

2012-02-10

TCEQ MC 105 Chief Clerk
P.O. Box 13087
Austin, TX 78711-3087

SUBJECT: TCEQ DOCKET NO. 2011-DIS SOUTH PORT ALTO MUNICIPAL UTILITY DISTRICT
REQUESTS FILED REGARDING INTERNAL CONTROL NO. 03102010-D02

IT IS MY INTENTION THAT THIS BE FORWARDED TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY COMMISSION MEMBERS, THE PUBLIC INTEREST COUNCIL AND IZZY POLCYN IN CONNECTION WITH THE SUBJECT PUBLIC HEARING SCHEDULED FOR FEBRUARY 22, 2012.

I have reviewed the material included within correspondence from Kayla Murray, Staff Attorney, Environmental Law Division, TCEQ dated January 30, 2011. This material includes a Technical Memorandum dated August 31, 2011 from Izzy Polcyn, Districts Bond Team, to Linda Brookins, Director, Water Supply Division. This memorandum is essentially the result of a review by TCEQ staff of the application to create the South Port Alto Municipal Utility District ("SPA MUD").

I have the following observations after being permitted on 2012-02-07 by TCEQ staff to review the original and subsequent creation documents submitted by the applicant:

1. The bond interest rate may be high. Currently many "A" rated districts are selling bonds around 4.5%.
2. The duration of the proposed bonds may be long. Districts with no history find it very difficult to sell bonds with extended durations beyond 20 years in a normal bond market with 30 years being the practical maximum constraint.
3. Virtually all properties within the proposed district currently convey wastewater effluent to a sewage treatment and disposal system located on their property. There is no organized sewer system.
4. There is no discussion of any fees, including surcharge, increment or connection fees, the district may charge to pay bonded indebtedness, offset costs or pay operating expenses.
5. The proposed district, once created is sovereign and has the authority to promulgate rules within its boundaries, including requirements to hook up to the systems. There is no discussion of any rules that will be used by the district to determine hook up eligibility to the systems or be used in any other way affecting the cost of participating in the district's activities by the rate and tax payers within.
6. There is substantial undeveloped land adjacent and nearby to the proposed district. There is no discussion of the proposed district expanding its boundary or providing out-of-district service in the future.

These observations point to a potential for a district to be created on the basis of a presumed feasible tax rate when it may not be. For example, the tax rate calculations presented assume 95% collection, but use a 90% collection rate as would be required by Rule and the proposed tax rate increases to over \$1.00. By Rule a feasible tax rate for Calhoun County is limited to \$1.00. As another example, tax rate calculations based on a 20 year bond at the current yield for "A" rated bonds of 4.5% with a 90% collection rate projects a tax rate of \$1.16. Again, not a feasible no growth tax rate for Calhoun County.

In addition, these observations point to the fact that homeowners will be required to hook up to the district's systems. Presuming that the water system would remain as it is, there may be little cost to the homeowner to hook up to the system. Except if the district plans to enforce plumbing code or other requirements for home owner eligibility to hook up to the district system.

These observations also point to a substantial cost to each and every homeowner to hook up to the district's wastewater system. A reasonable expectation of this cost would be between \$1,500 and \$4,000 per household. Again, the cost to bring many of these homes up to some plumbing code or other system requirement as a requisite to connect to the system might prove to be prohibitive. This cost cannot be built into a mortgage such as would be the case in a home sale in a raw land district. It will be necessary for each homeowner to fund this cost out-of-pocket. As a result, it is appropriate and reasonable for the Commission to include a discussion and require disclosure of this issue as a function of the financial feasibility of a proposed district whether specifically required by Rule or not.

These observations also point to the potential for this proposed district to implement increment, hook-up, or other fees for accessing the system. Since there is no choice for homes within the proposed district as to whether or not they hook up to the district's systems; such fees would and should be a consideration of financial feasibility of this district.

These are my questions:

1. **Do the TCEQ Commissioners consider a proposed in district tax rate in excess of \$1.00 to be feasible within Calhoun County?**

If not, then requiring alternative information concerning tax rate calculations accompanied by expert testimony with regard to bond sale expectation is appropriate.

2. **Have the applicants provided information on any fees the district may intend to charge customers to connect to the district's systems, or for any other purpose?**

If not, this information should be disclosed prior to creation because it can clearly affect the financial feasibility of the proposed district.

3. **Have the applicants provided information on the district's intentions to require any specific criteria for hooking up to their system?**

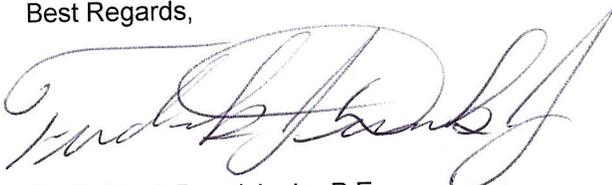
If not, this information should be disclosed prior to creation because it can clearly affect the financial feasibility of the proposed district as it relates to the total cost of participation by rate and tax payers within the proposed district.

4. **Have the applicants provided information on the district's intention to provide out-of-district service, or expand the district's boundaries in the future?**

If not, this information should be disclosed prior to creation because it can clearly affect the financial feasibility of the proposed district.

SPA MUD is an extremely small district proposed over property subdivided and individually owned. As a result, the Commission is prudent to consider district feasibility in a way consistent with this specific situation. Once created, the activities of the district will be governed by vote of only the few residents who live within the district and are registered voters of Calhoun County. Since most of the district's property owners live and vote in other counties the district's activities will be authorized by an extreme minority of residents. All residents of this proposed district deserve the opportunity to be presented with complete, viable and fully disclosed information on a sovereign jurisdiction to be created over their land before that jurisdiction is created. They deserve to know that this district is completely financially viable. They deserve to have a complete understanding of the rules that will be used to assess whether or not their property can be easily hooked up to the systems. They deserve to understand the costs associated with the requirement to hook up to the systems. They deserve to know whether or not the financial viability of the district will be affected by plans to expand its boundaries or provide out of district service to currently undeveloped lands.

Best Regards,



Frederick J. Dennick, Jr., P.E.
Texas Registration Number: 48537
Texas Firm Number: F-1168