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Addendum StartPage: 0

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

**WEST WISE SPECIAL UTILITY DISTRICT'S EXCEPTIONS TO
PROPOSED ORDER GRANTING STREAMLINED EXPEDITED RELEASE**

West Wise Special Utility District ("West Wise SUD") hereby submits this Objection (the "Objection") to the Proposed Order Granting Streamlined Expedited Release (the "Proposed Order"), filed on November 16, 2020.¹ The Proposed Order required the parties to file corrections or exceptions by December 7, 2020.² This Objection is timely filed.

I. INTRODUCTION

This Docket concerns the Petition of Destiny Development, LLC ("Petitioner"), seeking 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.³

In its Response and Objection to the Petition, West Wise SUD advised the Commission that the Petition is defective on its face because the Petitioner, Destiny Development, LLC, is not the "landowner" of the subject Property, and the landowner is not even a party to the docket.⁴ Rather, and as Order Number 4 acknowledges, the actual owner of the property is Cyd Bailey.⁵

¹ Proposed Order Granting Streamlined Expedited Release (November 16, 2020).

² *Id.* at cover.

³ See generally Petition (September 25, 2020).

⁴ West Wise Special Utility District's Response and Objection to the Petition (November 3, 2020) at 1-2.

⁵ Order Number 4 (November 13, 2020).

West Wise SUD's Response and Objection also explained that, as the holder of the governing CCN, it is fully capable of providing continuous and adequate retail water service to the Property, including through the existing installation of waterlines in the CCN area and the construction of a new pump station and water plant.

West Wise SUD objects to the Proposed Order because it would decertify the Property from West Wise SUD's CCN without a properly filed petition for decertification and because it incorrectly finds that "West Wise has not performed acts or supplied anything to the tract."⁶

II. EXCEPTIONS

Exception: The Petition is defective because it was not filed by the owner of the Property.

As West Wise SUD has previously explained, Petitioner, Destiny Development LLC, is not an owner of the subject Property. Rather, Cyd Bailey is the owner.⁷ The Commission's rules provide that the "*landowner* seeking streamlined expedited release under this subsection *must file with the commission a petition*" and supporting documentation for streamlined expedited release.⁸

Order Number 4 purports to remedy this defect by "restyling" the Docket to include the phrase "on behalf of Cyd Bailey." But Cyd Bailey is still not a named party to the Docket. West Wise SUD is harmed by the defect in the Petition because it remains unclear how the Commission will direct the landowner—who is not a party to this Docket—to pay the compensation that will be due West Wise SUD if the Property is decertified.⁹

⁶ Proposed Order at 4, Finding of Fact 17.

⁷ West Wise Special Utility District's Response and Objection to the Petition (November 3, 2020) at 1-2.

⁸ 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."

⁹ 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."

Because the Petition remains defective on its face, West Wise SUD objects to the Proposed Order in its entirety and urges the Commission to dismiss the Petition.

Exception: Finding of Fact 17 in the Proposed Order Is Incorrect and Overly Broad.

Finding of Fact 17 states “West Wise has not performed acts or supplied anything to the tract.”¹⁰ This finding is incorrect and overly broad because West Wise SUD has provided “service” as defined by the Texas Water Code to its entire certificated area. Finding of Fact 17 will adversely affect West Wise SUD in the compensation phase of this Docket.

Pursuant to its CCN, West Wise SUD is a regional water supplier currently serving in excess of 1145 customer connections. 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. 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 Property 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.

These acts, facilities, and lines constitute “service” under Texas Water Code § 13.002(21). “Service” means “*any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.*”¹¹ Notably, § 13.002(21) does not limit “service” to service that is directed toward any one particular tract of land, but applies broadly to a water utility’s actions and facilities related to its entire CCN.

¹⁰ Proposed Order at 4, Finding of Fact 17.

¹¹ Tex. Water Code § 13.002(21) (emphasis added).

Because Finding of Fact 17 is incorrect and overly broad, West Wise SUD asks that it be stricken from the final order on decertification.

III. CONCLUSION AND REQUESTED RELIEF

West Wise SUD respectfully requests that the Petition be dismissed because the landowner is not the Petitioner, as required by Commission rules, and the landowner is not even a party in this Docket; or alternatively, if the Commission grants the Petition, it should strike Finding of Fact 17 from the Proposed Order. West Wise SUD additionally requests all other relief to which it may be entitled.

Respectfully submitted,

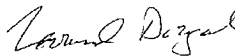


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ATTORNEYS FOR WEST WISE SPECIAL
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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on December 7, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal