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PUBLIC UTILITY COMMISSION
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PETITION OF PATRICIA MILLER § BEFORE THE
DEASON TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE OF § PUBLIC UTILITY COMMISSION
CONVENIENCE AND NECESSITY IN §
COLLIN COUNTY BY EXPEDITED § OF TEXAS
RELEASE §

MARILEE SPECIAL UTILITY DISTRICT'S RESPONSE TO REPLY OF PATRICIA MILLER DEASON

Marilee Special Utility District ("Marilee") files this Response to the Reply of Patricia Miller Deason ("Deason") and respectively shows as follows:

BACKGROUND

1. On February 17, 2017, Deason filed a petition for expedited release (the "Petition") of certain real property (the "Property") from the certificated water service territory of Marilee, as defined by Certificate of Convenience and Necessity No. 10150.

2. On March 15, 2017, Marilee filed a Response to the Petition, asserting that the Property was not eligible for expedited release because Marilee provides "service" to the Property, as defined at Texas Water Code Section 13.002(21).

3. On March 22, 2017, the PUC issued Order No. 3 setting forth a schedule for responses to PUC staff's determination of administrative completeness.

4. On March 31, 2017, Deason filed its Reply to Marilee's Response to the Petition. In its Reply, Deason asserts that Marilee is not providing service to the Property for purposes of Texas Water Code Section 13.002(21) because "any improvements that Marilee made are not dedicated solely to serving Petitioner's 257.86 acres." (emphasis added).

5. This Response demonstrates Deason applies the wrong legal standard for purposes of determining whether property is receiving service for purposes of expedited decertification, and ignores the facts that establish that the Property is receiving service from Marilee.

6. This Response is being filed within five working days of Marilee's receipt of Deason's Reply and is therefore timely under 16 TAC § 22.78.

ARGUMENTS AND AUTHORITY

7. Deason asserts that the Property is not receiving "service" from Marilee because: (i) "any improvements that Marilee made are not dedicated solely to serving Petitioner's 257.86 acres"; and (ii) "nothing in the affidavit submitted by Marilee indicates that the waterline underneath or adjacent to the property are for the particular purpose or committed to serving only Petitioner's property." (emphasis added). Deason apparently asserts that in order for "service" to be rendered to real property, facilities must be dedicated to serving only the property proposed for decertification. Deason misstates the applicable legal standard for purposes of determining whether service is rendered to property by a CCN holder, and therefore whether property is eligible for expedited decertification.

8. Under *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App.—Austin 2014, *pet'n denied*), the Court determined that the relevant standard for purposes of determining whether property is receiving "service" and therefore eligible for expedited decertification is whether any "facilities or lines are committed or used" in the performance of the CCN holder's duties as a retail public utility. *Id.* at 140. The Court

specifically held that “service” does not require that the landowner actually receive water service on the property. *Id.*, at 139. Instead, the Court found that a determination must be made whether facilities and lines “are committed” to the tract or “used” to provide water to the tract:

Certainly an active water tap on the Decertified Property would constitute a facility or line “used” to supply water to the tract on which it was located. But it might also be sufficient if there were facilities or lines “committed” to such service, such as a dedicated water line that has been installed to serve that property even if such line were not currently operative....

Id., at 140: The Court concluded that the relevant standard is whether the CCN holder “had performed any act or supplied anything to the Decertified Property related to providing water to that property.” *Id.*

9. Contrary to Deason’s assertions, the Court in *Crystal Clear* did not find that facilities or lines must “only” service the property proposed for decertification. Under Deason’s argument, any real property that receives active water service from transmission lines that serve more than one parcel of land would be eligible for expedited decertification. This is absurd. Instead, the relevant inquiry established by the Court is whether any facilities or lines are “used or committed” to service to property, and whether any acts have been undertaken by the CCN holder to provide water to property.

10. In the current case, Marilee’s facilities and lines are both used and committed for service to the Property, and in fact, Marilee is currently providing service to a significant portion of the Property that Deason seeks to decertificate. The following uncontested facts are supported by the affidavit and accompanying documents attached to the Response, which are hereby incorporated by reference:

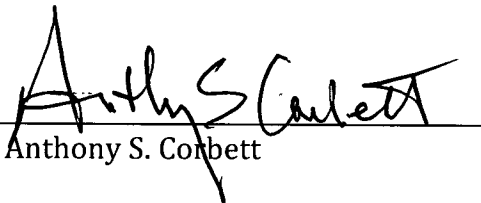
- i. The Service Application and Agreement, which was executed by Deason, governs water service by Marilee to a large portion of the Property. It specifically identifies the real property for which service was requested by Deason and to which Marilee has contractually committed to provide retail water service. The property is 166 acres located at 9379 County Road 132, Celina, Texas 75009.
 - ii. ***It is uncontested that the 166-acre tract of real property that is the subject of the Service Application and Agreement, and to which Marilee contractually committed to provide water service, is part of the same real property that Deason now seeks to decertificate.***
 - iii. Deason has not challenged the validity or enforceability of the service contract.
 - iv. ***Marilee currently provides active retail water service to the 166 acres in accordance with the Service Agreement. The water meter that serves the 166 acres remains active.***
11. Deason wholly fails to address to address two critical matters in its Reply which render the Property ineligible for expedited decertification under the *Crystal Clear* standard: (i) Marilee and Deason are parties to a contract pursuant to which Marilee contractually committed to provide retail water service to 166 acres of the Property that Deason now seeks to decertificate; and (ii) Marilee currently provides active water service to such 166 acres in accordance with the parties' contract.

12. Applying the *Crystal Clear* standard, Marilee has committed facilities and service to a large portion of the Property that Deason now seeks to decertificate, and Marilee currently uses those facilities to provide service to such lands. Facilities are both committed and used by Marilee to provide service to 166 acres of the real property that Deason now seeks to decertificate. Since Marilee has both committed and currently uses facilities to provide water service to the vast majority of the real property that Deason seeks to decertificate, such property is not eligible for expedited decertification.

CONCLUSION

WHEREFORE, Marilee requests that the PUC determine that Marilee has both committed and used facilities to provide retail water service to 166 acres of the Property that Deason now seeks to decertificate, and continues to provide retail water service to such lands, and therefore, the Property is not eligible for expedited decertification.

Respectfully submitted,

By: 
Anthony S. Corbett

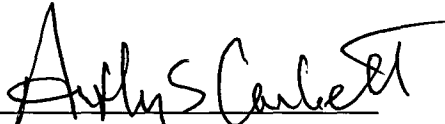
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ATTORNEYS FOR MARILEE SPECIAL
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CERTIFICATE OF SERVICE

I, Anthony S. Corbett, legal counsel to Marilee Special Utility District, certify that a copy of this document was served on all parties of record on this the 4th day of April, 2017, in accordance with 16 TAC § 22.74.


Anthony S. Corbett

MAILING LIST

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