCRIPTION
22	7/15/2016	GVSUD	Appraisal
23	7/15/2016	The City	Appraisal
26	8/2/2016	The City	Response to Order No. 3 - Petitioning for Third Qualified Independent Appraiser
29	8/16/2016	PUC CADM	Order of Referral
30	8/18/2016	SOAH	SOAH Order No. 1, Case Description, Notice of Prehearing Conference, and Granting Intervention
35	9/6/2016	PUC CADM	Corrected Draft Preliminary Order Memo
36	9/12/2016	PUC CADM	Preliminary Order
37	9/12/2016	PUC CADM	Outgoing Commission-Signed Order Mail Log
38	9/15/2016	SOAH	SOAH Order No. 2, Memorializing Prehearing Conference, Assigning Burden of Proof, and Setting Deadline for Proposed Procedural Schedule
40	9/26/2016	SOAH	SOAH Order No. 3, Setting Procedural Schedule and Hearing on the Merits
54	12/9/2016	GVSUD	GVSUD's Objections to Schertz's Prefiled Direct Testimony and Exhibits and Motion to Strike
55	12/9/2016	PUC Legal	Commission Staff's Objections to and Motion to Strike Portions of the City of Schertz's Direct Testimony and Exhibits
60	12/22/2016	The City	City of Schertz's Response to Green Valley Special Utility District's and Commission Staff's Objections to the City of Schertz's Direct Testimony and Exhibits and Motion to Strike
61	1/11/2017	PUC Legal	Commission Staff's Objections to and Motion to Strike Portions of Green Valley Special Utility District's Direct Testimony
62	1/11/2017	The City	City of Schertz's Objections to and Motion to Strike GVSUD's Prefiled Direct Testimony
65	1/25/2017	GVSUD	Response to Schertz' and Staff's Objections to PFT
72	2/28/2017	GVSUD	Objections to Schertz's Rebuttal Testimony
74	3/14/2017	The City	Response to GVSUD's Objections to the City's Rebuttal Testimony and Exhibits and Motion To Strike
75	3/14/2017	The City	City of Schertz's Motion for Partial Summary Decision
76	3/16/2017	GVSUD	Response to City of Schertz's Motion for Partial Summary Decision
77	3/16/2017	SOAH	SOAH Order No. 4, Ruling on Objections to Prefiled Evidence
78	3/16/2017	SOAH	SOAH Order No. 5, Setting Deadline for Responding to Motion for Summary Decision
79	3/16/2017	The City	Supplement to Motion for Partial Summary Decision

EX. NO.	DATE FILED	FILING PARTY	DESCRIPTION
80	3/22/2017	PUC LEGAL	Commission Staff's Statement of Position and Response to the City of Schertz's Motion for Partial Summary Decision
81	3/23/2017	GVSUD	Green Valley Special Utility District's Reply to Commission Staff's Statement of Position and Response to City of Schertz's Motion for Partial Summary Decision
82	3/24/2017	SOAH	SOAH Order No. 6, Granting Motion for Partial Summary Decision and Cancelling Hearing on the Merits
83	4/5/2017	The City	City of Schertz's Proposed Findings of Fact and Conclusions of Law

IV. PROCEDURAL HISTORY

On October 22, 2015, the City provided notice to GVSUD of its intent to provide sewer service to portions of land that were within the corporate limits of the City.¹³ On May 11, 2016, the City submitted the Application, under Texas Water Code § 13.255 and 16 Texas Administrative Code § 24.120, seeking decertification of 405 acres of land (Decertificated Area) from GVSUD's sewer CCN No. 20973 and single sewer CCN certification of that land to the City.¹⁴ On May 26, 2016, GVSUD filed a motion to intervene in this matter.¹⁵

On July 7, 2016, the City's and GVSUD's independent appraisers held their first meeting.¹⁶ On July 15, 2016, the City filed its appraisal, prepared by Jack E. Stowe (City Appraisal).¹⁷ On July 15, 2016, GVSUD filed its appraisal, prepared by Joshua Korman and his associate, John Kostohryz (GVSUD Appraisal).¹⁸ The City and GVSUD Appraisals

¹³ Ex. 1, attach. B; Ex. 53 at 65-67.

¹⁴ Ex. 1; Ex. 53 at 53.

¹⁵ Ex. 6.

¹⁶ Ex. 21.

¹⁷ Ex. 23; Ex. 69 at 62.

¹⁸ Ex. 22; Ex. 56, GVSUD-1.

reach different findings as to whether property of GVSUD would be rendered useless or valueless by the proposed decertification.¹⁹ On August 2, 2016, the City filed notice with the Commission that the parties and their appraisers were unable to agree on an appraisal determination and requested that the Commission appoint a third qualified independent appraiser.²⁰

On August 16, 2016, the Commission referred the Application to SOAH for hearing.²¹ The City, GVSUD, and Staff were named as parties in this matter.²² At an open meeting of the Commission held on September 8, 2016, the Commissioners adopted a preliminary order identifying a list of issues to be addressed in a hearing at SOAH regarding the Application (Preliminary Order).²³ On September 12, 2016, the Commission issued its preliminary order.²⁴

On September 14, 2016, a prehearing conference in this matter was held at SOAH.²⁵ Pursuant to the Commission's September 12, 2016 Preliminary Order, the then-presiding ALJ²⁶ ordered that the purpose of this first phase of the hearing was to address Issues 8–10 in the Preliminary Order.²⁷

On November 17, 2016, the City filed the direct testimony and exhibits of Robert F. Adams, D.E., P.E.²⁸ On December 15, 2016, GVSUD filed direct testimonies and exhibits of David "Pat" Allen,²⁹ Joshua M. Korman,³⁰ Garry Montgomery, P.E.,³¹ and

¹⁹ Compare Ex. 69, ex. Stowe R-C at 64–66 with Ex. 56, GVSUD-1 at GVSUD 200000.

²⁰ Ex. 26.

²¹ Ex. 29.

²² Ex. 29.

²³ Ex. 35.

²⁴ Ex. 36.

²⁵ Ex. 30.

²⁶ To balance workload, this case was subsequently reassigned to the current ALJ.

²⁷ Ex. 38.

²⁸ Ex. 53.

²⁹ Ex. 58.

Stephen H. Blackhurst, P.E.³² On February 14, 2017, the City filed the rebuttal testimonies and exhibits of Mr. Adams³³ and Mr. Stowe.³⁴ In accordance with the schedule set by the ALJ, the parties filed objections to and motions to strike some of the prefiled evidence, and later filed replies to the objections.³⁵ The ALJ overruled all the objections and admitted all of the prefiled evidence.³⁶

On March 14, 2017, the City filed a motion for partial summary decision.³⁷ On March 16, 2017, GVSUD filed its response to the City's motion for partial summary decision.³⁸ On March 22, 2017, Staff filed a statement of position and a response to the City's motion for partial summary decision.³⁹ On March 16, 2017, the City filed a supplement to its motion for partial summary decision.⁴⁰ On March 22, 2017, GVSUD filed a reply to Staff's statement of position and a response to the City's motion for partial summary decision.⁴¹

On March 24, 2017, the ALJ issued SOAH Order No. 6, which admitted all evidence prefiled by the parties, granted the City's motion for partial summary decision, and cancelled the hearing on the merits.⁴² In SOAH Order No. 6, the ALJ also ordered the City to file and provide

³⁰ Ex. 56.

³¹ Ex. 57.

³² Ex. 59.

³³ Ex. 70.

³⁴ Ex. 69.

³⁵ Exs. 54-55, 60-62, 65, 72, 74.

³⁶ Exs. 77-78, 82.

³⁷ Ex. 75.

³⁸ Ex. 76.

³⁹ Ex. 80.

⁴⁰ Ex. 79.

⁴¹ Ex. 81.

⁴² Ex. 82.

the ALJ with proposed findings of fact and conclusions of law by April 5, 2017.⁴³ On April 5, 2017, the City filed its proposed findings of fact and conclusions of law.⁴⁴

V. APPLICABLE LAW

Texas Water Code § 13.255 governs single certification in an area incorporated or annexed by a municipality that is currently served by a special utility district under a CCN. A municipality and a retail public utility that provides sewer service to all or part of the municipality's incorporated area pursuant to a CCN may agree in writing that all or part of the area may be served by a municipally owned utility.⁴⁵ However, 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, the municipality may file an application with the Commission to grant single certification to the municipally owned utility.⁴⁶ If an application is filed, the Commission must fix a time and place for a hearing and give notice of the hearing to the municipality and the retail public utility.⁴⁷

The Commission must grant single certification to the municipality.⁴⁸ But the Commission must first determine whether single certification, as requested by the municipality, would result in property of the retail public utility being rendered useless or valueless to the retail public utility.⁴⁹ The term "property" is not defined in the Texas Water Code. Words and phrases must be read in context and construed according to the rules of grammar and common usage unless they have acquired a technical or particular meaning by legislative definition or

⁴³ Ex. 82.

⁴⁴ Ex. 83.

⁴⁵ Tex. Water Code § 13.255(a).

⁴⁶ Tex. Water Code § 13.255(b).

⁴⁷ Tex. Water Code § 13.255(b).

⁴⁸ Tex. Water Code § 13.255(c).

⁴⁹ Tex. Water Code § 13.255(c).

otherwise.⁵⁰ The plain meaning of “property” is “something owned or possessed”, “the exclusive right to possess, enjoy, and dispose of a thing”, “something to which a person or business has legal title.”⁵¹ In a legal context, “property” is further defined as “any external thing over which the rights of possession, use, and enjoyment are exercised” and reflects “one’s exclusive right of ownership of a thing.”⁵²

The Commission must also determine the monetary amount that is adequate and just to compensate the retail public utility for its property that would be rendered useless or valueless.⁵³ Also, if the municipality requests transfer of property from the retail public utility to the municipality, the Commission must determine the adequate and just compensation to be paid for such property.⁵⁴ The grant of single certification by the Commission goes into effect on the date the municipality pays adequate and just compensation to the retail public utility, pursuant to court order.⁵⁵

For purposes of implementing the single certification and compensating the retail public utility, the value of real property owned and used by it for its facilities is determined according to the standards set forth in Chapter 21, Texas Property Code, governing actions in eminent domain.⁵⁶ The value of personal property is determined according to a specified list of factors, which are considered in detail below in the PFD.⁵⁷

If the municipality, the retail utility, and their appointed and qualified independent appraisers are not able to agree on the amount of compensation, either the retail public utility or

⁵⁰ Tex. Gov’t Code § 311.011.

⁵¹ Merriam-Webster Collegiate Dictionary (11th ed. 2003).

⁵² Black’s Law Dictionary (10th ed. 2014).

⁵³ Tex. Water Code § 13.255(c).

⁵⁴ Tex. Water Code § 13.255(c).

⁵⁵ Tex. Water Code § 13.255(c)–(f).

⁵⁶ Tex. Water Code § 13.255(g).

⁵⁷ See Tex. Water Code § 13.255(g).

municipality may petition the Commission to appoint a third qualified independent appraiser to reconcile the appraisals, and the third appraiser's determination of compensation is binding on the Commission.⁵⁸

VI. NO TRANSFER OF PROPERTY IS REQUESTED

The City has not requested the transfer of any of GVSUD's property. That is undisputed.⁵⁹ For that reason, Issue 9 should be summarily decided accordingly.

VII. NO PROPERTY OF GVSUD WOULD BE RENDERED USELESS OR VALUELESS TO GVSUD IF THE APPLICATION IS APPROVED

The City submitted an appraisal showing no property of GVSUD would be rendered useless or valueless by the decertification; hence, no compensation would be due.⁶⁰ GVSUD submitted an appraisal calculating that property with a total value of \$331,862 would be rendered useless or valueless by the certification.⁶¹ There is, however, no genuine issue as to any material fact. The ALJ concludes that no property of GVSUD would be rendered useless or valueless by the decertification that the City seeks.

The Decertificated Area is within the corporate limits of the City.⁶² The Decertificated Area has been certificated to GVSUD, under CCN No. 20973, since approximately 2005.⁶³ The Decertificated Area is approximately 405 acres and makes up less than 1% of the entire GVSUD sewer CCN area.⁶⁴

⁵⁸ Tex. Water Code § 13.255(1).

⁵⁹ Ex. 76 at 15; Ex. 80 at 3.

⁶⁰ Ex. 23; Ex. 70, ex. Stowe R-C.

⁶¹ Ex. 56, GVSUD-1 at 200000-07.

⁶² Ex. 53 at 17, 53-265.

⁶³ Ex. 58 at 13, GVSUD-3; Ex. 56, GVSUD-1 at 200030-200243.

⁶⁴ Ex. 56, GVSUD-1 at GVSUD 200004; Ex. 53 at 17, 58.

Currently, GVSUD provides no retail sewer service in the Decertificated Area, or anywhere else, under its sewer CCN. GVSUD does not have any retail wastewater customers, contractual obligations to provide retail wastewater service, or requests for retail wastewater service in the Decertificated Area.⁶⁵ In fact, GVSUD has no existing retail sewer customers or infrastructure anywhere within the boundaries of its CCN.⁶⁶

GVSUD does not own any real or personal property in the Decertificated Area.⁶⁷ GVSUD has made no physical improvements within the Decertificated Area, including any wastewater infrastructure.⁶⁸ GVSUD does not have any other wastewater infrastructure outside of the Decertificated Area that is or could be used to provide wastewater service to the Decertificated Area.⁶⁹

Further, GVSUD is not currently capable of providing sewer service to anyone in the Decertificated Area. GVSUD does not have a contract with a wholesale wastewater provider to collect or treat wastewater generated within the Decertificated Area.⁷⁰ Beyond not having any sewer infrastructure, GVSUD does not possess a Texas Pollutant Discharge Elimination System (TPDES) permit from the Texas Commission on Environmental Quality (TCEQ) to discharge treated effluent from a wastewater treatment plant.⁷¹ GVSUD has applied for a TCEQ permit, but it has not yet been granted, has been protested, and is currently the subject of a contested case hearing at SOAH.⁷² GVSUD does not have final approval from the TCEQ of its designs for a

⁶⁵ Ex. 53, ex. G (GVSUD's responses to the City's Requests for Admission (RFAs) 1-3, 1-9, 1-10, 2-22, 2-26, 2-27 and Requests for Information (RFIs) 1-7).

⁶⁶ Ex. 53, ex. G (GVSUD's response to the City's RFAs 1-1, 1-2).

⁶⁷ Ex. 53 at 17, ex. G (GVSUD's responses to the City's RFAs 1-4, 1-6, 2-20, 2-21 and RFIs 1-1, 1-11); Ex. 56, ex. GVSUD-1 at 200000-07; *see also* Exs. 56-59 (direct testimony and exhibits of all GVSUD witnesses failing to identify any real or personal property within the Decertificated Area).

⁶⁸ Ex. 53 at 17 and ex. G (GVSUD's responses to the City's RFAs 1-4, 1-6, 2-23); Ex. 56 at 12.

⁶⁹ Ex. 53 at 28; Ex. 56, ex. GVSUD-1.

⁷⁰ Ex. 53, ex. G (GVSUD's response to the City's RFI 1-12).

⁷¹ Ex. 53, ex. G (GVSUD response to the City's RFA 2-3); Ex. 70 at 9-10, 23-30.

⁷² Ex. 53 at 24, 31, and ex. G (GVSUD response to the City's RFI 1-11); Ex. 56 at 12; Ex. 57 at 16; Ex. 70 at 24-25.

wastewater collection system that could be installed to serve the Decertificated Area.⁷³ GVSUD has not submitted designs to the TCEQ for a wastewater collection system that could be installed to serve the Decertificated Area.⁷⁴

It is true that GVSUD purchased approximately 65 acres for \$325,000 in 2014 to construct a wastewater treatment plant outside of the Decertificated Area.⁷⁵ GVSUD claims the City should pay it \$1,799 as a share of the \$325,000 cost of the 65-acre tract of land.⁷⁶ No development has occurred on the 65 acres, and the 65 acres are not currently used to provide wastewater service of any kind, much less to the Decertificated Area.⁷⁷ GVSUD does not contend that the 65 acres of land will be rendered useless or valueless to GVSUD if the City's application is granted, removing the Decertificated Area from GVSUD's CCN.⁷⁸ In fact, GVSUD specifically denies that all or a portion of the 65 acres will be rendered useless and valueless upon decertification.⁷⁹

Moreover, most of the 65 acres is not necessary and could not be used for a wastewater treatment plant. Approximately 45 of the 65 acres are within a 100-year floodplain, which makes that portion of the Land unsuitable for siting a wastewater treatment plant.⁸⁰ Of the remaining 20 acres not in the 100-year floodplain, only about half of those acres would be needed to construct a 5-million-gallon-per-day wastewater treatment plant with the TCEQ-required buffer zones around the facility.⁸¹

⁷³ Ex. 53, ex. G (GVSUD's response to the City's RFAs 2-9, 2-12).

⁷⁴ Ex. 53, ex. G (GVSUD's response to the City's RFA 2-6).

⁷⁵ Ex. 53, ex. G (GVSUD's response to the City's RFI 1-11); Ex. 58 at 15; Ex. 56 at 13.

⁷⁶ Ex. 56, GVSUD-1 at 200004-05.

⁷⁷ Ex. 53 at 33.

⁷⁸ Ex. 70 at 10 and ex. Adams R-B (GVSUD's response to the City's RFI 4-46).

⁷⁹ Ex. 53, ex. G (GVSUD's response to the City's RFA 2-10).

⁸⁰ Ex. 70 at 10-11; Ex. 57 at 18.

⁸¹ Ex. 70 at 11.

Also, GVSUD would need the same amount of the Land for a wastewater treatment plant, whether the area requested by the City is decertificated or not.⁸² Growth is anticipated in GVSUD's sewer CCN area beyond the portion that would be decertificated if the City's application is granted.⁸³ The ALJ does not find the 65 acres for the wastewater treatment plant would be rendered valueless or useless to GVSUD if the separate 405 acres is decertificated in this case, as the City asks.

The ALJ concludes that no property of GVSUD would be rendered useless or valueless to GVSUD if the Commission grants the Decertification that the City seeks because:

- GVSUD is not providing sewer service to anyone in its CCN area;
- GVSUD has no contract or request to provide service there;
- GVSUD is not currently capable of providing service there;
- GVSUD owns no property in the Decertificated Area;
- GVSUD has no personal property outside the Decertificated Area that it might use to provide service there; and
- the 65 acres that GVSUD owns outside the Decertificated Area where it hopes to build a wastewater treatment plant would not be rendered useless or valueless to GVSUD if the Decertificated Area is removed from its CCN.

VIII. OTHER ITEMS IN GVSUD'S APPRAISAL ARE NOT PROPERTY

Issue 10 is the last referred issue under consideration in Phase 1 of the case. It asks: "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?"

⁸² Ex. 70 at 10-11; Ex. 57 at 18.

⁸³ Ex. 53, ex. G (GVSUD's response to the City's RFA 2-16).

The City did not ask for summary decision of Issue 10. However, the ALJ recommends that the Commission find that Issue No. 10 is moot, because the ALJ concludes above that the City has not requested transfer of any property from GVSUD and no property of GVSUD would be rendered useless or valueless by the decertification the City seeks.

The remaining items that GVSUD claims, in its appraisal, would be rendered useless and valueless if the Decertificated Area is removed from its CCN are not property. Thus, GVSUD would not be entitled to compensation for them under Texas Water Code § 13.255 if the City's request for decertification is granted.

When decertification of all or part of a retail public utility's certificated area and single certification of the area to a municipality would render some of its property useless or valueless to it, Texas Water Code § 13.255(g) specifies how the value of the property is determined for purposes of compensation. It provides:

For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

GVSUD claims the items listed in Texas Water Code § 13.555(g) are descriptions of property. Its appraiser, Mr. Korman, testified that GVSUD has several of these kinds of

“property” that would be rendered useless or valueless if the City’s decertification request is granted.⁸⁴ Mr. Korman correctly broke out the § 13.555(g) factors:

Factor 1 — impact on existing indebtedness of the retail public utility and its ability to repay that debt;

Factor 2 — the value of the service facilities of the retail public utility located within the area in question;

Factor 3 — the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question;

Factor 4 — the amount of the retail public utility’s contractual obligations allocable to the area in question;

Factor 5 — any demonstrated impairment of service or increase of cost to consumers of the retail public utility, remaining after single certification;

Factor 6 — the impact on future revenues lost from existing customers;

Factor 7 — necessary and reasonable legal expenses and professional fees;

Factor 8 — factors relevant to maintaining the current financial integrity of the retail public utility; and

Factor 9 — other relevant factors.⁸⁵

Under Factors 1, 6, 8, and 9 combined, GVSUD claims \$130,715 of its property would be rendered useless or valueless.⁸⁶ Under Factors 2 and 3 combined, it claims \$1,160.⁸⁷ Under Factor 5, it claims \$49,831.⁸⁸ Under Factor 7, it claims \$148,357.⁸⁹ GVSUD claims nothing

⁸⁴ Ex. 56 at 6–14 and ex. GVSUD-1 at 200002-08.

⁸⁵ Ex. 56, GVSUD 1 at 200002.

⁸⁶ Ex. 56 at 6–14, GVSUD-1 at 200003–04.

⁸⁷ Ex. 56 at 6–14, GVSUD-1 at 200004–05. GVSUD also claims \$1,799 under Factors 2 and 3 as a share of acquiring the 65 acres of land where it hopes to build a wastewater treatment facility outside the Decertificated Area. As set out above, the ALJ does not find the 65 acres would be rendered useless or valueless by the decertification the City requests.

⁸⁸ Ex. 56 at 6–14, GVSUD-1 at 200005–06.

under Factor 4.⁹⁰ Thus, GVSUD claims a total of \$330,063 of its property would be rendered useless or valueless.⁹¹

The ALJ does not agree that GVSUD is entitled to compensation for any of these items. The Texas Water Code § 13.255(g) factors do not describe **property** that might be rendered useless or valueless.⁹² Instead, they are factors used to determine the **value of property** that will be rendered valueless or useless.⁹³ That is the conclusion that the Commission reached in *City of Celina* when analyzing a nearly identical statute, Texas Water Code § 13.254(g).⁹⁴ As found above, GVSUD has no property that would be transferred or rendered useless or valueless if the City's application is granted; hence, there is no GVSUD property to value using the Texas Water Code § 13.255(g) factors.

The \$130,715 that GVSUD claims under combined Factors 1, 6, 8, and 9 is the net present value of revenue GVSUD anticipates it will receive from future customers within the Decertificated Area, which GVSUD could use to pay its bonded debt.⁹⁵ As to Factor 1, GVSUD's debt does not concern sewer service. GVSUD has no existing loans or other debt obligations secured to or related to the design or construction of sewer infrastructure.⁹⁶ Factor 6 concerns "future revenues lost from **existing customers**."⁹⁷ As previously discussed, GVSUD has no existing customers, so Factor 6 is not applicable. Nothing in Texas Water Code § 13.255 suggests that a retail public utility is entitled to compensation for revenue it hoped to receive in

⁸⁹ Ex. 56 at 6–14, GVSUD-1 at 200008.

⁹⁰ Ex. 56, GVSUD-1 at 200005.

⁹¹ Ex. 56, GVSUD 1 at 200007. GVSUD actually claims a total of \$331,862, but \$1,799 of that concerns the 65 acres of land that were addressed above in the PFD.

⁹² Emphasis added.

⁹³ Emphasis added.

⁹⁴ *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*, PUC Docket No. 45848, SOAH Docket No. 473-16-5011.WS, Order (April 13, 2017) (*Celina Order*).

⁹⁵ Ex. 56 at 6–14 and GVSUD-1 at 200003–04.

⁹⁶ Ex. 53, ex. G (GVSUD's response to the City's RFAs 1-7, 1-8).

⁹⁷ Tex. Water Code § 13.255(g) (emphasis added).

the future from customers it hopes to have then.⁹⁸ As to Factor 8, GVSUD does not need \$130,715 to maintain its integrity as a retail public utility providing sewer service, because it is not providing sewer service, as found above. As to Factor 9, no other relevant evidence concerns the \$130,715.

The \$49,831 that GVSUD claims under Factor 5 is the net present value of higher service fees that GVSUD claims its future customers outside the Decertificated Area will pay for sewer service if the Decertificated Area is removed from its CCN.⁹⁹ The anticipated higher fees are allegedly due to the fact that GVSUD will have no customers in the Decertificated Area to pay a share of the sewer service costs. In other words, GVSUD seeks compensation from the City for costs of facilities it has not built, may not obtain a permit to build, and may not need to serve customers it does not and may never have. GVSUD's lost future revenues from non-existent customers are not property and are not compensable under Texas Water Code § 13.255.¹⁰⁰

Under Factors 2 and 3, GVSUD claims \$1,160 as a share of the \$209,582 it spent on planning to provide sewer service.¹⁰¹ Expenditures are not property,¹⁰² so GVSUD is not entitled to the compensation.

The \$148,357 that GVSUD claims under Factor 7 is for legal and appraisal professional fees. Once again, expenditures are not property,¹⁰³ and GVSUD is not entitled to any compensation for them.

⁹⁸ Tex. Water Code § 13.255; cf. *Celina* Order at 9, 16.

⁹⁹ Ex. 56 at 6–14, GVSUD-1 at 200005–06.

¹⁰⁰ Cf. *Celina* Order at 9, 16.

¹⁰¹ Ex. 56, GVSUD-1 at 5–6.

¹⁰² Cf. *Celina* Order at 7–9, 15.

¹⁰³ Cf. *Celina* Order at 7–9, 15.

IX. RECOMMENDATION

As to Issue 8, the ALJ concludes that no GVSUD property will be rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding. As to Issue 9, it is undisputed that the City has not requested GVSUD to transfer any property to the City. Given the answers to those issues, the ALJ recommends that the Commission find that Issue 10 is moot.

X. FINDINGS OF FACT

1. On October 22, 2015, the City of Schertz (City) provided notice to Green Valley Special Utility District (GVSUD) of its intent to provide sewer service to approximately 405 acres of land (Decertificated Area) within the corporate limits of the City.
2. The Decertificated Area has been certificated to GVSUD for sewer service since approximately 2005 under Certificate of Convenience and Necessity (CCN) No. 20973.
3. On May 11, 2016, the City submitted an application (Application) to the Public Utility Commission of Texas (Commission), under Texas Water Code § 13.255 and 16 Texas Administrative Code §24.120, for single sewer certification for the Decertificated Area.
4. The Application also asked the Commission to decertificate the Decertificated Area from GVSUD's CCN No. 20973.
5. The Decertificated Area makes up less than 1% of GVSUD's sewer CCN area.
6. The City did not request transfer of any GVSUD property to the City.
7. On May 26, 2016, GVSUD filed a motion to intervene in this matter.
8. On July 7, 2016, the City's and GVSUD's independent appraisers held their first meeting concerning the proposed decertification.
9. On July 15, 2016, the City filed its appraisal, prepared by Jack E. Stowe (City Appraisal) with the Commission.
10. The City Appraisal showed no property of GVSUD would be rendered useless or valueless by the decertification.

11. On July 15, 2016, GVSUD filed its appraisal, prepared by Joshua Korman and his associate, John Kostohryz, (GVSUD Appraisal) with the Commission.
12. The GVSUD Appraisal calculated that its property worth \$331,862 would be rendered useless or valueless by the decertification.
13. Currently, GVSUD provides no retail sewer service in the Decertificated Area, or anywhere else, under its sewer CCN.
14. GVSUD does not have any retail wastewater customers, contractual obligations to provide retail wastewater service, or requests for retail wastewater service in the Decertificated Area.
15. GVSUD does not own any real or personal property in the Decertificated Area.
16. GVSUD has made no physical improvements within the Decertificated Area, including any wastewater infrastructure.
17. GVSUD has no existing retail sewer infrastructure anywhere within the boundaries of its CCN.
18. GVSUD does not have any wastewater infrastructure outside of the Decertificated Area that is or could be used to provide wastewater service to the Decertificated Area.
19. GVSUD does not have a contract with a wholesale wastewater provider to collect or treat wastewater generated within the Decertificated Area.
20. GVSUD does not possess a Texas Pollutant Discharge Elimination System (TPDES) permit from the Texas Commission on Environmental Quality (TCEQ) to discharge treated effluent from a wastewater treatment plant.
21. GVSUD has applied to TCEQ for a TPDES permit, but it has not yet been granted, has been protested, and is currently the subject of a contested case hearing at the State Office of Administrative Hearings (SOAH).
22. GVSUD does not have final approval from the TCEQ of its designs for a wastewater collection system that could be installed to serve the Decertificated Area.
23. GVSUD has not submitted designs to the TCEQ for a wastewater collection system that could be installed to serve the Decertificated Area.
24. GVSUD is not currently capable of providing sewer service to anyone in the Decertificated Area.

25. GVSUD purchased approximately 65 acres for \$325,000 in 2014 to construct a wastewater treatment plant outside of the Decertificated Area.
26. No development has occurred on the 65 acres, and it is not currently used by GVSUD to provide wastewater service of any kind, much less to the Decertificated Area.
27. Most of the 65 acres is not necessary and could not be used for a wastewater treatment plant.
28. Approximately 45 of the 65 acres are within a 100-year floodplain, which makes that portion of the land unsuitable for siting a wastewater treatment plant.
29. Of the remaining 20 acres not in the 100-year floodplain, only about half of those acres would be needed to construct a 5-million-gallon-per-day wastewater treatment plant with the TCEQ-required buffer zones around the facility.
30. GVSUD would need the same amount of the land for a wastewater treatment plant, whether the area requested by the City is decertified or not.
31. Growth is anticipated in GVSUD's sewer CCN area beyond the portion that would be decertificated if the City's application is granted.
32. GVSUD does not contend that the 65 acres of land will be rendered useless or valueless to GVSUD if the City's application is granted, removing the Decertificated Area from GVSUD's CCN.
33. GVSUD specifically denies that all or a portion of the 65 acres will be rendered useless and valueless upon decertification.
34. The 65 acres for the wastewater treatment plant would not be rendered valueless or useless to GVSUD if the separate 405 acres are decertificated in this case, as the City asks.
35. In its appraisal, GVSUD claims it is entitled to compensation from the City for the following that it claims will be rendered valueless and useless to it if the City's Application is granted:
 - a. \$130,715 in compensation as the net present value of revenue GVSUD anticipates it will receive from future customers within the Decertificated Area, which GVSUD could use to pay its bonded debt;
 - b. \$1,160 in compensation as a share of the \$209,582 it spent on planning to provide sewer service;

- c. \$49,831 in compensation as the net present value of higher service fees that GVSUD claims its future customers outside the Decertificated Area will pay for sewer service if the Decertificated Area is removed from its CCN; and
 - d. \$148,357 in compensation for legal and appraisal professional fees.
- 36. GVSUD has no existing loans or other debt obligations secured to or related to the design or construction of sewer infrastructure.
 - 37. GVSUD's debt does not concern sewer service.
 - 38. Because it is not providing sewer service, GVSUD does not need \$130,715, or any other amount, to maintain its integrity as a retail public utility providing sewer service.
 - 39. On August 2, 2016, the City filed notice with the Commission that the parties and their appraisers were unable to agree on an appraisal determination and requested that the Commission appoint a third qualified independent appraiser.
 - 40. On August 16, 2016, the Commission referred the Application to SOAH for hearing.
 - 41. The City, GVSUD, and Staff were named as parties in this matter.
 - 42. On September 12, 2016, the Commission issued a Preliminary Order in this case.
 - 43. The Preliminary Order referred 11 issues to SOAH for consideration, including the following:
 - 8. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Schertz in this proceeding?
 - 9. What property of Green Valley, if any, has Schertz requested to be transferred to it?
 - 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?
 - 44. In the Preliminary Order, the Commission asked that the Administrative Law Judge (ALJ) first hold a hearing and prepare a Proposal for Decision (PFD) on Issues 8–10, so that the Commission could make determinations on them before considering the other issues.
 - 45. On September 14, 2016, a prehearing conference in this matter was held at SOAH.

46. Pursuant to the Commission's Preliminary Order, the then-presiding ALJ ordered that the purpose of the first phase of the hearing was to address Issues 8–10 in the Preliminary Order.
47. The case was later reassigned by SOAH to another ALJ.
48. On November 17, 2016, the City filed the direct testimony and exhibits of Robert F. Adams, D.E., P.E.
49. On December 15, 2016, GVSUD filed direct testimonies and exhibits of David "Pat" Allen, Joshua M. Korman, Garry Montgomery, P.E., and Stephen H. Blackhurst, P.E.
50. On February 14, 2017, the City filed the rebuttal testimonies and exhibits of Mr. Adams and Mr. Stowe.
51. The parties filed objections to and motions to strike some of the prefiled evidence, and later filed replies to the objections.
52. The ALJ overruled all the objections and admitted all of the prefiled evidence.
53. On March 14, 2017, the City filed a motion for partial summary decision.
54. On March 16, 2017, GVSUD filed a response opposing the City's motion for partial summary decision.
55. On March 22, 2017, Staff filed a statement of position and a response supporting the City's motion for partial summary decision.
56. On March 16, 2017, the City filed a supplement to its motion for partial summary decision.
57. On March 22, 2017, GVSUD filed a reply to Staff's statement of position and a response opposing the City's motion for partial summary decision.
58. On March 24, 2017, the ALJ issued SOAH Order No. 6, which granted the City's motion for partial summary decision and cancelled the hearing on the merits.
59. As to Issue 8, no GVSUD property will be rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding.
60. As to Issue 9, the City has not requested GVSUD to transfer any property to the City.
61. Given the answers to Issues 8 and 9, Issue 10 is moot.

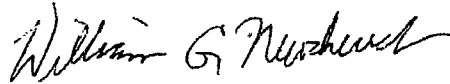
XI. CONCLUSIONS OF LAW

1. The City is a municipality. Tex. Water Code § 13.002(12).
2. GVSUD is a retail public utility and special utility district. Tex. Water Code § 13.002(19), ch. 65.
3. The Commission has jurisdiction and authority over this matter. Tex. Water Code §§ 13.041, .255(b)–(c); 16 Tex. Admin. Code § 24.120(b)–(c).
4. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a PFD with findings of fact and conclusions of law. Tex. Gov't Code §§ 2001.058, 2003.049.
5. All notice has been given as required. Tex. Gov't Code §§ 2001.051–.052; Tex. Water Code § 13.255(b).
6. The City, as the applicant, has the burden of proof in this case. 16 Tex. Admin. Code § 24.12; 1 Tex. Admin. Code § 155.427.
7. Texas Water Code § 13.255 governs single certification in an area incorporated or annexed by a municipality that is currently served by a special utility district under a CCN.
8. A municipality and a retail public utility that provides sewer service to all or part of the municipality's incorporated area pursuant to a CCN may agree in writing that all or part of the area may be served by a municipally owned utility. Tex. Water Code § 13.255(a).
9. 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, the municipality may file an application with the Commission to grant single certification to the municipally owned utility. Tex. Water Code § 13.255(b).
10. The Commission must grant single certification to the municipality. Tex. Water Code § 13.255(c).
11. Before granting single certification as requested by a municipality, the Commission must first determine whether single certification would result in property of the retail public utility being rendered useless or valueless to the retail public utility. Tex. Water Code § 13.255(c).
12. The Commission must also determine the monetary amount that is adequate and just to compensate the retail public utility for its property that would be rendered useless or valueless. Tex. Water Code § 13.255(c).

13. If the municipality requests transfer of property of the retail public utility to the municipality, the Commission must determine the adequate and just compensation to be paid for such property. Tex. Water Code § 13.255(c).
14. Words and phrases must be read in context and construed according to the rules of grammar and common usage unless they have acquired a technical or particular meaning by legislative definition or otherwise. Tex. Gov't Code § 311.011.
15. The term "property" is not defined in the Texas Water Code.
16. The plain meaning of "property" is "something owned or possessed," "the exclusive right to possess, enjoy, and dispose of a thing," and "something to which a person or business has legal title." Merriam-Webster Collegiate Dictionary (11th ed. 2003).
17. In a legal context, "property" is further defined as "any external thing over which the rights of possession, use, and enjoyment are exercised" and reflects "one's exclusive right of ownership of a thing." Black's Law Dictionary (10th ed. 2014).
18. The factors listed in Texas Water Code § 13.255(g) are compensation factors used to value personal property found by the Commission to be rendered useless and valueless by decertification, and do not identify types of personal property that may be rendered or valueless.
19. The Commission, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion. 16 Tex. Admin. Code § 22.182(a).
20. There is no genuine issue as to any fact material to Issues 8 and 9.
21. Dollars expended by GVSUD for engineering and planning to implement GVSUD's 2006 Wastewater Master Plan are not property and are not compensable under Texas Water Code § 13:255(c) and (g).
22. Dollars expended by GVSUD to obtain a TPDES permit from the TCEQ are not property and are not compensable under Texas Water Code § 13.255 (c) and (g).
23. Dollars expended by GVSUD to purchase the 65-acre tract of land are not property and are not compensable under Texas Water Code § 13.255 (c) and (g).
24. Texas Water Code § 13.255(g) limits compensation for the impact on the decertified entity for future lost revenues to such losses from existing customers.

25. GVSUD's lost future revenue from currently non-existing customers is not property and is not compensable under Texas Water Code 13.255(c) and (g).
26. Attorney's fees are not property under Texas Water Code § 13.255(c).
27. Appraisal expenses are not property under Texas Water Code § 13.255(c).
28. No property of GVSUD will be rendered useless or valueless to GVSUD by the decertification sought by the City in this matter.
29. No property of GVSUD will be transferred from GVSUD to the City by the decertification sought by the City in this matter.
30. Because the City has not requested transfer of any property from GVSUD and no property of GVSUD would be rendered useless or valueless by the decertification the City seeks, Issue No. 10 is moot.

SIGNED May 9, 2017.



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