

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 16, 2024

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 CRYSTAL CLEAR
SPECIAL UTILITY DISTRICT FOR APPROVAL TO LEVY AN
IMPACT FEE
TCEQ DOCKET NO. 2024-1872-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests 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. 2024-1872-DIS

APPLICATION BY CRYSTAL	§	BEFORE THE
CLEAR SPECIAL UTILITY	§	
DISTRICT FOR APPROVAL TO	§	TEXAS COMMISSION ON
LEVY IMPACT FEE	§	
	§	ENVIRONMENTAL QUALITY

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

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 Requests in the above-entitled matter.

I. Introduction

A. Summary of Position

Preliminarily, OPIC notes that the TCEQ Chief Clerk's office received two requests for a contested case hearing in this matter. These requests were submitted by Joseph Benavides and Austin Mark Ventures, LLC. For the reasons discussed herein, OPIC respectfully recommends that the Commission grant both hearing requests and refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the application.

B. Background

Crystal Clear Special Utility District (the District) filed an application with TCEQ for authority to levy a revised impact fee of \$5,163 per standard residential 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 impact fees 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 12, 2024. The Notice of Application by a District for Approval to Levy Impact Fee (the Notice) was published on August 25, 2024 and September 1, 2024 in the *Sequin Gazette*. It was also published on August 25, 2024 in the *San Marcos Daily Record*, and on August 28, 2024 and September 4, 2024 in the *Herald-Zeitung*. The District also averred that on September 4, 2024, it provided mailed notice to all landowners and developers who had expressed an interest in service during the last five years. It also provided notice to all of its customers and created an alert on its website regarding the impact fee. The comment and contested case hearing request periods ended on October 4, 2024.

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. The request should explain 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

Joseph Benavides

On September 12, 2024, Joseph Benavides timely submitted a combined comment and hearing request. In his request, Mr. Benavides explains that he is a current customer of the District and plans to add District services to more of his properties in the future. He states that the proposed impact fees will be detrimental to customers and are unnecessary because they are based on flawed predictions of the District's future needs.

Mr. Benavides represents that he owns multiple parcels of property within the service area of the District, and plans to purchase more land within the District. The map prepared by the ED's staff confirms that the address provided by Mr. Benavides is within the service area of the District. Based on this, OPIC concludes that because Mr. Benavides will be subject to the impact fee if it is granted by the Commission, he is affected by this application in a manner not common to the general public as required by 30 TAC § 55.256(a). Factors supporting his affected person status include that a reasonable relationship exists between the interest he claims and the proposed impact fee, and that there is a reasonable likelihood that his use of property may be affected by imposition of the impact fee. *See* 30 TAC § 55.256(c)(3), (4). Therefore, OPIC concludes that Joseph Benavides has demonstrated that he possesses a personal justiciable interest in this matter and qualifies as an affected person.

Austin Mark Ventures, LLC

On September 24, 2024, counsel for Austin Mark Ventures, LLC (Austin Mark) timely submitted a combined comment and hearing request. The request states that Austin Mark owns approximately 180 acres of property within the District's service area, which it intends to develop residentially. Austin Mark argues that the impact fee is unreasonable, inequitable, and unnecessary to finance improvements to serve the designated service area. Instead, it contends that the impact fee would improperly be used to pay for existing infrastructure or new infrastructure to serve the existing service area rather than new development within the service area.

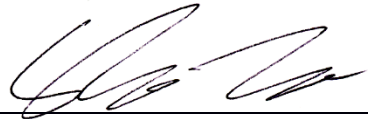
The map prepared by the ED's staff confirms Austin Mark owns property located within the service area of the District. Based on this, OPIC concludes that because Austin Mark, and possibly later residents of its development, will be subject to the impact fee if it is granted by the Commission, Austin Mark is affected by this application in a manner not common to the general public as required by 30 TAC § 55.256(a). Furthermore, much like Mr. Benavides, a reasonable relationship exists between the interest claimed by Austin Mark and the requested impact fee, and there is a reasonable likelihood that Austin Mark's use of property may be affected by imposition of the impact fee. *See* 30 TAC § 55.256(c)(3), (4). Therefore, OPIC concludes that Austin Mark Ventures, LLC has demonstrated that it possesses a personal justiciable interest in this matter and qualifies as an affected person.

IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends that the Commission grant the requests for a contested case hearing submitted by Joseph Benavides and Austin Mark Ventures, LLC and refer this matter to SOAH for a contested case hearing on the application.

Respectfully submitted,

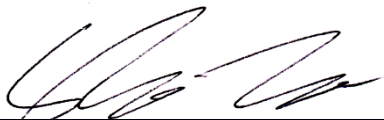
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, the Office of Public Interest Counsel's Response to Requests 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

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TCEQ DOCKET NO. 2024-1872-DIS

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