

TCEQ DOCKET NO. 2022-0091-MWD

APPLICATION BY GREEN VALLEY	§	BEFORE THE
SPECIAL UTILITY DISTRICT FOR	§	TEXAS COMMISSION ON
TPDES PERMIT NO. WQ0015917001	§	ENVIRONMENTAL QUALITY

**THE CITY OF SCHERTZ’S REPLY TO RESPONSES TO REQUESTS FOR HEARING
AND REQUESTS FOR RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the City of Schertz (“*Schertz*”) and, pursuant to 30 Texas Administrative Code (“*TAC*”) § 55.209(g), hereby submits this Reply to Responses to Requests for Hearing and Requests for Reconsideration (“*Reply*”) in the above-referenced Docket concerning the application (“*Application*”) by Green Valley Special Utility District (“*GVSUD*”) for a new Texas Pollutant Discharge Elimination System (“*TPDES*”) permit and draft TPDES Permit No. WQ0015917001 (the “*Draft Permit*”).

I. SUMMARY OF RESPONSES TO HEARING REQUESTS

The Texas Commission on Environmental Quality (“*Commission*”) should grant Schertz’s timely-filed request for a contested case hearing and/or reconsideration of the decision of the Executive Director (“*ED*”) regarding the Application and Draft Permit (“*Request*”) because it satisfies all regulatory criteria applicable to a hearing request concerning the Application. The Request complies with the form and procedural requirements set forth in 30 TAC § 55.201, which none of the parties to this proceeding dispute;¹ and Schertz is an “affected person” as such term is

¹ Pursuant to 30 TAC § 55.209(d), the only parties authorized to respond to the requests for reconsideration or contested case hearing filed in this proceeding are the ED, OPIC, and GVSUD. Though GVSUD opted not to do so, the Responses filed by the ED and OPIC both conclude that Schertz’s Request complies with the form and procedural requirements set forth in 30 TAC § 55.201. *TCEQ Commissioners’ Integrated Database*, <https://www14.tceq.texas.gov/epic/eCID/> (use “Search One: Status of Matter(s);” under the heading titled “Step One,” “Open Items” and “Applicant/Respondent” should be selected by default; under the heading titled “Step Two,” enter “WQ0015917001” into the text box labeled “TCEQ ID Number;” under the heading titled “Step Three,” select

defined in Texas Water Code (“*TWC*”) § 5.115 and 30 TAC § 55.203. Having come to the same conclusion, the Office of Public Interest Counsel (“*OPIC*”) also recommends that the Commission find that Schertz is an “affected person” and grant the Request.² Schertz supports such recommendation. GVSUD did not respond to the requests for reconsideration or contested case hearing filed in this Docket.³ Therefore, the ED is the only party to this proceeding who contends that Schertz’s Request should be denied,⁴ this Reply addresses only the ED’s Response.

II. REPLY

Contrary to the conclusion reached by the ED, the Commission should grant Schertz’s Request, as recommended by OPIC and Schertz, because it satisfies all of the regulatory prerequisites applicable to a contested case hearing request regarding a TPDES permit application. First, none of the parties to this proceeding dispute that the Request complies with the form and procedural requirements set forth in 30 TAC § 55.201.⁵ Second, Schertz is an “affected person” within the meaning of TWC § 5.115 and 30 TAC § 55.203 because, in light of (1) the law under which TPDES applications are considered, (2) Schertz’s relationship to and statutory authority over the provision of wastewater service within its corporate boundaries and sewer Certificate of Convenience and Necessity (“*CCN*”), and (3) the impact of the proposed Clearwater Creek Wastewater Treatment Plant (“*CCWWTP*”) on Schertz’s use of the proposed receiving water, Schertz has personal justiciable interests related to legal rights and powers affected by the Application, all of which are unique from the interests of the general public. As discussed in more

“Include Filings on this Item,” and click “Search;” all filings submitted in this Docket are listed at the bottom of the page titled “Search Results for TCEQ Commissioners’ Integrated Database”) [hereinafter *TCEQ CID*]; Executive Director’s Resp. to Hr’g Reqs. and Reqs. for Reconsid. 9 – 10 [hereinafter *ED’s Response*]; The Office of Public Interest Counsel’s Resp. to Reqs. for Hr’g and Reqs. for Reconsid. 6 [hereinafter *OPIC’s Response*].

² OPIC’s Response 1, 9 – 10, 19.

³ TCEQ CID.

⁴ TCEQ CID; OPIC’s Response 1, 19; ED’s Response 1, 10, 18.

⁵ TCEQ CID; ED’s Response 9 – 10; OPIC’s Response 6.

detail, herein, there are an abundance of facts supporting such three bases, refuting the ED's unsupported conclusion that Schertz is not an "affected person"⁶ and justifying Schertz's request for a contested case hearing in this matter. To that end, the Application and Draft Permit uniquely impact Schertz's ability to (1) enforce its statutory authority to regulate wastewater matters within its corporate boundaries, which include the intended service area for the proposed CCWWTP; (2) protect its sewer CCN service area; and (3) continue its use of nearly the same proposed discharge route and receiving waters under its own TPDES permit, shared with the Cibolo Creek Municipal Authority. These are justiciable interests of Schertz alone, and cannot impact members of the general public or the rest of the State as a whole.

A. Schertz has a unique interest in the enforcement of its statutory authority to regulate wastewater matters within its corporate limits, which include the intended service area for the proposed CCWWTP.

The ED mistakenly concludes that the fact "that the proposed service area for the [CCWWTP] is in [Schertz'] corporate boundaries . . . do[es] not demonstrate that the [sic] Schertz has a personal justiciable interest not in common to members of the general public."⁷ On the contrary, the Application uniquely affects Schertz's interest in the enforcement of its statutory authority over certain wastewater issues under TWC Chapter 26, Subchapter E, including, as noted by OPIC, the authority to "determine compliance with permit requirements" and "protect public health."⁸ The Texas Local Government Code also vests municipalities, like Schertz, with the authority to "operate a [wastewater] utility system inside or outside" its boundaries and "regulate the system in a manner that protects [its] interests." OPIC's Response further acknowledges this interest, stating that because "the proposed [CCWWTP]'s service area is in Schertz's corporate

⁶ ED's Response 9 – 10.

⁷ ED's Response 10.

⁸ OPIC's Response 10.

boundaries and . . . the Woman Hollering Wastewater Treatment Facility [(“**WHWWTF**”)] potentially could provide service, Schertz has an interest in regionalization . . . under TWC [§] 26.0282.”⁹ Schertz’s interest in regionalization is also addressed in detail in Schertz’s Request for a Hearing, which explains that “[t]he Application does not meet [the Commission]’s requirements for TPDES permit issuance because GVSUD failed to provide sufficient information regarding regionalization,” and the Draft Permit, if issued, would violate the State’s policy “to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems,” like Schertz’s nearby WHWWTF.¹⁰ In other words, even though Schertz’s WHWWTF is located outside of the three-mile radius typically used by the Commission to determine the “affected person” status of nearby potential regional providers, Schertz qualifies as an “affected person” because of its unique interest in the regulation and provision of wastewater services within its corporate boundaries.

B. Schertz has a unique interest in the protection of its sewer CCN service area.

The ED also incorrectly determined that Schertz is not uniquely affected by the fact that the proposed service area of the CCWWTP appears to extend into the service area singly certificated to Schertz by virtue of its sewer CCN.¹¹ As recognized by OPIC, Schertz’s interest in the enforcement of its statutorily-vested privilege to prevent other entities from providing wastewater service to areas within the geographic boundaries of its sewer CCN is exclusive to Schertz. Specifically, TWC § 13.242 provides that “a retail public utility,” such as GVSUD, “may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility

⁹ *Id.*

¹⁰ Request 6 (quoting Tex. Water Code § 26.003; *accord id.* §§ 26.081, .0282).

¹¹ ED’s Response 10.

without first having obtained a [CCN] that includes the area in which the consuming facility is located.”¹² Here, the “Clearwater Creek WWTP Area Map” included in the Application, which depicts the “Clearwater Creek Sewershed,” demonstrates that the sewershed of the proposed CCWWTP extends into the boundaries of Schertz’s sewer CCN. However, GVSUD failed to disclose in its Application that the service area of the proposed CCWWTP overlaps with Schertz’s sewer CCN boundaries.¹³ Therefore, to the extent that said sewershed is included in the service area of the proposed CCWWTP, granting the Application and issuing the Draft Permit would adversely and uniquely affect Schertz’s statutory authority to utilize its CCN. Naturally, Schertz, as the CCN holder, is uniquely qualified to raise the issue of whether the TPDES permit is needed.

Further, given the unique interest afforded to Schertz by virtue of its sewer CCN, Schertz disputes the ED’s recommendation that the Commission not refer to the State Office of Administrative Hearings (“*SOAH*”) the issue of “[w]hether GVSUD’s service area is in the CCN of another entity.”¹⁴ According to the ED’s Response, this is because the issue “is not relevant and material to the issuance of the [D]raft [P]ermit.”¹⁵ On the contrary, this issue is central to determining whether the Application and Draft Permit comply with the State’s statutory regionalization policy, an issue which the ED *does* recommend that the Commission refer to *SOAH*.¹⁶ The important connection between CCNs and regionalization is illustrated by Section 1.B.2 of the Application, where GVSUD was asked to “[p]rovide . . . information concerning the potential for regionalization,” including whether “any portion of the proposed service area [is]

¹² TWC § 13.242 (as defined by TWC § 13.002(19), the term “retail public utility” refers to “any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation).

¹³ Request 7 (citing Application, Tech. Reports, Domestic Tech. Report 1.1, Section 1.B.2, Aug. 31, 2020).

¹⁴ ED’s Response 15.

¹⁵ *Id.*

¹⁶ *Id.*

located inside another utility's CCN area.”¹⁷ Therefore, Schertz contends that the Commission should refer to SOAH the issue of whether any portion of the service area of the proposed CCWWTP extends into its sewer CCN service area.

C. As the holder of a TPDES permit for a wastewater treatment plant that discharges into the same receiving waters as the proposed CCWWTP, Schertz is uniquely impacted by the Application.

The ED's Response neglects to address the unique impact of the proposed CCWWTP on Schertz's interest in the continued use of the proposed discharge route authorized by the Draft Permit, which significantly overlaps with the discharge route/receiving waters used by Schertz to discharge treated wastewater effluent from the WHWWTF. Specifically, both Schertz's existing TPDES permit and the Draft Permit authorize the discharge of wastewater to Woman Hollering Creek, thence to Martinez Creek in Segment No. 1902A of the San Antonio River Basin, thence to the Lower Cibolo Creek in Segment No. 1902 of the San Antonio River Basin. Because Classified Segment Nos. 1902 and 1902A are already listed on the 2020 Texas Integrated Report – Texas 303(d) List of impaired and threatened waters for bacteria in the water, the authorization of an additional, unnecessary discharge into these Segments could degrade water quality therein. OPIC's Response expressly recognizes that this interest qualifies Schertz as an “affected person,” stating that “Schertz's water quality concerns and interest in continued use of the discharge route for the [WHWWTF] provide a basis for affected person status.”¹⁸

III. CONCLUSION

For the foregoing reasons, and as recommended by OPIC, Schertz requests that the Commission find that it is an affected person whose Request complies with the procedural

¹⁷ Application, Tech. Reports, Domestic Tech. Report 1.1, Section 1.B.2, Aug. 31, 2020.

¹⁸ OPIC's Response 10.

prerequisites set forth in 30 TAC § 55.201 and grant it a contested case hearing on the relevant and material issues raised in its Request. In the alternative, Schertz requests that the Commission deny the Application or remand it for reconsideration by the ED. Further, in the event of a contested case hearing, Schertz reserves the right to raise and pursue any and all issues that may be relevant to its interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 14, 2022, the foregoing Reply to Responses to Requests for Hearing and Requests for Reconsideration was filed with the Commission's Office of the Chief Clerk, and a true and correct copy was served to the ED, OPIC, and GVSUD via hand delivery, facsimile transmission, electronic submittal, or by deposit in the U.S. Mail pursuant to 30 TAC § 55.209(g).



David J. Klein