

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 26, 2023

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY EAST CENTRAL
SPECIAL UTILITY DISTRICT FOR APPROVAL TO LEVY AN
IMPACT FEE
TCEQ DOCKET NO. 2023-0578-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-0578-DIS

APPLICATION BY EAST
CENTRAL SPECIAL UTILITY
DISTRICT FOR APPROVAL TO
LEVY AN IMPACT FEE

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the Commission) files this Response to Hearing Request in the above-entitled matter.

I. Introduction

A. Summary of Position

Preliminarily, OPIC notes that the TCEQ Chief Clerk's office received one request for a contested case hearing in this matter from Ruth Perez. For the reasons discussed herein, OPIC respectfully recommends that the Commission deny Ms. Perez's hearing request.

B. Background

East Central Special Utility District of Bexar, Wilson, and Guadalupe Counties (East Central or the District) filed an application with TCEQ for authority to levy a revised impact fee of \$3,806 per equivalent single-family connection within the District's service area. The application was filed pursuant to Chapter 395 of the Texas Local Government Code; Title 30 of the Texas Administrative Code, Chapter 293; and the procedural rules of TCEQ.

The purpose of the impact fee is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan, also known as an impact fee study, for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed.

The application was declared administratively complete on March 31, 2022. The Notice of Application by a District for Approval to Levy Impact Fee (the Notice) was published on December 28, 2022 and January 4, 2023 in both the *Wilson County News* and the *Sequin Gazette*. On January 3, 2023 the District mailed the Notice to each owner of property within its service area. The comment and contested case hearing request periods ended on February 6, 2023.

II. Applicable Law

A district may submit an application to the Commission to levy an impact fee pursuant to Chapter 395 of the Texas Local Government Code; Title 30 of the Texas Administrative Code, Chapter 293; and the procedural rules of TCEQ. Notice is governed by 30 TAC § 293.173, which provides that:

(c) The applicant shall cause notice to be published and mailed as follows:

(1) Notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district intends to levy an impact fee with the last publication not later than the 30th day before the date on which the commission may consider the application;

(2) The district shall send not later than the 30th day before the

date of consideration by the commission, notice of the application to each owner of property within the service area, as of the date of submitting the application to the executive director, unless good cause is shown why such notice should not be given. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting of the application to the commission; and

(3) The district shall file an affidavit certifying compliance with the requirements of this subsection with the chief clerk at least one week prior to the date of consideration by the commission.

Under 30 TAC § 293.173(d):

The commission may act on an 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 under this section. 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.

Commission rules applicable to hearing requests associated with this type of application are contained in Subchapter G of Chapter 55 of the Commission's rules. *See* 30 TAC § 55.250 (applying rules governing contested case hearings to applications declared administratively complete after September 1, 1999).

Specifically, A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining 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." 30 TAC § 55.251(b)-(d).

An affected person is "one who has a personal justiciable interest related

to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” 30 TAC § 55.256(a). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

The Commission shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with the requirements of § 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b).

III. Discussion

On January 27, 2023, Ruth Perez timely submitted a combined comment and hearing request. Her concerns principally focus on a previous permitting

matter that is not directly related to the impact fees at issue in this Application. She also states that she does not use the District's utilities and is opposed to paying an additional fee.

According to the map created by the ED's staff, Ms. Perez's location is approximately 4.26 miles from the District's nearest boundary and is not within the service area of the District. Because Ms. Perez does not own property within the District's service area, she will not be subject to the impact fee. Consequently, OPIC is unable to distinguish how her interest in the Application differs in any way from that of the general public as required by 30 TAC § 55.256(a). Furthermore, because she will not be subject to the fee, there is no reasonable likelihood that her health, safety, or use of property will be affected. *See* 30 TAC § 55.256(c)(4).

Therefore, OPIC concludes that Ms. Perez has not demonstrated that she possesses a personal justiciable interest in this matter and does not qualify as an affected person.

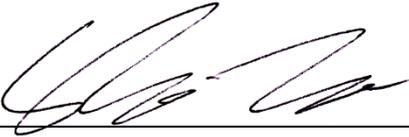
IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission deny the hearing request of Ruth Perez.

Respectfully submitted,

[Signature on Next Page]

Garrett T. Arthur
Public Interest Counsel

By: 

Sheldon P. Wayne
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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne

MAILING LIST
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TCEQ DOCKET NO. 2023-0578-DIS

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REQUESTER(S):

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