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Emily Lindley, *Commissioner*
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Kelly Keel, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 14, 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 PETITION FOR CREATION OF
ROCKWALL COUNTY MUNICIPAL UTILITY DISTRICT NO. 11
TCEQ DOCKET NO. 2023-0858-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2023-0858-DIS

PETITION FOR THE CREATION
OF ROCKWALL COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 11

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BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to the hearing requests in the above-captioned matter.

I. Introduction

A. Summary of Position

The TCEQ Chief Clerk's office received timely hearing requests from Royse City (the City) and Rockwall County (the County). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests.

B. Background

Bahamas Laguna Azure, LLC (Petitioner) filed a petition for creation of Rockwall County Municipal Utility District No. 11 (District) pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code (TWC), 30 Texas Administrative Code (TAC) Chapter 293, and the procedural rules of the TCEQ. The application was declared administratively

complete on September 22, 2022. On February 9, 2023, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 430.45 acres located within Rockwall County, and all of the land within the proposed District is within the extraterritorial jurisdiction of Royse City. The petition further states that, if approved, the proposed District will construct, maintain, and operate a waterworks system including the purchase and sale of water for domestic and commercial purposes; construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic and commercial purposes; construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and construct, install, operate, purchase, and maintain facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized. The comment and contested case hearing request periods ended on March 13, 2023. The Commission received timely comments and hearing requests from the City and the County.

II. Applicable Law

A municipal utility district (MUD or a district) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution, and TWC § 54.011. Chapters 49 and 54 of the TWC and the Commission's administrative rules found at Title 30, Chapter 293, of the TAC govern petitions to create a MUD. A district shall be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TWC § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. TWC § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. *Id.* Among other things, the petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. TWC § 54.015. *See also* 30 TAC § 293.11(a) and (d).

If all of the district is proposed to be located outside the corporate limits of a municipality, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider

necessary. TWC § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court shall submit to the Commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners court thinks would assist the Commission in making a final determination on the petition. TWC § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. TWC § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of § 54.015, and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. TWC § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

TWC § 54.021(b).

If the Commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, it shall exclude all land not benefited and redefine the proposed district's boundaries accordingly. TWC § 54.021(c). If the petition does not conform to the requirements of TWC § 54.015 or the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall deny the petition. TWC § 54.021(d). The rights, powers, privileges, authority, and functions of a district shall be subject to the continuing right of supervision by the Commission. TWC § 54.024.

The applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. TWC §§ 49.011(b) and 54.018. Additionally, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. 30 TAC § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an "affected person" under the factors in 30 TAC Chapter 55. TWC § 49.011(c). *See also* 30 TAC § 55.250 (applying rules governing contested case hearings to applications declared administratively complete after September 1, 1999). Affected persons must file their hearing requests during the 30 days following the final notice publication date. TWC § 49.011(c). *See also* 30 TAC § 293.12(c).

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). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Relevant factors to be considered in determining whether a person is affected include:

- (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 Executive Director (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

The City

The City's hearing request stated that the proposed District's jurisdictional boundaries fall entirely within the City's water and sewer Certificate of Convenience and Necessity (CCN) Nos. 12827 and 20813. As the holder of water and sewer CCNs, the City asserts its exclusive right to provide retail water and sewer service within its CCN service areas, including the proposed District. The City has concerns that establishing the proposed District and constructing waterworks and sanitary sewer infrastructure within its CCNs would potentially impact the City's economic interest in developing its water and sewer systems and its obligation to provide continuous and adequate water and sewer services to the land encompassed by the proposed District.

The City also asserts that the proposed District's Preliminary Engineering Report is not sufficient due to the missing traffic study and inadequate funding for necessary road improvements which would impact the City's authority to regulate its roadways and drainage in its ETJ where the proposed District would be located. The City further asserts that the Petitioner failed to meet the procedural requirements under TWC § 54.016, and the Petitioner must first attempt to negotiate a mutually agreeable contract of water and sewer services

with the City. The City explained that its inability to enter into a contractual agreement with the Petitioner to provide water and sewer services was due to the Petitioner's inconsistent specification of its required level of water and sewer service requirements, and the inconsistent specification impacts the City's interest and statutory authority in negotiating an agreement with the Petitioner required under TWC 54.016.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Here, the City stated that its interest in serving as the exclusive retail water and sewer service provider in its water and sewer CCN service areas is protected under TWC §§ 13.242 and 13.250. While OPIC acknowledges that the City's CCNs were granted by the Public Utility Commission under statutory provisions that do not necessarily confer authority over the issues contemplated by this application, OPIC agrees that such statutory protections are relevant when the Commission considers the feasibility and practicality of a petition to create a district while assessing whether to approve or deny the petition under TWC § 54.021(a) and (b). Further, the City has statutory authority to protect public health and safety and regulate development within its ETJ. Tex. Loc. Gov't Code 42.001, 212.044. Also, the commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to

serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. TWC § 54.016(d). Here, the City has also identified other interests, such as the City's authority to regulate its roadways and drainage within its ETJ, that are relevant to the Commission's decision in this matter. TWC § 54.021(b)(1); (b)(3)(E), (F).

Based on the City's identified interests and the District's location within its ETJ and water and sewer CCN service areas, OPIC finds that the City has demonstrated it qualifies as an affected person in this matter. Therefore, OPIC respectfully recommends that the Commission grant the City's hearing request.

The County

The County stated that it is vested with both statutory and constitutional authority over various public functions such as transportation, emergency services, and the health and safety of its citizens, which will be directly affected by creation of the proposed District. The County's hearing request raised concerns regarding limited space in the County and the impacts of overdevelopment subdivisions on critical systems like electric and gas grid, schools, emergency services and water resources; financial burden on existing residents; threats to quality of life; and County's responsibility to represent and protect the interests of its citizens against the potential effects of overdevelopment.

As explained earlier, governmental entities with authority under state law over issues contemplated by the application may be considered affected persons.


30 TAC § 55.256(b). Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Here, the County's interests in protecting the health and safety of its citizens and maintaining transportation and emergency services are interests protected by law. Tex. Health & Safety Code § 121.003. Therefore, OPIC finds that the County has demonstrated it qualifies as an affected person in this matter. OPIC respectfully recommends that the Commission grant the County's hearing request.

IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission find that the City and the County qualify as affected persons, grant their hearing requests, and refer the matter to the State Office Of Administrative Hearings for a contested case hearing.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: -----

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2023, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Pranjal M. Mehta

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TCEQ DOCKET NO. 2023-0858-DIS

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