

TCEQ DOCKET NO. 2024-1611-DIS

PETITION FOR THE CREATION OF PRESTON ROAD MUNICIPAL UTILITY DISTRICT OF GRAYSON COUNTY	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**CITY OF SOUTHMAYD’S REPLY TO APPLICANT’S RESPONSE
TO HEARING REQUESTS**

The City of Southmayd, Texas (“City”) files this Reply to Applicant’s Response to Hearing Requests and, in support thereof, would show the following:

I. Introduction

Preston 56, LP (“Preston 56” or “Applicant”) filed a petition with the Texas Commission on Environmental Quality (“TCEQ”) on December 27, 2023 (the “Petition”), seeking to for create the Preston Road Municipal Utility District of Grayson County (“District”). The City opposes the creation of the proposed District and timely requested a contested case hearing as an affected person within the definition of that term in the Texas Administrative Code. In its Response to Hearing Requests, the Applicant requested that the TCEQ deny the City’s hearing request. The City is an “affected person” pursuant to TCEQ rules and asks the TCEQ to grant the City’s request for a contested case hearing on the Petition and determine that the City is an affected person with party status.

II. The City is an Affected Person.

The City timely filed its hearing request in writing on March 6, 2024. In its hearing request, the City provided all information requested by 30 Tex. Admin. Code § 55.201(d). Contrary to the assertions made by the Applicant, the City established in its hearing request that it is an “affected person” under 30 Tex. Admin. Code § 55.203 because the City has interests related to legal rights,

duties, privileges, powers, or economic interests affected by the Petition that are not common to the general public. Local governmental entities, such as the City, with authority under state law over issues contemplated by a Petition, may be considered affected persons under 30 Tex. Admin. Code § 55.203. The proposed development is located within the extraterritorial jurisdiction (“ETJ”) of the City and the City has not consented to the creation of the proposed District. The City has authority to protect the public health and safety within its ETJ and to regulate development within its ETJ. *See, e.g.*, TEX. LOC. GOV’T CODE §§ 42.001, 212.044. Specifically, the City has statutory authority over various functions within its ETJ – including but not limited to water quality, water and sewer services, emergency services, and health and safety concerns – that are affected by the Petition. Such functions and interests are relevant to the Petition because they may be affected by the proposed District within the ETJ of the City and have not been addressed by the Petition.

Additionally, as a regional water service provider, the City has an interest to ensure that new development within its jurisdiction, including its ETJ, regionalizes with the existing system to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. See Texas Water Code § 26.081(a). Additionally, the proposed District is located partially within the City’s certificate of convenience and necessity (“CCN”) for water service. The City therefore has an interest in ensuring the creation and operation of the proposed District is protective of the public health and safety within its ETJ and CCN. Thus, the City has authority under state law over the issues contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

The Applicant incorrectly states that the City has stated objections relating to development within its ETJ but not the Petition itself. However, the Applicant is attempting to add a merits

requirement into the threshold analysis of party status where none exists, providing no statutory or regulatory citation to support these assertions. 30 Tex. Admin. Code § 55.201(d) states:

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the Petition, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the Petition and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for Petitions filed...on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of Petition.

30 Tex. Admin. Code § 55.201(d).

In its hearing request, the City has effectively shown that as a governmental entity its statutory authority and its interest in issues relevant to the Petition, which are not common to the general public, could be affected by the Petition and the proposed District. There is no requirement

in TCEQ's rules that the City must prove with evidence how its interests will actually be affected. Rather, to establish that it is an affected party, the City must only show how it "believes" it "will be adversely affected" by the activities to be authorized by the Petitions. *See* 30 Tex. Admin. Code § 55.201(d)(2). The proposed District that is the subject of the Petition is located within the City's ETJ, the City has not consented to the creation of the proposed District, and the City has raised issues, above, that it has statutory authority over and are contemplated by the Petition. Thus, the City has met the requirements of the TCEQ's rules to determine that it is an affected party for the purposes of this matter.

D. Conclusion

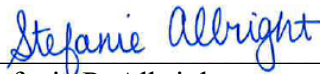
For these reasons, the City reasserts its request that the Commission find that the City is an affected person and grant its request for a contested case hearing on the Petition in order to address the concerns raised in its hearing request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, a copy of the foregoing document was filed with the Texas Commission on Environmental Quality Office of the Chief Clerk and served on all parties on the attached Service List.



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DOCKET NO. 2024-1611-DIS; INTERNAL CONTROL NO. D-12272023-031

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