

TCEQ DOCKET NO. 2023-0858-DIS

**APPLICATION FOR THE CREATION
OF ROCKWALL MUNICIPAL
UTILITY DISTRICT NO. 11**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE CITY OF ROYSE CITY'S SUPPLEMENTAL CERTIFICATE OF SERVICE TO
ITS REPLY TO THE RESPONSES TO CONTESTED CASE HEARING REQUESTS**

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

COMES NOW, the City of Royse City (the City), pursuant to 30 Texas Administrative Code (TAC) § 55.254(f), and hereby submits this Supplemental Certificate of Service to its Reply to the Responses to Contested Case Hearing Requests (Reply) filed on August 28, 2023.

I. UPDATED CERTIFICATE OF SERVICE

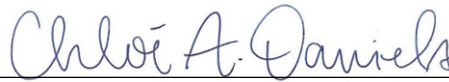
The City files this Supplemental Certificate of Service to its Reply and clarifies that all persons listed in the below Mailing List were served before 5:00 pm on August 28, 2023.

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 CITY OF ROYSE
CITY**

CERTIFICATE OF SERVICE

I certify that on August 28, 2023, this Supplemental Certificate of Service and the City's Reply to the Responses to Contested Case Hearing Requests were filed with the Commission's Office of the Chief Clerk, and true and correct copies were served on all persons listed in the below Mailing List via electronic mail.



Chloe A. Daniels

MAILING LIST

Rockwall County Municipal Utility District No. 11
TCEQ Docket No. 2023-0858-DIS; TCEQ Internal Control No. D-09222022-043

FOR THE APPLICANT:

via electronic mail:

Timothy G. Green
Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
tgreen@coatsrose.com

Alex Pfefferkorn
Quiddity Engineering
2805 Dallas Parkway, Suite 600
Plano, Texas 75093
apfefferkorn@quiddity.com

REQUESTOR(S):

via electronic mail:

David Klein
Chloe Daniels
Lloyd Gosselink Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701
dklein@lglawfirm.com
chloe.daniels@lglawfirm.com

Frank New
County Judge
Rockwall County
101 East Rusk Street, Suite 202
Rockwall, Texas 75087
fnew@rockwallcountytexas.com

Craig Stoddart
Assistant Criminal District Attorney
Rockwall County
1111 East Yellowjacket Lane, Suite 201
Rockwall, Texas 75087
cstoddart@rockwallcountytexas.com

Christopher Bowers
Suster Law Group, PLLC
1316 Village Creek Dr., Ste. 500
Plano, Texas 75093-4461
office@susterlaw.com

INTERESTED PERSON(S):

via electronic mail:

Clifford James Sevier
Commissioner, Precinct 1
Rockwall County
101 East Rusk Street, Room 202
Rockwall, Texas 75087
csevier@rockwallcountytexas.com

FOR THE EXECUTIVE DIRECTOR:

via electronic mail:

Harrison "Cole" Malley, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Harrison.Malley@tceq.texas.gov

Daniel L. Harrison, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711
Daniel.Harrison@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division, MC-108
P.O. Box 13087
Austin, Texas 78711
Ryan.Vise@tceq.texas.gov
pep@tceq.texas.gov

FOR THE PUBLIC INTEREST COUNSEL
via electronic mail:

Pranjal Mehta
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Pranjal.Mehta@tceq.texas.gov

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE CITY OF ROYSE CITY’S REPLY TO THE RESPONSES TO
CONTESTED CASE HEARING REQUESTS**

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

COMES NOW, the City of Royse City (the City) and, pursuant to 30 Texas Administrative Code (TAC) § 55.254(f), hereby submits this Reply (Reply) to Responses to Contested Case Hearing Requests filed by the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ), the Office of Public Interest Counsel (OPIC) of the TCEQ, and the Applicant (each, a Response, and collectively the Responses) in the above-referenced Docket concerning the application (Application) by Bahamas Laguna Azure, LLC (the Petitioner) for the Creation of Rockwall Municipal Utility District No. 11.

I. SUMMARY OF RESPONSES TO HEARING REQUESTS

The City timely filed its request for a contested case hearing on March 10, 2023 (Request), providing all of the information necessary to satisfy TCEQ criteria to receive a contested case hearing—both the procedural requirements set forth in 30 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 Petitioner all filed timely responses to the City’s request for a contested case hearing. Specifically, ED and OPIC’s Responses independently determined and recommended that the City is an affected person with justiciable interests and entitled to a contested case hearing concerning the Application. However, the Petitioner’s Response asserts that “neither the City nor [Rockwall] County is an affected person entitled to a contested case hearing.”

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

II. REPLY

Contrary to the conclusion reached by the Petitioner in its Response to the City's Request, the Commission should grant the City's Request, as recommended by the ED and OPIC. Petitioner asserts that none of the bases that the City has offered to support its Request—its interest as the water and sewer Certificate of Convenience and Necessity (CCN) holder, its authority over roadway and drainage facilities within its extraterritorial jurisdiction (ETJ), nor its reasoning for not yet reaching an agreement with the Petitioner—are sufficient for a hearing to be granted to the City. As stated by Petitioner, a hearing request can only be filed by the Commission, the ED, the applicant, or an affected person authorized by law and such hearing request must identify a personal justiciable interest. Despite Petitioner's contention to the contrary, the City should be considered an affected person, pursuant to 30 TAC § 55.256(b) which grants governmental entities affected person status. The City should also be considered an affected person based on the factors listed in 30 TAC § 55.256(c), particularly in light of the City's interest as both the water and sewer CCN holder for the entire area within the proposed district's boundaries, which is a statutorily protected interest under TWC §§ 13.242 and 13.250, and an interest that both the ED and OPIC have acknowledged as relevant to the Commission's consideration in their respective Responses. Possessing these CCNs alone appropriately constitutes sufficient grounds for the City to be granted a contested case hearing, which is the established precedent of the Commission in recent Dockets.¹

Although Petitioner mentions in its Response that it has the option to seek a streamlined expedited release of its property from the City's CCNs, it has taken no such steps to date toward doing so and as such, the City retains its exclusive right to be the water and wastewater provider to the area within the boundaries of the proposed district. Thus, unless and until Petitioner decides to file a petition for streamlined expedited CCN decertification, Petitioner remains subject to the

¹ See Interim Order Concerning the Petition for the creation of Rockwood Municipal Utility District No. 1 of Denton County, TCEQ Docket No. 2023-0528-DIS (June 6, 2023); Interim Order Concerning the Petition for the creation of Denton County Municipal Utility District No. 12, TCEQ Docket No. 2022-1733-DIS (July 31, 2023).

applicable Texas laws prohibiting the provision of water and/or sewer service within the City's water and sewer CCNs. Such statutorily protected right is not speculative, despite Petitioner's claim otherwise.

Similarly, Petitioner's assertion that it could remove its property from the City's ETJ and not be subject to the City's Subdivision Ordinances once Senate Bill 2038 of the 88th Texas Legislature goes into effect on September 1, 2023 is irrelevant. Oddly, that is the argument that is speculative. Again, unless and until Petitioner decides to take the steps to remove itself from the City's ETJ, Petitioner remains subject to the applicable Texas laws enabling the City to establish and implement its Subdivision Ordinances. Otherwise, as it stands, the land to be included in the proposed district is within the City's ETJ, and the City's interest in and authority to regulate roadways and drainage within said area is relevant to the Commission's consideration of the application pursuant to TWC § 54.021(b)(1) and (b)(3)(E).

Petitioner also contends that the City's failure to respond to Petitioner or arrive at a mutually agreeable contract with the Petitioner serves as "statutory consent by the City for creation of the District" pursuant to Tex. Local Gov't Code § 42.042(c) and TWC § 54.016(c). Although it is true that the City and the Petitioner failed to reach a mutually agreeable contract under TWC § 54.016(c), and such failing constitutes an authorization for the inclusion of the land in the proposed district, TWC § 54.016(c) also clarifies that "[a]uthorization for the inclusion of such land within the district under the provisions of this section shall mean only authorization to initiate proceedings to include the land within the district...." Such authorization in no way affects the City's qualification for status as an affected person under 30 TAC § 55.256 or its justiciable interests and as such the City retains its ability to request a contested case hearing on the Application pursuant to 30 TAC § 55.251. The reason a mutually agreeable contract has not been reached within the prescribed time period was due to Petitioner's refusal to provide the City with a reliable, consistent quantity of living unit equivalents of water and sewer service needed for the land within the proposed District. Petitioner's failure to negotiate with the City in good faith should not, by statutory default, grant it the City's automatic approval. Hence the City's filing of its Request. In fact, Petitioner's Response to Hearing Requests demonstrates that its development plan is a moving target, when it noted that on May 11, 2023, it provided the City with a changed development plan. This is a process and effort that should have been done 120 days before the

petition to create the district was filed. Accordingly, the City is an affected person entitled to a contested case hearing as to whether Petitioner has engaged in meaningful discussions with the City to reach a mutually agreeable contract before the Petition was filed.

Last, despite the Petitioner's recognition of the correct regulations in evaluating a contested case hearing request in its Response, it incorrectly cites inapplicable case law that has no bearing on the Commission's consideration of the City's Request. In its Response, Petitioner cites to an Amarillo Court of Appeals case, particularly to the Court's standard for what constitutes a "justiciable interest" in a case where the standing of one landfill to contest the ED's approval of a permit modification of another landfill in a distant part of the state is at issue during judicial review of the Commission's decision to uphold the ED's approval of the permit modification.² Such standard is not applicable to the Commission's consideration of the City's affected person status and justiciable interests under 30 TAC § 55.255(a) in regards to having a contested case hearing granted at the State Office of Administrative Hearings. Additionally, Petitioner's further introduction of an Austin Court of Appeals case has no effect on the City's affected person status or its justiciable interests. In such case, the Court was asked to review the Commission's decision to deny two hearing requestors affected person status to a contested hearing on a Texas Radiation Control Act permit, where both requestors were members of the public seeking associational standing, and the Court held the decision was made within the bounds of the Commission's discretion.³ Neither of these cases apply to the facts at hand and are unrelated to the statutes and regulations the Commission uses in evaluating a contested case hearing request for a petition for the creation of a municipal utility district, a fact conceded by Petitioner in its own footnote 7.

III. CONCLUSION

For the foregoing reasons, and as recommended by OPIC and the ED, the City 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, the City requests that the Commission deny

² Texas Disposal Sys. Landfill, Inc. v. Texas Comm'n on Env't Quality, 259 S.W.3d 361 (Tex. App.—Amarillo 2008, no pet.).

³ Texas Comm'n on Env't Quality v. Sierra Club, 455 S.W.3d 228 (Tex. App.—Austin 2014).

the Application. Further, in the event of a contested case hearing, the City 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 CITY OF ROYSE
CITY**

CERTIFICATE OF SERVICE

I certify that on August 28, 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).



Chloe A. Daniels