

TCEQ DOCKET NO. 2023-0578-DIS

**APPLICATION BY EAST CENTRAL
SPECIAL UTILITY DISTRICT REQUEST
TO LEVY IMPACT FEE
INTERNAL CONTROL NO.
D-03302022-060**

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the Application by East Central Special Utility District (Applicant or District) to levy impact fee within the District's service area. The Office of the Chief Clerk received a hearing request from Ms. Ruth Perez.

Attached for Commission consideration are the following:

Attachment A—Executive Director's Satellite Map.

I. DESCRIPTION OF DISTRICT

East Central Special Utility District applied for authority to levy an impact fee of \$3,806.00 per equivalent single-family connection (ESFC) within the District's service area. The District provides retail water service to approximately 8,073 customers within the service area of approximately 120 square miles located in Bexar, Wilson, and Guadalupe Counties. A review of the application and supporting documents, the proposed impact fee appears to be reasonable, equitable, and necessary as a mechanism to finance improvements which serve the designated service area, and is within the limits allowed by applicable statutes and TCEQ rules. The TCEQ has jurisdiction to consider and grant this application pursuant to TEX. LOCAL GOVT. CODE § 395.080.

II. PROCEDURAL HISTORY

The TCEQ received the petition on March 30, 2022. The Application was declared administratively complete on March 31, 2022. In accordance with 30 Texas Administrative Code (TAC) § 293.173(c) the District mailed notice on January 3, 2023, for approval of the impact fee to each owner of property within the service area. The District published Notice of Application by the district for approval to levy impact fee in the *Wilson County News* and the *Seguin Gazette*, newspapers of general circulation in Wilson, Bexar, and Guadalupe Counties, where the district is located, on December 28, 2022 and January 4, 2023. The period to request a contested case hearing ended on February 6, 2023.

The TCEQ received one timely hearing request on this Petition, from the Ms. Ruth Perez.

III. LEGAL BACKGROUND

1. Impact Fees

Chapter 395 of the Texas Local Government Code and Chapter 49 of the Texas Water Code allow Texas districts to assess an impact fee in a district if approved by the Commission. See Tex. Loc. Gov't Code § 395.080(b); Tex. Water Code § 49.212(d). The Commission reviews impact fee applications in accordance with Sections 293.171-176 of the Commission rules. See 30 Texas Administrative Code ("TAC") §§ 293.171-176.

An "impact fee" is a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. Tex. Loc. Gov't Code § 395.001(4); see also 30 TAC § 293.171(1). "New development" is defined as the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units. Tex. Loc. Gov't Code § 395.001(6).

A "capital improvement plan" is a plan that identifies capital improvements or facility expansions pursuant to which impact fees may be assessed. See 30 TAC § 293.171(2); see also Tex. Loc. Gov't Code § 395.001(2).

Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers. 30 TAC § 293.171(3); see also Tex. Loc. Gov't Code § 395.001(1). Service area is defined as an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. 30 TAC § 293.171(5); see Tex. Loc. Gov't Code § 395.001(9). The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan. *Id.*

Notice of an impact fee application must be published and mailed as provided in section 293.173 of the Commission's rules, unless waived by the Executive Director. See 30 TAC § 293.173(c)(2). The Commission may act on an impact fee application without holding a public hearing if a public hearing is not requested by the Commission, the Executive Director, or an affected person in the manner prescribed by Commission rule during the 30 days following the final publication of notice of the impact fee application. 30 TAC § 293.173(d). If the Commission determines that a public hearing is necessary, the Chief Clerk shall advise all parties of the time and place of the hearing. *Id.*

If the Commission finds that a requested impact fee is reasonable, equitable and necessary as a mechanism for a district to finance improvements to serve the designated service area, the Commission shall approve the capital improvements plan and impact fee. 30 TAC § 293.174(a). The Commission may approve an impact fee

amount that is different than the impact fee amount requested in the application for approval; however, in no event shall the Commission approve an impact fee amount higher than the impact fee amount contained in the notice required under 30 TAC § 293.173(b). *Id.*

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant or affected persons may request a contested case hearing on this application. *30 TEX. ADMIN. CODE § 55.251(a)*. The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.

30 TEX. ADMIN. CODE § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition. *30 TEX. ADMIN. CODE § 55.251(b)* and (d). These two requirements are mandatory. The affected person’s hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person’s personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor’s location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

30 TEX. ADMIN. CODE § 55.251(c). An affected person’s personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. *30 TEX. ADMIN. CODE § 55.256(a)*. The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c). Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application. *30 TEX. ADMIN. CODE § 55.256(b).*

V. THE HEARING REQUEST

The following individuals submitted a request for a contested case hearing:

1. Ms. Ruth Perez

Ms. Ruth Perez submitted a timely hearing request which included all of the required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1). She requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3). The hearing request states that Ms. Perez is not subject to the proposed impact fee and does not receive utilities from East Central Special Utility District. The address provided in her hearing request shows that Ms. Perez lives 4.26 miles from the District. Ms. Perez did not identify her personal justiciable interest affected by the application in a manner not common to members of the general public pursuant to 30 TAC § 55.251(c)(2). The Executive Director recommends the Commission find that the Ms. Ruth Perez is not an affected person pursuant to 30 TAC §§ 55.251 and 55.256.

The Executive Director recommends the Commission deny Ms. Ruth Perez's hearing request.

VI. RECOMMENDATION

The Executive Director recommends that the Commission find that Ms. Ruth Perez is not an affected person and deny her hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 26, 2023, the "Executive Director's Response to Hearing Request" for East Central Special Utility District application to levy impact fee, Internal Control No.D-03302022-060, was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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MAILING LIST
East Central Special Utility District
TCEQ Docket No. 2023-0578-DIS; Internal Control No. D-03302022-060

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FOR ALTERNATIVE DISPUTE RESOLUTION
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Kyle Lucas
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FOR THE CHIEF CLERK:
via eFilings:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711

REQUESTER(S):

Ruth Perez
8331 Glen Court
San Antonio, Texas 78239

INTERESTED PERSON(S):

Carol A. Koehler
1332 Saint Brides Road West
Chesapeake, Virginia 23322

Attachment A

East Central Special Utility District



Protecting Texas by
Reducing and
Preventing Pollution

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 6/23/2023
CRF 0085964
Cartographer: Abanda



Requestor
East Central SUD

The distance between the
Requestor, Ruth Perez, and East
Central SUD is 4.26 miles.

