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**DOCKET NO. 49339**

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

**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 15**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response. In support thereof, Staff would show the following:

**I. INTRODUCTION**

On March 14, 2019, Green Valley Special Utility District (Green Valley SUD) filed an application to amend its sewer certificate of convenience and necessity (CCN) No. 20973 in Guadalupe County. The requested service area consists of approximately 159 acres.

On June 18, 2019, Order No. 3 found the application to be administratively complete. On October 30, 2019, Staff filed its final recommendation, recommending approval of the application. Order No. 14, filed July 17, 2020, moved to dismiss this case. On August 6, 2020, Green Valley SUD filed a response to the motion to dismiss and along with a motion to abate. On August 7, 2020, the United States Court of Appeals for the Fifth Circuit issued a decision on a matter between Green Valley SUD and the Commission.<sup>1</sup> On August 10, 2020, Order No. 15 was issued, requiring Staff to file responses to the motion to dismiss and the motion to abate by September 11, 2020. This pleading, therefore, is timely filed.

**II. RESPONSE**

**Motion to Abate**

Staff recommends that Green Valley SUD's motion to abate is no longer necessary. In the motion filed on August 6, 2020, Green Valley SUD reasoned that this proceeding should be abated to await the resolution of the Fifth Circuit appeal. As the Fifth Circuit has now rendered a decision, the impetus for abating this matter has ceased.<sup>2</sup>

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<sup>1</sup> *Green Valley Special Util. Dist. v. City of Schertz, Tex.*, 18-51092, 2020 WL 4557844 (5th Cir. Aug. 7, 2020).

<sup>2</sup> *Id.*

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### **Motion to Dismiss**

Staff respectfully recommends that the motion to dismiss be withdrawn. The basis for that motion was summarized in the Order Remanding to Docket Management, filed on July 16, 2020. The order for remand reasoned that, because the Fifth Circuit had not yet ruled on the appeal, the district court's decision to explicitly invalidate the Commission's order in Docket No. 45798 still stood.<sup>3</sup> As stated in response to the motion to remand, the Fifth Circuit has now issued a decision, vacating the district court's decision and thereby, rendering this concern moot. Further, there are three reasons given by the Commission in support of a motion to dismiss that the Fifth Circuit identified:

First, the PUC observed that "the district court explicitly invalidated [its] order" decertifying the GVDC tract. Second, because this en banc court has not yet ruled on the PUC Officials' appeal, "the district court's decision currently stands." And third, on account of that, the PUC could not order recertification because, in effect, the district court's order meant that the decertification never occurred in the first place.<sup>4</sup>

In response to these three reasons, the Fifth Circuit states, "Our decision removes those obstacles."<sup>5</sup>

Additionally, previous discussion during an open meeting suggests that if the Fifth Circuit vacated the district court's judgment, the instant application would likely be granted.<sup>6</sup> When these comments were made, the Fifth Circuit's decision was still unknown. Now, with a decision rendered, Staff recommends that reconsidering the previous proposed order<sup>7</sup> could be an efficient way to address this application, rather than dismissing this proceeding and requiring Green Valley SUD to file anew. Therefore, consistent with the Fifth Circuit's opinion and statements made during the open meeting, Staff respectfully recommends that the motion to dismiss be withdrawn.

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<sup>3</sup> *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).

<sup>4</sup> *Green Valley Special Util Dist v City of Schertz, Tex.*, at \*4 n. 13.

<sup>5</sup> *Id.*

<sup>6</sup> Open Meeting Tr. at 17:23-25 and 18:1-5 (Jul. 16, 2020).

<sup>7</sup> Proposed Order and Memorandum (Jun. 17, 2020).

### **III. CONCLUSION**

Staff respectfully requested the issuance of an order consistent with the foregoing response.

Dated: September 11, 2020

Respectfully Submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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#### **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 September 11, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray  
Creighton R. McMurray