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DOCKET NO. 49871

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**PETITION OF THE CITY OF RED OAK §
INDUSTRIAL DEVELOPMENT §
CORPORATION TO AMEND §
ROCKETT SPECIAL UTILITY §
DISTRICT'S WATER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN DALLAS AND ELLIS COUNTIES §
BY EXPEDITED RELEASE §**

2021 FEB 9 AM 11:14
BEFORE THE

PUBLIC UTILITY COMMISSION
FILED CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

**PETITIONER'S APPEAL OF ORDER NO. 13 DENYING THE CITY OF RED OAK
INDUSTRIAL DEVELOPMENT CORPORATION'S MOTION TO
AMEND ITS PETITION AND RESTYLE DOCKET**

The Red Oak Industrial Development Corporation (ROIDC) appeals Order No. 13 denying Petitioner's Motion to Amend its Petition and Restyle Docket (Motion), filed herein on January 29, 2021.

I. BACKGROUND

As Order No. 13 points out, all parties agree Red Oak Industrial Development Corporation and Compass Datacenters DFW III LLC (Compass)¹ are the owners of the tracts made the subject of this Petition, and not the City of Red Oak Industrial Development Corporation (CROIDC). Order No. 13 denied Petitioner's request to amend its petition and restyle the docket to identify ROIDC as the petitioner in this case. Petitioner disagrees with the ALJ's findings in support of Order No. 13 and reurges its arguments in support of the Motion.

In the alternative, Petitioner files with this appeal the Affidavit of Ben Goodwyn, the President of both CROIDC and ROIDC, explicitly authorizing CROIDC to seek a streamlined expedited petition of the property as issue. Commission precedent supports finding that CROIDC filed the Petition on ROIDC's behalf, and therefore moving forward with the petition on those grounds.

¹ Compass Datacenters DFW III LLC has filed a petition for streamlined expedited release of its land in Public Utility Commission Docket No. 51545.

II. ARGUMENT

A. **The correct parties have been involved in this proceeding since it was filed, therefore the error is correctable and should be considered a “misnomer.”**

The Administrative Law Judge finds that the facts of this case “look more like misidentification than misnomer” based on the legal status of CROIDC andROIDC.² That finding is erroneous and contrary to Texas law.

A misnomer arises “when a party misnames itself or another party, but the correct parties are involved.”³ ROIDC and CROIDC have the same officers, the same legal counsel, and serve the same purpose. Therefore, the correct parties have been involved in this petition from the beginning, which is the determinative test.⁴ Courts generally allow parties to correct a misnomer so long as it is not misleading, and when the plaintiff misnames itself, “the rationale for flexibility in the typical misnomer case—in which a plaintiff misnames the defendant—applies with even greater force.”⁵

The ALJ also finds that Rockett might be at a disadvantage by the opportunity for ROIDC to restyle the petition.⁶ This is incorrect. Neither the Commission nor Rockett were misled by the misnomer, nor were they placed at a disadvantage by the error.⁷ Indeed, the Commission immediately began processing the Petition,⁸ and soon thereafter Rockett moved to intervene and filed its response and objection to the Petition.

² Order No. 13 Denying City of Red Oak Industrial Development Corporation’s Motion to Amend its Petition and Restyle Docket at 3 (Jan. 29, 2021) (Order No. 13).

³ *In re Greater Houston Orthopaedic Specialists, Inc* , 295 S.W.3d 323, 325 (Tex. 2009) (per curiam).

⁴ *Id.*

⁵ *Id.* at 326.

⁶ Order No. 13 at 4.

⁷ *Reddy P’ship/5900 North Freeway LP v Harris Cnty.*, 370 S.W.3d 373, 376 (Tex. 2012), quoting *Sheldon v. Emergency Med Consultants, I, P A* , 43 S.W.3d 701, 702 (Tex. App. –Fort Worth 2001, no pet.).

⁸ See Order No. 1 Requiring Comments on Administrative Completeness and Notice and Establishing Procedural Schedule (Aug. 23, 2019); see also Order No. 2 Granting Motion to Intervene, Finding Petition Administratively Complete and Notice Sufficient, and Establishing Schedule (Sept. 25, 2019).

On October 19, 2019, Rockett filed suit against the Public Utility Commission (Commission), CROIDC, and Alamo Mission LLC—an entity that had also filed an application to remove properties from Rockett—to enjoin the Commission from decertifying Rockett’s CCN on the grounds that Rockett has protection under 7 United States Code § 1926(b). Thus, both Rockett and the Commission understood the property that was involved in the Petition, understood who the petitioner was, and were proceeding in response to the Petition.

Further, even if the petitioner *was* misidentified, the mistake can be corrected. In *Enserch Corp. v. Parker*,⁹ the plaintiff sued the wrong defendant. The Texas Supreme Court in *Enserch* recognized that there are cases in which even if the parties are misidentified, if the plaintiff could prove that the proper defendant was not prejudiced by the mistake in pleading, then limitations would not operate to bar the suit.¹⁰ No property was misidentified. No party was kept from responding timely. And, importantly, no party was disadvantaged in obtaining relevant evidence, which is a primary inquiry when addressing misidentification.¹¹

B. The Commission has previously granted decertification where the Petition was not filed by the landowner.

Additionally, and in the alternative, there is precedent for the Commission to find that ROIDC and Compass authorized CROIDC and their attorneys to act *on its behalf* to seek streamlined expedited release of the properties. In Docket No. 51367,¹² the Commission made the following findings of fact:

⁹ 794 S.W.2d 2 (Tex. 1990).

¹⁰ *Id.* at 5; *see also Flour Bluff Indep Sch Dist v Bass*, 133 S.W.3d 272, 274 (Tex. 2004) (limitations will be tolled when two separate, but related, entities that use a similar trade name and the correct entity had notice of the suit and was not misled or disadvantaged by the mistake); *Reddy Partnership/5900 North Freeway LP v. Harris County*, 370 S.W.3d 373, 376 (Tex. 2012), quoting *Sheldon v Emergency Med Consultants, I, P.A.*, 43 S.W.3d 701, 702 (Tex. App.—Fort Worth 2001, no pet.).

¹¹ *Enserch Corp* , 794 S.W.2d at 5.

¹² *Petition of Destiny Development, LLC, on behalf of Cyd Bailey, to Amend West Wise Special Utility District’s Certificate of Convenience and Necessity in Wise County by Expedited Release*, Docket No. 51367, Order (Dec. 17, 2020).

1. “Ms. Cyd Bailey authorized Destiny Development LLC and its attorneys to act on her behalf to seek the streamlined expedited release of the tract of land.”

5. “On September 25, 2020, on behalf of Ms. Bailey, Destiny Development filed a petition for streamlined expedited release of a tract of land from the CCN holders’ service area under CCN number 10284.”¹³

And, importantly, the Commission made the following conclusion of law:

6. “An authorized agent of the landowner may file a petition for streamlined expedited release of the landowner’s tract of land.”¹⁴

As such, it is well within Commission precedent to grant decertification where the landowner expressly provides authority to file the petition on its behalf. In fact, in that proceeding, the former CCN holder (West Wise) objected to the petition because it was not filed by the landowner, just as Rockett has done in this docket.¹⁵ Commission Staff stated in its reply to the former CCN holder:

West Wise specifically cites to 16 TAC 24.245(h)(3) . . . to argue that landowners cannot be represented by another party in these proceedings and must file the petition themselves. *Staff notes that the rule does not include such a restriction.* Here, the landowner has expressly consented to Destiny Development filing the petition and has executed an affidavit filed in this docket giving Destiny Development express permission to do so. West Wise would appear to be suggesting that Ms. Bailey be required to refile the same petition already filed in this docket as the petitioner while still being represented by Destiny Development, and to start the process over again. Aside from the fact that the rule does not contain the restriction outlined by West Wise, the principles of administrative efficiency and judicial economy suggest this course of action is not necessary. Therefore, Staff respectfully recommends that the petition be allowed to proceed.¹⁶

¹³ Docket No. 51367, Findings of Fact Nos. 1, 5 (Dec. 17, 2020).

¹⁴ Docket No. 51367, Conclusion of Law No. 6 (Dec. 17, 2020).

¹⁵ Docket No. 51367, West Wise Special Utility District’s Response and Objection to the Petition (Nov. 3, 2020).

¹⁶ Docket No. 51367, Commission Staff’s Recommendation on Final Disposition at 2 (Nov. 10, 2020)

West Wise also filed exceptions to the Proposed Order, again arguing that the petition was defective because it was not filed by the owner of the property.¹⁷ Regardless of the CCN holder's objections, the Commission found that "an authorized agent of the landowner may file a petition for streamlined expedited release of the landowner's tract of land."¹⁸

C. CROIDC is authorized to file this petition on ROIDC's behalf.

Attached as Exhibit A is the Affidavit of Ben Goodwyn. Mr. Goodwyn is President of both CROIDC and ROIDC. As Mr. Goodwyn avers, ROIDC authorizes CROIDC to pursue the decertification sought in this petition on its behalf. The Commission has previously found that an authorized agent of a landowner may file a petition on its behalf, and that is what has happened here. The timing of the authorization is not important. If the Commission were to dismiss this petition, Mr. Goodwyn and his attorneys would be required to refile the same petition filed in this docket in his capacity as president of ROIDC.¹⁹

As Staff argued in Docket No. 51367, the principles of administrative efficiency and judicial economy render this course of action unnecessary. Additionally, 16 Tex. Admin. Code § 24.245(h)(3) does not require that a landowner file a petition for streamlined expedited release themselves. Accordingly, CROIDC is an authorized agent of ROIDC and may file a petition for decertification on its behalf.

D. CROIDC is authorized to file this petition on Compass Datacenter DFW III, LLC's behalf.

Additionally, as noted in Red Oak's Response to Order No. 10,²⁰ Tracts 3 and 4A were conveyed to Compass Datacenters DFW III, LLC (Compass) on November 19, 2019. At the time of the conveyance, Compass was aware of this petition for decertification and authorized

(emphasis added).

¹⁷ Docket No. 51367, West Wise Special Utility District's Exceptions to the Proposed Order Granting Streamline Expedited Release (Dec. 7, 2020).

¹⁸ Order at Conclusion of Law No. 6.

¹⁹ See Affidavit of Ben Goodwyn, being provided as Exhibit A.

²⁰ Red Oak Industrial Development Corporation's Response to Order No. 10 (Nov. 20, 2020).

ROIDC (and CROIDC, by extension) to continue to seek decertification on Compass's behalf.²¹ Accordingly, CROIDC is authorized to pursue decertification of Tracts 3 and 4A on Compass's behalf and the Commission should review the petition as it pertains to all tracts.

E. ROIDC's corporate status is irrelevant because CROIDC is authorized to pursue the petition on its behalf.

The ALJ found that there are "unresolved legal questions about the legal status of ROIDC and its right to be petitioner in this case."²² ROIDC's legal status is implicated if ROIDC is the petitioner in the case because a dissolved entity may not maintain an action, suit, or proceeding in a Texas court.²³ However, Section 22.362 of the Texas Business Organizations Code specifically notes that the forfeiture of the right to conduct affairs does not impair the validity of a contract or act of the corporation.²⁴ In this case, ROIDC authorized CROIDC to act on its behalf, which it may do regardless of status. Accordingly, ROIDC's corporate status is no longer relevant.

III. CONCLUSION

City of Red Oak Industrial Development Corporation is authorized to act as the agent of Red Oak Industrial Development Corporation in this Petition and respectfully requests that the Commission allow the petition for decertification to proceed.

²¹ *Id.*, Attachment B (Affidavit of Jared Day).

²² Order No. 13 at 5.

²³ Tex. Bus. Orgs. Code § 22.362(a).

²⁴ *Id.* at § 22.362(c).

Respectfully submitted,

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**ATTORNEYS FOR RED OAK INDUSTRIAL
DEVELOPMENT CORPORATION**

CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on February 8, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN

EXHIBIT A

DOCKET NO. 49871

PETITION BY CITY OF RED OAK	§	BEFORE THE
INDUSTRIAL DEVELOPMENT	§	
CORPORATION FOR	§	
STREAMLINED EXPEDITED	§	
RELEASE FROM ROCKETT	§	PUBLIC UTILITY COMMISSION
SPECIAL UTILITY DISTRICT'S	§	
CCN NO. 10099 PURSUANT TO	§	
TEXAS WATER CODE §13.254(a-5)	§	
AND 16 TAC § 24.254(l)	§	OF TEXAS

AFFIDAVIT OF BEN GOODWYN

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

BEFORE ME, the undersigned authority, on this day personally appeared Ben Goodwyn, the affiant, who is known to me. After administering an oath, the affiant testified that:

1. My name is Ben Goodwyn. I am over the age of 18 years, of sound mind, and am competent to make this Affidavit. The facts stated herein are within my personal knowledge and are true and correct.

2. I am President of the City of Red Oak Industrial Development Corporation (CROIDC), the Petitioner in the above-captioned matter. I am also President of the Red Oak Industrial Development Corporation (ROIDC).

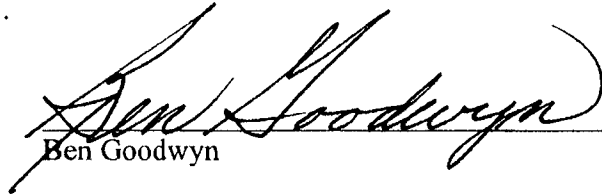
3. At the time this Petition was filed, the ROIDC owned approximately 384 acres of land (the Property), which is located within the boundaries of water CCN No. 10099 issued to the Rockett Special Utility District (Rockett). The Property was comprised of five tracts of land, named Tracts 1, 2, 3, 4A, and 4B.

4. CROIDC and its attorneys are authorized to seek a streamlined expedited release of the Property on ROIDC's behalf and as its agent.

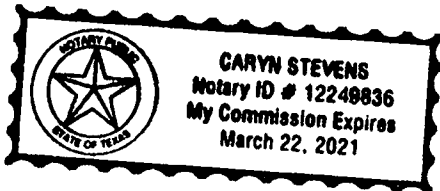
5. If the Commission dismisses the petition filed by CROIDC, then I, along with ROIDC's attorneys, will be required to re-file the same petition filed in this docket as the petitioner in my capacity as the President of ROIDC.

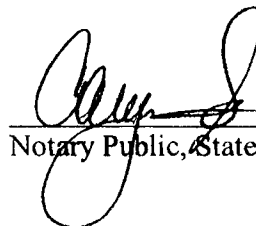
FURTHER AFFIANT SAYETH NOT.

SIGNED this 5th day of February, 2021.


Ben Goodwyn

SWORN TO AND SUBSCRIBED BEFORE ME by Ben Goodwyn on February 5th, 2021.




Notary Public, State of Texas