

Control Number: 49871



Item Number: 71

Addendum StartPage: 0

DOCKET NO. 49871

RECEIVED

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 10 AM 11:55
BEFORE THE

PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

**RED OAK INDUSTRIAL DEVELOPMENT CORPORATION'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Red Oak Industrial Development Corporation (ROIDC) timely files the following exceptions to the Public Utility Commission's (Commission) Proposal for Decision (PFD) issued on February 1, 2021, in the above-referenced matter and respectfully shows the following:

I. EXECUTIVE SUMMARY

ROIDC excepts to the PFD and its recommendation that the Commission dismiss the petition due to lack of jurisdiction. As detailed in ROIDC's Appeal to Order No. 13, the inclusion of the City of Red Oak Industrial Corporation (CROIDC) as the petitioner is a case of misnomer, and correctable under Texas law. Furthermore, ROIDC explicitly granted CROIDC authority to file the petition for streamlined expedited release. Commission precedent supports finding that CROIDC had authority to file and therefore the petition should move forward on those grounds. As such, ROIDC objects to the PFD. ROIDC urges the Commission to not adopt the PFD and allow CROIDC to prosecute this petition under 16 Tex. Admin. Code (TAC) § 24.245(h)(3).

II. EXCEPTIONS TO THE PROPOSAL FOR DECISION

Exception No. 1—ROIDC excepts to the PFD's Proposed Conclusions of Law Nos. 5 and 6 and Ordering Paragraph Nos. 1 and 2, resulting in dismissal of the Petition.

71

The PFD's proposed Conclusions of Law Nos. 5 and 6, as well as the PFD's Ordering Paragraphs Nos. 1 and 2, all incorrectly conclude that the Commission lacks jurisdiction over the complaint. The PFD relies on Order No. 13, issued on January 29, 2021, in which the Administrative Law Judge (ALJ) denied CROIDC's request to amend its petition and restyle the docket to identify ROIDC as the petitioner in this case. Based on this Order denying CROIDC's request, the PFD incorrectly finds that the Petition should be dismissed for lack of jurisdiction under 16 TAC § 22.181(d)(1).

ROIDC timely filed an appeal of Order No. 13 on February 8, 2021 (the Appeal). As of the date of this filing, the Commission has not had an opportunity to grant or deny the Appeal.¹ As ROIDC argued in its original request and the Appeal, the inclusion of CROIDC as the petitioner constitutes a misnomer and courts generally allow parties to correct a misnomer, so long as it not misleading.² A misnomer arises "when a party misnames itself or another party, but the correct parties are involved."³ The correct parties have been involved in this petition from the beginning, which is the determinative test between misnomer and misidentification,⁴ as ROIDC and CROIDC have the same officers, the same legal counsel, and serve the same purpose.

Additionally, there is precedent for the Commission to find that ROIDC authorized CROIDC and their attorneys to act *on its behalf* to seek streamlined expedited release of the properties. In Docket No. 51367,⁵ the Commission explicitly found that "an authorized agent of the landowner may file a petition for streamlined expedited release of the landowner's tract of land."⁶ ROIDC filed the affidavit of Ben Goodwyn, president of both ROIDC and CROIDC,

¹ 16 TAC 22.123(a)(7).

² *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 326 (Tex. 2009) (per curiam).

³ *Id.* at 325.

⁴ *Id.* at 323.

⁵ *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).

⁶ *Id.* at Conclusion of Law No. 6.

explicitly authorizing CROIDC to pursue the decertification sought on ROIDC's behalf.⁷ 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.⁸

As Staff argued in Docket No. 51367, the principles of administrative efficiency and judicial economy render this course of action unnecessary. Additionally, 16 TAC § 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.

Additionally, as noted in the proposed Finding of Fact No. 10, 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 ROIDC (and CROIDC, by extension) to continue to seek decertification on Compass's behalf.⁹ 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.

The PFD errs in dismissing the petition for lack of jurisdiction, as it relies on the erroneous findings in Order No. 13. As shown in ROIDC's pending Appeal, ROIDC has standing to prosecute the petition. As such, ROIDC requests the Commission not adopt the PFD and order the Commission to continue processing the Petition and grant the streamlined expedited release ROIDC has explicit authority to seek on behalf of CROIDC and Compass.

⁷ 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, Ex. A at 9 (Feb. 8, 2021)

⁸ *Id*

⁹ *Petition by Compass Datacenters DFW III, LLC for Streamlined Expedited Release from Rockett Special Utility District's CCN No. 10099*, Docket No. 51545, Ex. B (Affidavit of Jared Day).

III. CONCLUSION AND PRAYER

ROIDC respectfully requests that the Commission not adopt the PFD and order the Commission to continue processing the Petition, and grant any other relief to which ROIDC may be entitled.

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 10, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN