



Control Number: 49339



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DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner
John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Hunter Burkhalter ^{LB}
Chief Administrative Law Judge

RE: **Open Meeting of July 16, 2020**
Docket No. 49339 – *Application of Green Valley Special Utility District to Amend a Sewer Certificate of Convenience and Necessity in Guadalupe County*

DATE: June 17, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, July 16, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file any corrections or exceptions to the Proposed Order on or before Tuesday, July 7, 2020.

The application is unopposed by the parties. However, rather than issuing a Notice of Approval, I prepared a Proposed Order for consideration by the Commission because a final decision granting the application in this docket might have legal implications for the Commission's ongoing appeal of Docket No. 45798¹ currently pending before the U.S. Fifth Circuit Court of Appeals.

If there are no corrections or exceptions, no response is necessary.

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¹ *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County by Expedited Release, Docket No. 45798, Order (Jul. 11, 2016) (on appeal).*

DOCKET NO. 49339

APPLICATION OF GREEN VALLEY	§	PUBLIC UTILITY COMMISSION
SPECIAL UTILITY DISTRICT TO	§	
AMEND A SEWER CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
GUADALUPE COUNTY	§	

Proposed Order

This Order addresses the application of Green Valley Special Utility District to amend its sewer certificate of convenience and necessity (CCN) number 20973 to add an approximately 159-acre tract to its sewer service area in Guadalupe County. The Commission approves the application and amends Green Valley SUD’s sewer CCN No. 20973 to add the requested 159-acre tract.

I. Background

The 159-acre tract in question is, or was, owned by Guadalupe Valley Development Corporation and was removed from Green Valley SUD’s certificated area by a Commission Order granting streamlined expedited release in Docket No. 45798.¹ On November 28, 2018, a federal district court, in *Green Valley Special Util. Dist. v. Walker*,² entered judgment in favor of Green Valley SUD and invalidated the Commission’s Order granting expedited release. The federal district court order was, in turn, appealed to the U.S. Fifth Circuit Court of Appeals by all of the named defendants in the district court litigation—Guadalupe Valley Development Corp., the three Public Utility Commissioners, and the past and present Executive Directors of the Commission.

In its application, Green Valley SUD admits that the purpose of the present application is to return to its certificated area the 159-acre tract removed by the Commission’s Order granting expedited release in Docket No. 45798.

Since appealing the federal district court’s order, Guadalupe Valley Development Corp. has had a change of heart. That is, it has now reached an agreement with Green Valley SUD and

¹ *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District’s Certificate of Convenience and Necessity in Guadalupe County by Expedited Release*, Docket No. 45798, Order (Jul. 11, 2016) (on appeal).

² 351 F. Supp. 3d 992 (W.D. Tex. 2018).

wishes for that utility to provide sewer service to the 159-acre tract. As a result, it withdrew its appeal of the federal district court order on January 28, 2019, and it supports Green Valley SUD's application in the present docket. The appeal by the PUC Commissioners and Executive Directors, however, remains pending before the Fifth Circuit.

II. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Green Valley SUD is a special utility district created under Texas Water Code (TWC) chapter 65.
2. Green Valley SUD operates, maintains, and controls facilities that provide sewer service under CCN number 20973 in Comal and Guadalupe Counties.
3. Green Valley SUD is actively in the financing and design phase for permanent water treatment and collection facilities that will provide centralized sewer service to the service area held under CCN number 20973, including the requested tract, and has obtained a permit for the service area, including the requested tract, issued by the Texas Commission on Environmental Quality (TCEQ) under water quality permit number WQ0015360001.

Application

4. On March 14, 2019, Green Valley SUD filed the application at issue in this proceeding in which it seeks to add the 159-acre tract to its sewer CCN number 20973.
5. The tract is in Guadalupe County and has no current customers.
6. The prior and current owners of the tract have requested that Green Valley SUD provide service to the tract.
7. On March 18 and May 15, 2019, Green Valley SUD supplemented the application.
8. In Order No. 3 filed on June 18, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

9. On July 29, 2019, Green Valley SUD filed the affidavit of Shan S. Rutherford, attorney for Green Valley SUD, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on July 8, 2019.
10. On August 5, 2019, Green Valley SUD filed a publisher's affidavit attesting to publication of notice in the *Seguin Gazette*, a newspaper of general circulation in Guadalupe County, on July 2 and 9, 2019.
11. In Order No. 5 filed on September 5, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

12. On November 1, 2019, the parties filed a joint motion to admit evidence.
13. In Order No. 6 filed on December 9, 2019, the ALJ admitted the following evidence into the record: (a) Green Valley SUD's application filed on March 14, 2019; (b) supplemental application information filed on March 18 and May 15, 2019; (c) Green Valley SUD's affidavit of notice to current customers, neighboring utilities, and affected parties filed on July 29, 2019; (d) the publisher's affidavit filed on August 5, 2019; (e) Green Valley SUD's consent form to Commission Staff's proposed maps and certificate filed on October 11, 2019; and (f) Commission Staff's final recommendation and the attached final map and certificate filed on October 30, 2019.
14. In Order No. 11 filed on June 12, 2020, the ALJ admitted the following additional evidence into the record: (a) Green Valley SUD's Response to Order No. 9 and Renewed Request for Expedited Approval of Uncontested Application, filed on May 6, 2020; and (b) Commission Staff's Briefing on Waiver Request and Other Issues, filed on May 27, 2020.

Adequacy of Existing Service—Texas Water Code (TWC) § 13.246(c)(1); 16 Texas Administrative Code (TAC) § 24.227(e)(1)

15. Sewer service is not currently being provided on the tract.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)

16. There is a need for the provision of sewer service to the requested tract because the current property owner, Guadalupe Valley Development, has requested service from Green Valley SUD.

17. The requested tract is located in an area near San Antonio and is in close proximity to developed sections of Guadalupe County.
18. Guadalupe Valley Development intends to develop the requested tract into an industrial park.

Effect of Granting the CCN Amendment—TWC § 13.246(c)(3); 16 TAC 24 § 24.227(e)(3)

19. Granting the amendment will enable Green Valley SUD to serve the requested tract.
20. There will be no effect on any other retail public utility serving the proximate area as there are no other sewer providers in the area.
21. The effect of granting the application will be to return the 159-acre tract to the certificated area of Green Valley SUD.

Ability to Serve: Managerial and Technical—TWC § 13.241(a), 13.246(c)(4); 16 TAC § 24.227(a), (e)(4)

22. The TCEQ has issued to Green Valley SUD wastewater permit number WQ0015360001 to serve all of Green Valley SUD's sewer CCN, including the requested tract.
23. Green Valley SUD is actively in the financing and design phase for permanent treatment and collection facilities that will serve the requested tract.
24. Green Valley SUD has the managerial and technical capability to provide continuous and adequate service to the requested tract. Among other things, this is demonstrated by the fact that the tract has previously been a part of Green Valley SUD's certificated area.

Feasibility of Obtaining Alternate Service—TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)

25. Currently, there are no other sewer providers in the area.
26. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation—TWC § 13.241(d), 16 TAC 24.227(b)

27. Because the CCN amendment Green Valley SUD seeks would not require construction of a physically separate sewer system that would solely serve the requested tract, it need not demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6); 16 TAC §§ 24.11, 24.227(a), (e)(6)

28. Green Valley SUD satisfies the leverage test because it has a debt to equity ratio of .28, which is less than one, and has sufficient unrestricted cash available as a cushion for two years of debt service.
29. Green Valley SUD meets the operations test because, although it has not submitted projections in the application, it had \$340,259 in operating income before depreciation, derived by adding depreciation of \$903,638 to a net operating loss of \$563,379. Therefore, there are no shortages to cover.
30. Green Valley SUD has sufficient available cash to cover any projected operations or maintenance shortages in the first five years of operations, satisfying the operations test.
31. Green Valley SUD has the financial ability and stability to provide continuous and adequate service to the requested tract.

Financial Assurance—TWC § 13.246(d), 16 TAC § 24.227(f)

32. There is no need to require Green Valley SUD to provide a bond or other financial assurance to ensure continuous and adequate service to the requested tract.

Ability to Serve: Wastewater Treatment Facility—TWC §§ 13.241(c), 13.246(c)(4), 16 TAC § 24.227(a)(2)

33. Green Valley SUD's wastewater treatment plant is permitted by the TCEQ under TPDES permit number WQ0015360001 and will be capable of meeting TCEQ's design criteria for sewer treatment plants.
34. Green Valley SUD will have sufficient capacity to serve the requested area and adequate facilities for the provision of sewer utility service.

Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7) and (c)(9); 16 TAC § 24.227(e)(7) and (e)(9)

35. Serving the requested tract with a centralized sewer system will eliminate the need for multiple sewer systems and septic systems.

Improvement of Service or Lowering of Costs—TWC § 13.246(c)(8); 16 TAC § 25.227(e)(8)

36. Because there is no current sewer service to the requested tract, potential customers will benefit from centralized sewer service and consistent costs.

Map and Certificate

37. On October 9, 2019, Commission Staff emailed its proposed map and certificate to Green Valley SUD.
38. On October 11, 2019, Green Valley SUD filed its consent to the proposed map and certificate.
39. On October 30, 2019, Commission Staff filed the proposed map and certificate as an attachment to its recommendation.

Informal Disposition

40. More than 15 days have passed since the completion of the notice provided in this docket.
41. No person filed a protest or motion to intervene.
42. Green Valley SUD and Commission Staff are the only parties to this proceeding.
43. No party requested a hearing and no hearing is needed.
44. Commission Staff recommended approval of the application.
45. The decision is not adverse to any party.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, and 13.246.
2. Green Valley SUD is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Green Valley SUD provided notice of the application in accordance with the requirements of TWC § 13.246 and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,³ the TWC, and Commission rules.

³ Tex. Gov't Code ch. 2001.

5. After consideration of the factors in TWC § 13.246(c), Green Valley SUD has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and its current service area as required by TWC § 13.241(a) and 16 TAC § 24.227.
6. Green Valley SUD has demonstrated that the amendment to CCN number 20973 is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
7. Green Valley SUD's sewer treatment plant (TPDES permit number WQ0015360001) will be capable of meeting the TCEQ's design criteria for sewer treatment plants and the requirements of the Texas Water Code in accordance with TWC § 13.241(c).
8. Under TWC § 13.257(r) and (s), Green Valley SUD is required to record a certified copy of its approved certificate and map, along with a boundary description of the service area, in the real property records of Guadalupe County and to submit evidence of the recording to the Commission.
9. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the application, as supplemented, and amends Green Valley SUD's sewer CCN No. 20973 to include the area described in this Order and shown on the map attached to this Order.
2. The Commission approves the map and certificate attached to this Order.
3. Green Valley SUD must serve every customer for service within the approved area under sewer CCN No. 20973 that requests sewer service, and such service must be continuous and adequate.
4. Green Valley SUD must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Guadalupe County affected by the application and this Order, and

submit to the Commission evidence of the recording no later than 45 days after receipt of this Order.

5. The Commission denies all other motions any other requests for general or specific relief which have not been expressly granted.

Signed at Austin, Texas the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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Green Valley Special Utility District
Portion of Sewer CCN No. 20973
PUC Docket No. 49339
Amended CCN No. 20973 in Guadalupe County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Sewer CCN

-  20973 - Green Valley SUD
-  21108 - City of Cibolo

0 300 600
Feet



Map by: Komal Patel
Date created: October 08, 2019
Project Path: n:\finalmapping\
49339GreenValleySUD.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That Green Valley Special Utility District

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Green Valley Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 20973

to provide continuous and adequate sewer utility service to that service area or those service areas in Bexar, Comal and Guadalupe Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49339 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Green Valley Special Utility District, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2020.