

1 Consideration of the proposal for decision and proposed order concerning the Petition for the creation of Lampasas County Municipal Utility District No. 1

Proposed Order Changes and Reasoning:

- The Commission declines to adopt some of the ALJ's determinations on the reasonableness of projected construction costs. The statutes and rules do not expressly answer the question of what period of time the Commission should consider when determining if the projected construction costs are reasonable. The Commission finds more policy support for considering the reasonableness of projected construction costs based on estimates at the time the preliminary report is filed with the petition. This allows Commission staff to review the application without having to constantly request and analyze cost updates as petitions move through the agency's review process. The Commission proposes the following changes to the ALJ's proposed findings on this issue:

~~FOF 20. Since the petition was submitted in 2022, construction costs have significantly increased.~~

FOF 21. The costs for 4-inch and 6-inch piping used for water construction were estimated at \$35 and \$55 per linear foot, ~~whereas costs are currently closer to \$60 to \$64 per foot.~~ Constructing a water plant to serve the 421 connections would ~~cost approximately \$2.9 million, versus the \$1.0 million noted in the cost estimates contained in the petition.~~ Hot Mix Asphalt concrete is currently priced at approximately \$275 per placed ton, which is approximately 3 times higher than the cost estimate contained in the Preliminary Engineering Report. The ED testified that these estimates were reasonable and Protestant did not rebut these estimated costs at the time of filing the petition.

~~FOF 22. Road construction costs have more than doubled since the petition was filed, increasing~~ the road facilities bond issue requirement was estimated from the \$24.7 million estimated in the petition to over \$52 million. The ED testified that these estimates were reasonable and Protestant did not rebut these estimated costs at the time of filing the petition

FOF 23. Projected construction costs offered by Petitioner are ~~unreasonable~~ reasonable under current market conditions at the time of filing of the petition and preliminary report.

FOF 32. Petitioner has ~~not~~ demonstrated that the projected construction costs... are reasonable.

- The Commission declines to adopt some of the ALJ's determinations on the reasonableness of projected tax rates. The record reflects that the proposed tax rate appears collectable, within the regulatory limits, and because it is below the Commission's limit set forth at 30 TAC § 293.59(k), it retains some flexibility to be higher if necessary. The Commission finds that the tax rates are reasonable as proposed largely based on compliance with the

regulatory limits. The Commission's decision on projected construction costs and what timeframe is used to review its reasonableness also affects its review of the reasonableness of the tax rate. Because the Commission reviews the reasonableness of costs at the time of the Petition, the ALJ's use of costs at the time of the contested case hearing to find that tax rates were unreasonable was also incorrect. Furthermore, the ALJ's findings related to the effect the costs at the time of the contested case hearing would have on tax rates were speculative and not based on any evidence in the administrative record. The Commission therefore overturns the ALJ and modifies and adds to the findings on the reasonableness of projected tax rates as follows:

FOF 24. Petitioner projects an interest rate of 4%. ~~In today's market, MUD bonds are unlikely to attract an interest rate of 4%.~~

FOF 25. ~~When a higher interest rate is paired with increased construction costs, the result is that a higher debt service will be spread across fewer owners with lower valuations, requiring a much higher tax rate, potentially double or triple that proposed, to realize the income required to retire the bonds.~~

FOF 30. The projected tax rate of \$0.9313 per \$100 valuation, comprised of \$0.8813 for debt and \$0.05 for operation and maintenance, is ~~not~~ reliable in light of increased estimated construction costs.

FOF 30.A. The projected tax rate of \$0.9313 per \$100 of assessed value is within the \$1.00 per \$100 of assessed value limit applicable to Lampasas County under the provisions of the Commission's financial feasibility rule for district bond issues per 30 TAC §293.59.

FOF 32. Petitioner has ~~not~~ demonstrated that the projected ... tax rates, ... are reasonable.

- The Commission declines to adopt some of the ALJ's determinations on the reasonableness of projected water and sewer rates. The record reflects that the only part of this review that is relevant to this District is water service rates, as no party disputes that Petitioner has proposed no sewer service rates. The Commission finds that water rates are reasonable when a district is within a certificated area, and the only rates to be applied are in accordance with the CCN holder's PUC-approved tariff. The District will not have or charge a separate retail water rate because the retail water service provider, Corix Utilities (Texas) Inc., will charge its retail water rates to residents of the proposed District under its approved tariff. The Commission further does not find it helpful to compare an investor-owned utility's water rate with a municipality's rates, as comparing a governmental entity serving a town or city to a for-profit company serving a rural area is not a like comparison. The Commission therefore modifies the findings on the reasonableness of projected water and sewer rates as follows:

~~FOF 26. The petition projects an average monthly water bill of \$69.50 based on a water use of 1000 gallons per month. This bill is based on City of Lampasas rates.~~

~~FOF 28. Under Corix's rates considered approved on May 28, 2023 in PUC Docket No. 53815, 10,000 gallons per month with a 5/8 inch meter would cost over \$184.67. Petitioner confirmed that the District's water rates will be the water rates established in the approved tariff of Corix without additions. Petitioner calculated that Corix's rates result in a projected monthly bill of \$180.29 based on a water use of 10,000 gallons per month.~~

~~FOF 32. Petitioner has not demonstrated that the projected ... water and sewer rates are reasonable.~~

- The Commission disagrees with the scope and purpose of the ALJ's need and market demand findings. This portion of the ALJ's proposed analysis is a departure from what the Commission usually considers in MUD creation matters. Historically, the Commission has mainly used the statutory factor of considering "the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities to evaluate whether the proposed MUD is "necessary." TWC § 54.021(b)(1). The Commission's requirement for filing a market study does not suggest that a petitioner must establish market demand to create a MUD. The Commission does not find the *Galilee Partners* matter controlling in this case because it involved a different type of district with different statutory standards under TWC § 51.021(a)(1)-(4), instead of TWC § 54.021(a) & (b). Therefore, the Commission deletes the entire section of the proposed order as unnecessary and beyond the scope of its review of whether a MUD is necessary:

Need

~~FOF 33. The lots will be targeted toward both primary and secondary homebuyers.~~

~~FOF 34. Homes in Lampasas County are typically built on medium to large ranches and used for recreation as second homes.~~

~~FOF 35. The market study assumed that purchasers of the lots would be willing to regularly travel to Austin, San Antonio, Dallas Fort Worth, and Abilene.~~

~~FOF 36. Petitioner predicted average assessed value of homes for the District is \$850,000, significantly higher than the median property value in the County of \$174,300 as of 2021.~~

~~FOF 37. The median household income in Lampasas County in 2021 was \$66,506.~~

~~FOF 38. Lampasas County land sales data from 2022 reveals that nearly 80% of sales occurred closer to metropolitan areas than the District.~~

~~FOF 39. The 421 lots proposed to be developed within the District are anticipated to be sold to builders and end-user landowners at the rate of 18 to 36 lots per year.~~

~~FOF 40. Potential buyers of upper end housing from outside the county would likely choose lower priced property nearer to urban amenities in the eastern part of the county, over land in the proposed district that is seven miles west of Lampasas.~~

~~FOF 41. The significant increase in mortgage rates has resulted in weaker housing market conditions, price reductions, lower affordability levels, and lower levels of new home starts.~~

~~FOF 42. Lot and home prices will need to be reassessed to account for changes in mortgage rates and market conditions.~~

~~FOF 43. Petitioner has not demonstrated that the project is necessary.~~

- Because the Petitioner has shown that the lack of availability of comparable systems necessitates district creation under TWC § 54.021(b)(1), the Commission finds that the Petitioner has demonstrated that the proposed District is necessary under TWC § 54.021(a). Of those statutory factors proscribed by the Legislature, the Commission finds that the “availability of comparable service from other systems” factor is the most relevant one for determining whether the proposed MUD is “necessary.” Therefore, the Commission amends Conclusion of Law No. 12 as follows:

COL 12. Petitioner ~~failed to meet~~ has met its burden of proof to show that the project is necessary. Tex. Water Code § 54.021.

- The ALJ’s proposed order does not include findings determining whether there is no unreasonable effect on total tax assessments on the district lands. The ALJ’s proposed order only addresses the proposed District’s tax rate. The ALJ recommends that this rate is unreasonable. The Commission, as discussed above, declines to follow this recommendation because the proposed tax rate is within the Commission’s limit and is correctly based on costs at the time of application. Thus, the Commission must determine whether the District’s proposed tax rate is reasonable compared to other taxing authorities in the area. Noting that no party challenged that the total assessments were unreasonable, the Commission believes the overall effect of total tax assessments on land located within the District is not unreasonable. The Commission therefore adds the following to proposed Finding of Fact No. 31:

FOF 31. The proposed tax rate is reasonable compared to other taxing authorities in the area. The district will not have an unreasonable effect on total tax assessments on all land located within the district.

- The Commission concludes that Petitioner has met its burden to demonstrate that the project is feasible and practicable and it is necessary and would be a benefit to the land included in the district based on consideration of all the factors in Tex. Water Code § 54.021(b). The Commission has already recommended changing Conclusion of Law No.

12 above. The Commission determines to amend Conclusion of Law Nos. 11 and 13 as follows:

COL 11. Petitioner ~~failed to meet~~ has met its burden of proof to show that the project is feasible. Tex. Water Code § 54.021.

COL 13. The Petition should be granted. ~~denied~~.

- The Commission notes the ALJ's findings, which demonstrate that the Petitioner sufficiently supported its road powers request. However, the proposed Order does not include an ordering provision granting the road power request, presumably because the ALJ recommended denial of the Petition on other grounds. The Commission agrees with the ALJ's proposed findings that Petitioner has met its burden of proof for showing that the District is entitled to be granted road powers pursuant to TWC § 54.234. Because the Commission has determined to grant the District creation, the Commission adds specific language to grant road powers in a revised Ordering Provision No. 1, as follows:

OP 1. The Petition for Creation of Lampasas County Municipal Utility District No. 1 and the request to acquire road powers is granted. ~~denied~~.

- If the Commission grants the creation of the District, the Commission's Order must include the appointment of five temporary directors. The PFD does not provide an analysis for this action. Based on the limited record evidence, the Commission intends to approve the appointment of the five temporary directors proposed by the Petitioner. To appoint the temporary directors requested in the Petition, the Commission needs to add the following finding of fact and ordering provision to accomplish the appointments:

Add Finding of Fact No. 71 stating:

FOF 71. Petitioner submitted affidavits for Lynn Yuan, James Leftwich, Kurt Lippert, Randy Juenger, and Gerry Courtney that requested to be temporary directors and swore that each are (1) at least 18 years old; (2) a resident of the State of Texas; and (3) either owns land subject to taxation within the proposed District or is a qualified voter within the proposed District. No party challenged the qualifications of the five individuals to be appointed as temporary directors or these affidavits.

Add Ordering Provision 1.B. stating:

OP 1.B. Lynn Yuan, James Leftwich, Kurt Lippert, Randy Juenger, and Gerry Courtney are named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.

- The Commission regularly includes the following standard language in its MUD creation orders. For consistency with other MUD-creation orders, the Commission revises the proposed order to add the following:

OP 1.A. The District is created under the terms and conditions of Article XVI, §59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the Commission and the general laws of the State of Texas relating to municipal utility districts, including road powers under Texas Water Code §54.234, subject to the requirements of the TCEQ and the general laws of the State of Texas relating to the exercise of such powers. The District shall be composed of the area situated in Lampasas County, Texas, described by meets and bounds in Exhibit “A” attached hereto and incorporated herein for all purposes.