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DOCKET NO. 50404

**PETITION OF STERLING DEASON
O'DONNELL AND DARWIN DEASON,
CO-TRUSTEES OF THE STERLING
DEASON O'DONNELL DD 2012 TRUST
UNDER AGREEMENT OF THE DD
2014-B GRANTOR RETAINED
ANNUITY TRUST TO AMEND
MARILEE SPECIAL UTILITY
DISTRICT'S CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
COLLIN COUNTY BY EXPEDITED
RELEASE**

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PUBLIC UTILITY COMMISSION

OF TEXAS

**MARILEE SPECIAL UTILITY DISTRICT'S
RESPONSE TO ADMINISTRATIVELY COMPLETE PETITION
AND PETITIONER'S BRIEF IN SUPPORT OF FINDING THEREOF**

COMES NOW, Marilee Special Utility District ("Marilee") and files this Response to the administratively complete Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under the DD 2014-B Grantor Retained Annuity Trust ("Petitioner") filed in this Docket (the "Petition"). In support thereof, Marilee respectfully shows the following:

I. BACKGROUND

On January 2, 2020, Petitioner filed the Petition to decertify 260.372 acres of real property (the "Property") from Marilee's certificated water service territory, Certificate of Convenience and Necessity (CCN) No. 10150, pursuant to Texas Water Code (TWC) § 13.254(a-5) now redesignated as TWC § 13.2541(b)¹, and 16 Texas Administrative Code (TAC) § 24.245(l).

¹ TWC § 13.254(a-5), amended by Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4.

On January 16, 2020, Marilee timely filed its Motion to Intervene, Item 3 of this Docket. On February 11, 2020, Marilee timely filed its Response to the Petition, Item 9 of this Docket. On April 16, 2020, Marilee separately filed a Motion for Leave, Item 14 of this Docket, and the related Surreply to Petitioner's Reply, Item 15 of this Docket. On April 27, 2020, Order No. 4, Item 18 of this Docket, granted Marilee's Motion for Leave.

On May 11, 2020, Petitioner filed its Brief In Support of Finding of Administrative Completeness, Item 20 in this Docket. On June 12, 2020, the administrative law judge found that the Petition was administratively complete, notice was sufficient, and set forth a schedule for Marilee to respond by June 19, 2020.² Therefore, Marilee timely files this Response.

II. ARGUMENT AND AUTHORITY

In response to the administratively complete Petition, Marilee incorporates its Response to the Petition³ and Surreply to Petitioner's Reply⁴ in this Response. Further, Marilee addresses claims by Petitioner in Petitioner's Brief In Support of Finding of Administrative Completeness.⁵

A. Facts Distinguished From *HMP Ranch, Ltd. Petition*, Docket No. 45037.

In Petitioner's Brief, Petitioner claims that the Commission's finding that Marilee provided water to the Property and the Commission's denial of the 2017 decertification petition filed in Docket No. 46866 (the "2017 Petition") by Patricia Miller Deason, who was the previous landowner of the subject property in this Docket, is irrelevant based on the Commission's previous finding in the *Petition of HMP Ranch, Ltd. To Amend Johnson*

² Order No. 5, Item 21 (Jun. 12, 2020).

³ Marilee's Response to the Petition, Item 9 (Feb. 11, 2020).

⁴ Marilee's Surreply to Petitioner's Reply, Item 15 (Apr. 16, 2020).

⁵ See Petitioner's Brief in Support of Findings of Administrative Completeness, Item 20 (May 11, 2020).

*County Special Utility District's Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release, Docket No. 45037.*⁶

However, Petitioner fails to distinguish the facts in *HMP Ranch*, specifically that no former landowner of the subject property previously filed for decertification, the CCN holder had not provided water to the property in over ten (10) years and could not locate inactive water meter boxes present on the subject property, and the petitioner HMP Ranch Ltd. did not carve out areas of the subject property that includes active meters in its attempt to decertify the subject property.

B. Marilee Continues To Provide Water Service To The Same Active Meters That The Commission Found The Property Received Service In 2017.

In Petitioner's Reply, Petitioner claims that the Petition in this Docket and the 2017 Petition is not related in time, citing the *HMP* case as "the Commission has held that 'the time that the petition filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water under TWC § 13.254(a-5).'"⁷

Petitioner is correct—that the time of the filed Petition is relevant—as Marilee provided retail water service to the Property at the time the Petition was filed, and currently provides retail water service, through three (3) active water meters (the "Meters"), three (3) waterlines of various sizes installed on the Property, and a 6" waterline adjacent to the Property.⁸ Marilee provided true and correct copies of Marilee's waterlines, the location of the Meters, billing statements of water used for the Meters, and information from the website of the Collin Central Appraisal District confirming the addresses of the billing statements for the Meters are located within the property conveyed to Petitioner, which

⁶ Petitioner's Reply, Item 13 at 5-6 (Apr. 8, 2020).

⁷ *Id.*

⁸ Marilee's Response, Item 9 at 2-5 (Feb. 11, 2020).

includes the Property at issue as evidenced by the General Warranty Deed (the "Deed") attached as Exhibit "C" to the Petition,⁹ along with an Affidavit from Marilee's General Manager, Donna Loiselle.¹⁰

Prior to and since 2017, when the Commission found that Marilee provides water service to the Property through the Meters,¹¹ Marilee has provided and continues to provide the same water service to the Property at the same Meters, as shown above.

Unlike *HMP Ranch* where the Commission found that the subject property had not received water in over 10 years and the CCN holder could not even locate the alleged inactive meter on the subject property, Petitioner has not shown that Marilee does not provide water service to the Property conveyed to Petitioner through the Deed.

C. Petitioner Carves Out "The Other Land" From The Property To Circumvent The Commission's Decision In 2017.

Again, Petitioner is correct that time is relevant. After the 2017 Petition was denied by the Commission, Petitioner received a conveyance of the same subject property at issue in the 2017 Petition from Patricia Miller Deason, as evidenced by the Deed,¹² 97% of which is the Property itself. Then, *less than a year later*, Petitioner files the Petition and purposefully removes a few acres where the Meters are located (the "Other Land") from the metes and bounds in the Deed and submits the Property to the Commission for decertification.¹³ With those actions alone, it is clear that the Petitioner is attempting to circumvent the Commission's denial of the 2017 Petition filed by Patricia Miller Deason claiming that there is no privity between the petitioners and the subject property, yet not

⁹ Petition, Item 1 at Ex. C. (Jan. 2, 2020).

¹⁰ Id. at Exs. A-D.

¹¹ Order, Item 19 in Docket No. 46866 at 5 (May 19, 2017).

¹² Petition, Item 1 at Ex. C. (Jan. 2, 2020).

¹³ Petitioner's Reply to Marilee's Response, Item 13 at Ex. A (Apr. 8, 2020).

providing any trust documents, affidavit, or other information as to the settlors or beneficiaries of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust (the "Trust"), or the relationship between Patricia Miller Deason and Sterling Deason O'Donnell or Darwin Deason, Co-Trustees of the Trust (i.e., Petitioner).

Petitioner essentially argues that it can (1) transfer the property to a related party for unknown/undisclosed terms, and (2) conveniently remove a few acres of the land from the 2017 Petition where Marilee's active meters and facilities are located that currently provide water, to escape issue and claim preclusion.

D. Granting The Petition Will Allow Landowners To Buy Property And Carve Out Active Meters Each Time Any Petition Is Denied.

Like Marilee, CCN holders have an obligation to protect and serve its designated service areas, which includes defending its CCN from amendment when it is actually providing water service. More importantly, this is the second time that Marilee is defending, and must defend, the Property from decertification, after the Commission has previously found that Marilee is providing water service to the Property. It was not the intent of lawmakers to allow a landowner to specifically cut out land where meters, waterlines, and facilities are installed, then claim the property is not receiving water service.

If the Commission grants the Petition, this will have grave adverse effects. Landowners will be able to purchase property and cut out areas of the tract where active water meters and existing waterlines and facilities lie, then decertify from the current CCN by claiming the property is not receiving water service. Land previously denied of decertification will be conveyed to a "new" landowner—like Petitioner—to evade the

Commission's denial of decertification. This will create areas (pockets or holes) in an entity's CCN, not only making it difficult for CCN holders to plan, maintain, and pay for infrastructure but also the customers of the CCN holders will bear the burden by paying higher rates to make up for loss of income from the decertified area—here, over 250 acres, which if developed as residential, will result in millions of dollars of lost net revenue that Marilee's other customers will have to cover.

III. CONCLUSION

The Commission found Marilee provided water service to the Property through the Meters and various waterlines on and adjacent to the Property, and denied the 2017 Petition. Now, Marilee has shown in this Docket that it continues to provide water service to the Meters, and has provided water service since the Commission's ruling in 2017. If the Commission does not find that res judicata and collateral estoppel as the basis for dismissal or "denial" of the Petition,¹⁴ then the Commission should deny the Petition based on the simple fact that Marilee is currently providing water service to the Meters, just as the Commission determined the same in 2017.

Petitioner has failed to demonstrate that Marilee has not committed facilities or lines providing water service to the Property, performed acts and/or supplied things to the Property, or that the Property is not receiving water service from Marilee, as the term has been defined by the courts, since 2017.¹⁵

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein and in its Response and Surreply, Marilee Special Utility District respectfully requests the Petition be denied in its entirety. If the Commission shall find it necessary to consider

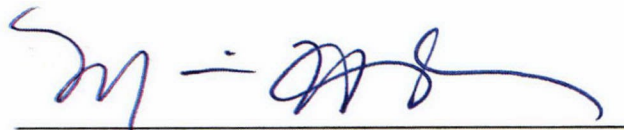
¹⁴ Marilee's Surreply to Petitioner's Reply, Item 15 at 2-5 (Apr. 16, 2020).

¹⁵ Order, Item 19 in Docket No. 46866 at 5 (May 19, 2017).

privity of Patricia Miller Deason and Petitioner, Marilee requests an evidentiary hearing for such consideration. However, if the Petition is granted, Marilee requests that the Commission allow for compensation to Marilee, in accordance with the statutory factors set forth in Texas Water Code § 13.254(g), for its existing waterlines and nearby facilities, associated debt in connection to the installation of such facilities, necessary and reasonable legal and professional fees associated affected by the taking of over 250 acres of its service area. Marilee additionally requests all other such relief as to which it may be entitled.

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC

A handwritten signature in blue ink, appearing to read 'M - JWS', is written over a horizontal line.

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ATTORNEYS FOR MARILEE SPECIAL
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on June 19, 2020, by e-mail.¹⁶

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¹⁶ See *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).