



Control Number: 51367



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PETITION OF DESTINY	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT, LLC TO AMEND	§	
WEST WISE SPECIAL UTILITY	§	
DISTRICT'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
WISE COUNTY BY EXPEDITED	§	
RELEASE	§	

WEST WISE SPECIAL UTILITY DISTRICT'S RESPONSE
AND OBJECTION TO THE PETITION

West Wise Special Utility District ("West Wise SUD") hereby submits this Response (the "Response") to the Petition of Destiny Development, LLC, ("Petitioner"), filed on September 25, 2020, with the Public Utility Commission of Texas ("the Commission"). The Petition (hereinafter referred to as "the Petition") seeks the expedited release of an approximately 31-acre tract (the "Property") that lies within the boundaries of West Wise SUD's existing Certificate of Convenience and Necessity ("CCN") No. 10284 in Wise County.

On October 27, 2020, and pursuant to Order No. 3, the Administrative Law Judge ("ALJ") deemed the Petition to be administratively complete and directed West Wise SUD to respond by November 3, 2020.¹ This Response is therefore timely filed.

I. STATEMENT OF POSITION

At the outset, the Petition is defective on its face, as the Petitioner (Destiny Development, LLC) is not the "landowner" of the subject Property, and the landowner is not even a party to the docket. The Commission's rules clearly require the landowner to file the Petition and be a party to the docket. Absent the landowner as a party, it is unclear how the docket can proceed through

¹ *Petition of Destiny Development, LLC to Amend West Wise Special Utility District's Certificate of Convenience and Necessity in Wise County by Expedited Release*, Docket No. 51367, Order No. 3.

the compensation process, which requires certain interactions between the CCN holder and the “landowner” and for the landowner to be subject to the jurisdiction of the Commission, including to pay compensation to the former CCN holder.

Next, it is important to note that West Wise SUD, a regional water supplier currently serving in excess of 1145 customer connections, is fully capable of providing continuous and adequate retail water service to the Property. In addition to its existing water supplies, West Wise SUD has constructed a new pump station and replaced 6-inch waterlines with 8-inch waterlines for additional flow and pressure to the area in which the development is located. West Wise SUD is also currently in the process of replacing its existing 1.0 MGD water plant with a 2.0 MGD water plant.

Nonetheless, Petitioner has opted to forgo retail service from the long-standing and stable existing regional water provider and instead seek decertification. That choice will come with consequences. In particular, if the Commission grants the Petition, the landowner will be required to pay compensation for the adverse impacts of the decertification on West Wise SUD as authorized by law. Therefore, if the Commission grants the Petition, it should then initiate the compensation phase of these proceedings to determine the amount of just and adequate compensation that landowner will owe to West Wise SUD for the decertification, according to Texas Water Code § 13.254(g) and Commission Rule 24.245(j).²

II. THE PETITION IS DEFECTIVE BECAUSE IT IS NOT FILED BY “AN OWNER” OF A TRACT OF LAND

The Petition is defective on its face because the Petitioner in this docket, Destiny Development LLC, is not an owner of the subject Property. The Commission’s rules provide that

² Commission Rule 24.245(i) (requiring the amount of compensation to be determined “after the commission has granted a petition for streamlined expedited release”).

the “*landowner* seeking streamlined expedited release under this subsection *must file with the commission a petition*” and supporting documentation for streamlined expedited release.³ According to the Petition and attached Warranty Deed, Ms. Cyd Bailey owns the Property. Ms. Bailey, the land owner, is not the petitioner, and importantly *is not even a party to this docket*.

Without the landowner being a party to the docket, it is unclear how the docket will proceed, especially in the compensation phase, which requires various interactions between the CCN holder and the “landowner”, including agreement (or not) on an appraiser.⁴

Finally, it is unclear how the Commission could issue its order on compensation, and direct the landowner, currently a non-party, to pay the compensation, if the landowner is not formally before the Commission as a party in this docket.⁵

The Petition is therefore defective on its face, and should be dismissed for failure to comply with the Commission’s rules.

III. WEST WISE SUD MUST BE PROPERLY COMPENSATED IF THE PROPERTY IS DECERTIFIED FROM ITS CCN

As typical of other regional water providers, West Wise SUD has undertaken other planning efforts to ensure its water system can meet the needs of a growing population. If the Commission grants the Petition, West Wise SUD intends to seek full compensation, as allowed by law, due to the decertification, including for planning, design, and construction of the service facilities that are allocable to service to the Property.

³ Commission Rule 24.245(h)(3) “A *landowner* seeking streamlined expedited release under this subsection *must file with the commission a petition* and supporting documentation containing the following information and verified by a notarized affidavit.”

⁴ Commission Rule 24.245(i)(1).

⁵ Commission Rule 24.245 (i) (5) “The commission will issue an order establishing the amount of compensation to be paid *and directing the landowner* to pay the compensation to the former CCN holder not later than 60 days after the commission receives the final appraisal.”

At this stage in the process, however, the amount of monetary compensation owed to West Wise SUD has not yet been determined. In the event the Petition is not denied, the Commission should ensure that West Wise SUD, as a retail public utility with substantial service obligations to existing customers within its CCN, receives just and adequate compensation as part of the decertification process. The property of West Wise SUD subject to compensation can be any property that has been impacted by the decertification as set forth in Texas Water Code § 13.254(g), and is no longer limited to property that is rendered “useless or valueless.”⁶

As Commission Rule 24.245(j) makes clear, the following factors, as required by Texas Water Code § 13.254(g), must be considered in valuing the real and personal property of the decertified utility.

First, the value of West Wise SUD’s affected real property must be determined according to the standards set forth in Chapter 21 of the Texas Property Code governing actions in eminent domain.⁷

Second, the value of West Wise SUD’s affected personal property must be determined considering:

- (A) the amount of the former CCN holder’s debt allocable to service to the removed area;
- (B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;
- (C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;
- (D) the amount of the former CCN holder’s contractual obligations allocable to the removed area;

⁶ The recent enactment of S.B. 2272, which became effective September 1, 2019, eliminates the concept of “useless and valueless” property from Texas Water Code §§ 13.254, 13.2541.

⁷ *Id.* § 13.254(g).

- (E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;
- (F) the impact on future revenues lost from existing customers;
- (G) necessary and reasonable legal expenses and professional fees, including costs incurred to comply with Texas Water Code § 13.257(r); and
- (H) any other relevant factors as determined by the Commission.⁸

Of course, the actual calculation of the proper compensation will be determined in the next phase of this process by an appraiser, which may be an individual agreed to by the parties or, if not agreed, using a process where each party selects an appraiser and a third appraiser makes a determination based upon the other two appraisals.⁹

IV. CONCLUSION AND REQUESTED RELIEF

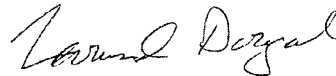
Based on the foregoing, West Wise SUD respectfully requests that, 1) the Petition be dismissed given that the landowner is not the Petitioner, as required by Commission rules, and the landowner is not even a party in this docket; or 2) alternatively if the Commission grants the Petition, it then proceed to the compensation phase of these proceedings to initiate the appraisal

⁸ Commission Rule 24.245(j).

⁹ *Id.* §§ 13.2541(g), (i).

process, and following such appraisal, award compensation to West Wise SUD. West Wise SUD additionally requests all other relief to which it may be entitled.

Respectfully submitted,



Leonard H. Dougal - State Bar No. 06031400
Danica L. Milios - State Bar No. 00791261
Jackson Walker LLP
100 Congress Ave., Suite 1100
Austin, Texas 78701
512-236-2233
512-391-2112 (fax)
ldougal@jw.com
dmilios@jw.com

ATTORNEYS FOR WEST WISE SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on November 3, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal