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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 §

PUBLIC UTILITY COMMISSION

OF TEXAS

**MARILEE SPECIAL UTILITY DISTRICT'S
RESPONSE AND OBJECTION TO PETITIONER'S MOTION TO STRIKE**

COMES NOW, Marilee Special Utility District ("Marilee") and files this Response and Objection to Petitioner's Motion to Strike Marilee's Objection to Commission Staff's Recommendation on Final Disposition, filed as Item 26 of this Docket on July 7, 2020. In support thereof, Marilee respectfully shows the following:

I. OVERVIEW

On January 2, 2020, 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 ("Petitioner") filed a 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 (the "Petition"), pursuant to Texas Water Code (TWC) § 13.2541(b)¹ and 16 Texas Administrative Code (TAC) § 24.245(l). On January 16, 2020, Marilee timely filed its Motion to Intervene, which was granted pursuant to Order No. 2 issued on January 30, 2020. Pursuant to Order No. 1, Marilee timely filed

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

its Response on February 11, 2020. Marilee also filed its Motion for Leave and its Surreply to Petitioner's Reply on April 16, 2020. Marilee was granted its Motion for Leave pursuant to Order No. 4 issued April 27, 2020.

On June 26, 2020, Commission Staff filed its Recommendation on Final Disposition. Marilee timely filed its Objection to Commission Staff's Recommendation on Final Disposition on July 2, 2020 ("Objection"). On July 6, 2020, Petitioner filed its Motion to Strike Marilee's Objection; therefore, this Response and Objection is timely filed pursuant to 16 TAC § 22.78(a).

II. RESPONSE AND OBJECTION

In its Motion to Strike, Petitioner states that Marilee's filings in this docket are unnecessary and untimely. Whether the Property is currently receiving water service is a disputed fact. The Public Utility Commission of Texas (the "Commission") denied a previously filed petition for expedited release of nearly the same tract of land, as the Property involved here. The previously filed petition for decertification was presented by former landowner Patricia Miller "Deason" who appears to have a familial relationship with Petitioner. Thus, it was necessary for Marilee to file multiple times in this Docket to provide the Commission with correct information regarding the circumstances related to the Property as well as the distinguished facts of caselaw cited by the parties.

A. Petitioner Falsely Suggests "Other Property" Previously Denied Of Expedited Release Is Completely Unrelated To The Property In This Docket.

In its Motion to Strike, Petitioner claims that Marilee's Response provided "that the Property is not eligible for decertification because the Public Utility Commission of Texas (the "Commission") previously denied decertification of other property."² This statement

² Petitioner's Motion to Strike Marilee's Objection, Item 26 at 2 (Jul. 6, 2020) (emphasis added).

summarizing Marilee's Response³ is false and misleading, as it alludes that the "other property" is completely unrelated to the Property at issue in this Docket.

Actually, Marilee's Response provides, among other things, that the subject Property of this Docket is currently receiving water service through the same three active meters (the "Meters") in which the Commission denied a petition for expedited release in 2017 (the "2017 Petition") involving nearly all of the land at issue here.⁴ Additionally in its Response, Marilee referenced multiple filings in Docket No. 46866, where Marilee provided evidence to the Commission that the subject property in the 2017 Petition was receiving water service,⁵ which included the service agreements for the Meters. Such service agreements covered multiple tracts of land which collectively make up the Property in the Petition, as further discussed herein.

B. Marilee's Surreply Was Necessary As Denial Of The 2017 Petition Is Relevant And To Distinguish Facts Of Cited Case In Petitioner's Response.

In its Response, Petitioner contends and misleads that the "other property" (being the subject tract of land in the 2017 Petition) "has no bearing in this proceeding" and Marilee's Surreply was unnecessary "to re-urge its prior arguments."⁶

Marilee's Surreply was, in fact, necessary and filed in response to show the significant relevance between the subject land in the 2017 Petition and the Property in this docket, specifically the similarity of facts and evidence found in the denied 2017

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

⁴ See Marilee's Response to the Petition for Expedited Release, Item 9 at 3-6 (Feb. 11, 2020) (referring to the Petition of Patricia Miller Deason, Docket No. 46866).

⁵ See *id.* at 5-6 (referencing various filings by Marilee and Commission Staff, and Commission's Order regarding evidence of water service to the Meters).

⁶ Petitioner's Motion to Strike, Item 26 at 2 (Jul. 6, 2020).

Petition and that 97% of the Property is the same as the subject land in the 2017 Petition.⁷ Since the denial of the 2017 Petition, there have been no change in circumstances, other than Petitioner added a few more acres to the land in the 2017 Petition, to evade the prior denial of decertification. In other words, Petitioner has included all of the denied land in the 2017 Petition (which the Commission determined is actually receiving water service and Marilee is committed to providing such water service) in this Petition. Nothing has changed.

Moreover, Marilee's Surreply was also necessary, as Petitioner simply stated "whether a tract might have previously received water service is irrelevant"⁸ and cited the Commission's finding in the Petition of HMP Ranch Ltd., without providing any context or facts regarding water service thereto.⁹ First, a prior adjudication is always relevant if the same land in the current Petition was involved in a prior determination, namely the 2017 Petition. Second, the Commission grants or denies petitions for expedited release based on facts and evidence surrounding water service by the CCN holder specifically related to the subject property in each petition. Therefore, if Petitioner merely states the finding from HMP Ranch Ltd., without comparing the facts supporting such finding, Marilee must respond to clarify Petitioner's misleading statement and distinguish the facts.

Petitioner's attempt to distract the Commission by such a simplistic statement implored Marilee to file its Surreply and provide the Commission with important and distinguishing facts of this matter and the Petition of HMP Ranch Ltd, including that—

⁷ Marilee's Surreply to Petitioner's Reply, Item 15 at 5 (Apr. 16, 2020).

⁸ Petitioner's Reply to Marilee's Response to the Petition, Item 13 at 6 (Apr. 8, 2020).

⁹ Marilee's Surreply to Petitioner's Reply, Item 15 at 1-2, 7 (Apr. 8, 2020).

unlike this case—water service to the subject land in HMP Ranch was not previously found by the Commission to have received water service and denied expedited release.¹⁰

C. Marilee's Objection To Commission Staff's Recommendation Is Proper, Necessary and Timely, To Challenge Errors Or Omissions And Distinguish Important Facts of Cited Caselaw.

Petitioner states that Marilee's Objection is "not an objection to some irregularity on Commission Staff's Recommendation ... and confuses issues that have previously been decided."¹¹ Objections must be allowed to challenge errors or omissions. This includes when Commission Staff omitted specific details of the facts and evidence that led to the Commission's finding that the Property was receiving water service and denial of the 2017 Petition, especially as the 2017 Petition also carved out land where the same active three Meters currently provide water service (like Petitioner). Marilee currently provides water through the same waterlines. Marilee has not relinquished its commitment to serving water to the Property as service has continued since 2017, and Marilee provided multiple detailed service agreements where the Commission found collectively that Marilee is providing water service to the Property.¹²

Especially when the former landowner has been denied expedited release, and Petitioner (the subsequent landowner) blatantly attempts to circumvent the Commission's findings and decision by filing this Petition and purposefully avoids such details, it is necessary that Marilee correct any errors or omissions to ensure the accuracy of such important facts to be considered. Whether the Property is currently receiving water

¹⁰ Id.

¹¹ Petitioner's Reply to Marilee's Response to the Petition, Item 13 at 6 (Apr. 8, 2020).

¹² See *generally*, Marilee's Objection to Commission Staff's Recommendation on Final Disposition, Item 25 (July 2, 2020) (clarifying the evidence and support provided by Marilee, among other essential information, related to the Commission's decision in denial of the 2017 Petition).

service is a disputed fact issue, and it is imprudent to allow specific facts and evidence surrounding the findings related to the 2017 Petition and this Petition be disregarded.

In addition to challenging errors and omissions, Marilee's Objection distinguished important facts and evidence of various caselaw cited by Commission Staff for the first time in support of its Recommendation.¹³ Marilee is entitled to make its record in this proceeding, including objections to challenge errors and omissions and distinguishing facts of cited caselaw. Less than a week after the Commission Staff filed its Recommendation on Final Disposition, Marilee filed its Objection; therefore, the Objection was timely filed and thus cannot be prejudicial to the Petitioner. Indeed, Petitioner has used its Motion to Strike as a mechanism to respond to Marilee's "Objection."

III. CONCLUSION

The ultimate issue here (whether the Property is currently receiving water service) is a disputed fact issue that has not yet been decided, especially due to the importance of the specific facts and evidence supporting the Commission's findings in the denial of the 2017 Petition. Marilee's filed Response, Surreply and Objection are necessary to provide essential detailed information surrounding the related 2017 Petition, this subsequent Petition, and the distinguishing facts of cited caselaw. Such filings are not "an attempt re-urge prior arguments;" rather, Marilee must clarify misstatements or inaccuracies presented by parties, to assist the Commission in its determination, which is again, whether the Property has continued receiving and is currently receiving water service.

¹³ See *generally*, *id.* (distinguishing the specific facts between the various cited caselaw, the 2017 Petition and this Petition); see *also*, Commission Staff's Recommendation on Final Disposition, Item 23 (June 26, 2020) (being the first filing by Commission Staff in this docket that discussed factors and caselaw as the basis for its recommendation regarding water service to the Property).

Contrary to Petitioner's claim that Marilee's Objection "confuses issues that have previously been decided," neither Petitioner nor Commission Staff has cited a petition considered by the Commission or its predecessor where expedited release was denied as the property was found to be receiving water service and where the subsequent landowner filed essentially the same petition shortly thereafter. Such statement by Petitioner supports that the Commission should, in fact, deny this Petition—just as the Commission previously decided and denied the 2017 Petition, especially as the Property (which wholly encompasses the land in the denied 2017 Petition) is still being served by the same three active water meters and committed facilities.

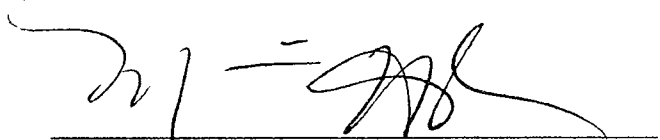
WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein and its filings in this docket, Marilee Special Utility District respectfully requests Petitioner's Motion to Strike be denied, the Petition be denied in its entirety, and all other such relief as to which it may be entitled.

If the Commission grants the Petition, Marilee requests the Commission make findings of fact, explaining what change in circumstances warrant a different decision or result, for the same land described in the 2017 Petition and this Petition. Aside from a change in ownership, the underlying facts remain unchanged, namely Marilee is providing the same level of water service to the land in the 2017 Petition and this Petition, both in 2017 when the 2017 petition was denied, and currently in 2020. There has also been no change to Marilee's commitment to provide water service (the same committed infrastructure remains in existence, performing the same function it did in 2017) relative to the land in the 2017 Petition and this Petition. Because of this, the Commission should reach the same decision it made in 2017, and deny this Petition. If a different decision is

made here, findings of fact will provide guidance to the appellate court as to what changed, warranting a different result.

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC

A handwritten signature in black ink, appearing to read 'Maria Huynh', is written over a horizontal line.

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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 July 10, 2020, by e-mail.¹⁴

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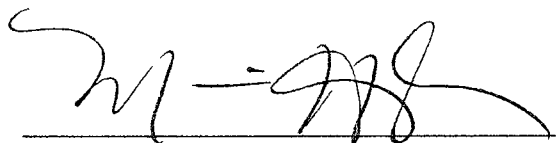
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¹⁴ See *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).