

TCEQ DOCKET NO. 2023-0528-DIS

**APPLICATION FOR THE CREATION
OF ROCKWOOD MUNICIPAL
UTILITY DISTRICT NO. 1 OF
DENTON COUNTY**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

THE TOWN OF PONDER’S REPLY TO RESPONSES TO REQUESTS FOR HEARING

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

COMES NOW, the Town of Ponder (Ponder) and, pursuant to 30 Texas Administrative Code (TAC) § 55.254(f), hereby submits this reply (Reply) to the Response to Hearing Requests filed by the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ), Response to Requests for Hearing filed by the Office of Public Interest Counsel (OPIC) of the TCEQ, and the Applicant’s Response to Hearing Requests (each a Response, collectively the Responses) in the above-referenced Docket concerning the application (Application) by JLMCG Properties and Cendei Sherwood (the Petitioners) for the Creation of Rockwood Municipal Utility District No. 1 of Denton County.

I. SUMMARY OF RESPONSES TO HEARING REQUESTS

Ponder timely filed its request for a contested case hearing on December 27, 2022, providing all of the information necessary to satisfy TCEQ criteria to receive a contested case hearing—both the procedural requirements set forth in 30 Texas Administrative Code (TAC) § 55.251 and the substantive arguments demonstrating that it is an “affected person” under Texas Water Code (TWC) § 5.115 and 30 TAC § 55.256. The ED, OPIC, and Petitioners all filed timely responses to Ponder’s request for a contested case hearing. Specifically, ED and OPIC’s Responses independently determined and recommended that Ponder should be considered an affected person with justiciable interests and entitled to a contested case hearing concerning the Application. However, the Petitioners’ Response challenges Ponder’s contentions in its Request, asserting that “Ponder failed to articulate a way that it would be affected by the proposed District in a manner not common to members of the general public...” and “As such, Ponder’s hearing request does not demonstrate how it meets the definition of an affected person.”

While Ponder agrees with and supports the Responses of the ED and OPIC, it takes issue with the Petitioner's Response. Therefore, Ponder's Reply only addresses the arguments of the Petitioners' Response.

II. REPLY

Contrary to the conclusion reached by the Petitioners in their Response to Ponder's Request, the Commission should grant Ponder's Request, as recommended by the ED and OPIC, because it satisfies all of the regulatory prerequisites applicable to a contested case hearing request regarding an application for the creation of a municipal water district. The substance of Petitioner's Response challenging Ponder's request is simple and straightforward—Ponder has failed to demonstrate a nexus between its interest in water and wastewater service to jurisdictional boundaries of the proposed district and the fact that such boundaries would be located outside of Ponder's corporate limits. Such unsupported contention is flawed for at least two conclusive reasons. First, the fact that the proposed jurisdictional boundaries are outside of Ponder's corporate limits has no bearing on whether Ponder could be an affected person. Under Texas Local Government Code § 42.042 (a)-(b), (f) and TWC § 54.016(a)-(b), if a proposed municipal utility district is within the corporate limits or extraterritorial jurisdiction (ETJ) of a municipality, then the landowner must work with that municipality (secure the municipality's consent and, if unsuccessful, make a good faith effort to negotiate a contract for water and wastewater services with the municipality) before it can submit an application at the TCEQ to create a district. Thus, there is no statutory or regulatory limitation that a proposed district only be located within the corporate limits of a municipality. Second, the proposed district is located within the service area of Ponder's water CCN. Again, as noted in Ponder's Request, since the proposed district is located within Ponder's water CCN boundaries, only Ponder has the right to provide retail water service within the district, and this interest absolutely pertains to the creation of a district that intends to issue ad valorem tax bonds to pay for the costs of designing, constructing, installing, and operating a water system. Further, Ponder is not attempting to regulate development in the proposed district as stated in the Petitioners' Response, and Ponder's Request does not contend that it has a right to a contested case hearing because it wants to regulate how the land is developed. Rather, it is seeking to prevent infringement by the proposed district upon Ponder's exclusive right to provide retail water service within its water CCN service area. Therefore, contrary to the Petitioners'

contention, the Application negatively affects Ponder in a manner that is unique to Ponder and not common to members of the general public by impairing Ponder's legal right, duty, privilege, and economic interest under its water Certificate of Convenience and Necessity (CCN) in providing retail water service within its CCN service area. Consequently, Ponder's Request should be granted.

III. CONCLUSION

For the foregoing reasons, and as recommended by OPIC and the ED, Ponder requests that the TCEQ find that it is an affected person whose Request complies with the procedural 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, Ponder requests that the Commission deny the Application. Further, in the event of a contested case hearing, Ponder reserves the right to raise and pursue any and all issues that may be relevant to its interest.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



DAVID J. KLEIN
State Bar No. 24041257
dklein@lglawfirm.com

CHLOE A. DANIELS
State Bar No. 24134756
chloe.daniels@lglawfirm.com

ATTORNEYS FOR THE TOWN OF PONDER

CERTIFICATE OF SERVICE

I certify that on May 22, 2023, the foregoing Reply to Responses to Requests for Hearing was filed with the Commission's Office of the Chief Clerk, and a true and correct copy was served to the ED, OPIC, and the Petitioner 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