



Control Number: 49339



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PUC DOCKET NO. 49339

**APPLICATION OF GREEN VALLEY
SPECIAL UTILITY DISTRICT TO
AMEND A SEWER CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
GUADALUPE COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**GREEN VALLEY SUD'S RESPONSE TO ORDER NO. 14
AND MOTION TO ABATE**

COMES NOW, Green Valley Special Utility District ("Green Valley SUD"), applicant in the above-referenced docket, and pursuant to Chief Administrative Law Judge Burkhalter's July 17, 2020, Order No. 14, files this Response and Motion to Abate.

I. RESPONSE IN OPPOSITION TO PROPOSED DISMISSAL WITHOUT PREJUDICE

Green Valley SUD respectfully submits that dismissal of this docket without prejudice would be improper at this time for two reasons. First, while the Commissioners properly recognized through Chair Walker's July 15, 2020 Memorandum and subsequent July 16, 2020 Open Meeting discussion, that the federal district court invalidated the Commission's decertification in Docket No. 45798 of the 159-acre tract (the "Subject Tract"),¹ the Commission has not issued a revised certificate of convenience and necessity and accompanying mapping reflecting the reincorporation of the Subject Tract into Green Valley SUD's sewer CCN No.20973 in the intervening nearly two years since the federal district court's final judgment invalidating the decertification. As a result, Green Valley SUD's industrial customer has no official Commission assurance that Green Valley SUD has the right and obligation to provide continuous service to the Subject Tract.

¹ *Green Valley Special Utility District v. Walker*, 351 F. Supp. 3d 992 (W.D. Tex. 2018) (invalidating, *inter alia*, the Commissioners' decertification of the Subject Tract in *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 (July 11, 2016)).

Second, dismissal without prejudice could result in the unnecessary imposition of costs and delays in obtaining recertification of the Subject Tract and the associated certainty sought by Green Valley SUD's industrial customer in the event that the Commissioners should prevail in the pending appeal to the Fifth Circuit Court of Appeals.² The imposition of additional costs and delays associated with restarting the clock on Green Valley SUD's application would appear to contradict the sentiments of the Commissioners as reflected in the July 16, 2020 Open Meeting discussion of this docket. Commissioner D'Andrea reasoned, "[A]s to the uncertainty they raised in the letter, if these parties lose in the Fifth Circuit, then they're welcome to come back here. And, you know, the way things are now, I would grant this[.] [T]here doesn't need to be a cloud of uncertainty over the development there because win or lose in the Fifth Circuit we can make this work."³ The practical effect of a dismissal without prejudice if the Commissioners prevail at the Fifth Circuit is to require Green Valley SUD to file a new application, publish notice and undergo administrative and technical review to a case that has now been pending for nearly 17 months, the result being the creation of an additional unknown period of uncertainty for Green Valley SUD and its customer.

II. MOTION TO ABATE

Green Valley SUD submits, consistent with the Commissioners' Open Meeting discussion, that the better course is to abate this proceeding pending resolution of the Fifth Circuit appeal, and formally moves to abate. Should the district court's invalidation of the decertification of the Subject Tract be upheld on appeal, Green Valley SUD would agree to submit a motion to dismiss this docket. If, however, the invalidation is overturned on appeal, Green

² *Green Valley Special Utility District v. City of Schertz et al*, Cause No. 18-51092 in the Fifth Circuit Court of Appeals (pending).

³ A copy of the transcript of the Commissioners' discussion of this docket is attached as **Exhibit A**.

Valley SUD would move to lift the abatement, and the case would be procedurally ripe for immediate consideration by the Commissioners, thereby avoiding unnecessary costs to Green Valley SUD and Commission Staff. Green Valley SUD has conferred with Staff regarding this Motion to Abate, and Staff indicated that it would neither join nor oppose this Motion.

III. CONCLUSION

For the foregoing reasons, Green Valley Special Utility District respectfully requests that the Chief Administrative Law Judge elect not to dismiss Green Valley SUD's CCN amendment application at this time, but instead grants Green Valley SUD's Motion to Abate this proceeding pending the outcome of the Commission's federal appeal of the district court's invalidation of its order granting decertification of the subject tract in Docket No. 45798. Green Valley SUD further requests all further relief to which it is entitled.

Respectfully submitted,

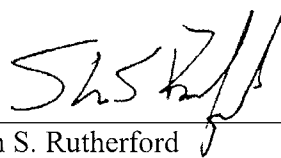
By: 

Shan S. Rutherford
State Bar No. 24002880
TERRILL & WALDROP
810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888
srutherford@terriwwaldrop.com

**ATTORNEYS FOR GREEN VALLEY
SPECIAL UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 6, 2020, in accordance with the Orders Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, appearing to read "S.S. Rutherford", is written over a horizontal line.

Shan S. Rutherford

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS
AUSTIN, TEXAS

OPEN MEETING
THURSDAY, JULY 16, 2020

BE IT REMEMBERED THAT AT approximately 9:30 a.m., on Thursday, the 16th day of July 2020, the above-entitled matter came on for hearing at the Public Utility Commission of Texas, 1701 North Congress Avenue, William B. Travis Building, Austin, Texas, Commissioners' Hearing Room, before DeANN T. WALKER, CHAIRMAN, and ARTHUR C. D'ANDREA and SHELLEY BOTKIN, COMMISSIONERS; and the following proceedings were reported by Janis Simon, Certified Shorthand Reporter.

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1 grant a CCN like this. And so, how to move forward, I'm
2 fine granting it in the city limit. But if y'all want
3 to deny it, then I can -- that's fine with me, too.

4 CHAIRMAN WALKER: Well, I'm fine either
5 way. She is too, so --

6 COMM. D'ANDREA: Okay.

7 CHAIRMAN WALKER: -- you decide.

8 (Laughter)

9 COMM. D'ANDREA: Then, I say we grant the
10 city limits, deny everything else, and you're welcome to
11 come back, you know, when there's some kind of -- some
12 kind of development on the horizon.

13 CHAIRMAN WALKER: Okay. So, I will
14 entertain a motion to adopt an order consistent with our
15 discussion.

16 COMM. D'ANDREA: You have your motion.

17 COMM. BOTKIN: Second.

18 AGENDA ITEM NO. 7

19 DOCKET NO. 49339 - APPLICATION
20 OF GREEN VALLEY SPECIAL UTILITY
21 DISTRICT TO AMEND A SEWER
22 CERTIFICATE OF CONVENIENCE AND
23 NECESSITY IN GUADALUPE COUNTY

24 CHAIRMAN WALKER: Okay. Item No. 7,
25 Docket No. 49339. I filed a memo yesterday in that. I
think some additional information or request was filed
today or late last night. And I stand by -- even with

1 what they filed, I stand by my memo. So, y'all need to
2 have a discussion.

3 (Laughter)

4 COMM. D'ANDREA: I agree with what you
5 said. I would, you know -- I mean, this is a
6 consequence of -- it seems like nitpicking to worry
7 about the language in a federal court order. But like
8 this is the reason you're supposed to pay attention to
9 that because what that federal court order was supposed
10 to do is provide perspective injunctive reliefs and
11 enjoin us from enforcing that order. And if it had done
12 that, then what the parties are asking for now would
13 make a lot of sense because we would still have an order
14 out there that we could then unwind for them, whether
15 the federal -- whatever happens to the federal court
16 order.

17 But, instead, you ask the federal court
18 to, you know, invalidate a state court agency order,
19 which is a very strange remedy to seek and probably not
20 the right one. And so, now we -- now, our hands are
21 tied. And I think we have to do what you suggested
22 because there's nothing out there to act on.

23 That said, I think, you know, if these
24 parties -- as to the uncertainty they raised in the
25 letter, if these parties lose in the Fifth Circuit, then

1 they're welcome to come back here. And, you know, the
2 way things are now, I would grant this if -- you know,
3 I -- there doesn't need to be a cloud of uncertainty
4 over the development there because win or lose in the
5 Fifth Circuit we can make this work.

6 COMM. BOTKIN: I agree with you. I would
7 dismiss without prejudice.

8 CHAIRMAN WALKER: I think we need to
9 remand it, though.

10 COMM. BOTKIN: Oh, okay.

11 CHAIRMAN WALKER: How I got to that is --
12 and not that I agree with a district judge's decision in
13 another case that found we couldn't do a summary
14 decision on our own motion, I'm worried about doing that
15 in this case. And so, that's why I decided to talk to
16 y'all about remanding it so we don't step into that.
17 Again, I think we can do things on our own motion, and
18 I'll be discussing that in the next case. But because
19 we have that district court judge opinion out there, I'm
20 a little worried about doing this.

21 COMM. D'ANDREA: Okay.

22 COMM. BOTKIN: Okay.

23 COMM. D'ANDREA: Sounds good.

24 CHAIRMAN WALKER: Okay. So -- and I think
25 my memo talked about remanding it. So, I will entertain

1 a motion to adopt an order on remand consistent with my
2 memo.

3 COMM. D'ANDREA: You have your motion.

4 COMM. BOTKIN: Second.

5 AGENDA ITEM NO. 8

6 DOCKET NO. 50926 - COMMISSION
7 STAFF'S PETITION FOR AN ORDER
8 APPOINTING A TEMPORARY MANAGER
9 TO THE WALNUT BEND WATER SYSTEM

10 CHAIRMAN WALKER: Okay. Item No. 8,
11 Docket No. 50926. We have to hold a separate hearing in
12 this today appointing -- to address appointing a
13 temporary manager that was filed by Commission Staff on
14 June 15th, 2020. So, at this point I'm going to recess
15 the current Open Meeting, and we'll open the next Open
16 Meeting once the Court Reporter has had time to note the
17 change in the Open Meeting.

18 (Recess: 9:43 a.m. to 9:50 a.m.)

19 CHAIRMAN WALKER: Okay. I'm going to
20 assume that she/he has -- she or he has switched back
21 over. So, I'm reconvening the previous Open Meeting and
22 returning to Item No. 8, Docket No. 50926.

23 I filed a memo yesterday, and Staff has
24 filed a response. And I think there's some things that
25 I did not include in my memo that we're going to need to
address in addition, but I want to also open it up for

C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Janis Simon, Certified Shorthand Reporter in
and for the State of Texas, do hereby certify that the
above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such
were reported by me or under my supervision, later
reduced to typewritten form under my supervision and
control, and that the foregoing pages are a full, true,
and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 17th day of July, 2020.



Janis Simon
Certified Shorthand Reporter
CSR No. 7076 - Expires 7/31/22

Firm Registration No. 276
Kennedy Reporting Service, Inc.
555 Round Rock West Drive
Building E, Suite 202
Round Rock, TX 78681
512-474-2233
www.kennedyreporting.com