



Control Number: 51367



Item Number: 18

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# Public Utility Commission of Texas

## Commissioner Memorandum

**TO:** Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Chairman DeAnn T. Walker *DTW*

**DATE:** December 16, 2020

**RE:** December 17, 2020 Open Meeting – Item No. 18  
Docket No. 51367 – *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*

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I recommend that the Commission adopt the revised proposed order attached to this memorandum.

At the last open meeting, I discussed the changes I thought were necessary to cases involving expedited release. The changes included removing the background section and moving some of that material into the findings of fact to give a better basis for the Commission's decision.

In addition, the Commission decided at that meeting to grant the streamlined expedited release in Docket No. 51114<sup>1</sup> and discussed how equipment and facilities are not decertificated in this type of proceeding. The Commission also directed Commission Advising to revise the proposed order in that docket in accordance with the Commission's discussion. Commission Advising filed a draft order in Docket No. 51114 on December 10, 2020, which is also being considered at this meeting.

Based on the recommended changes in the revised proposed order filed in Docket No. 51114, I believe that the proposed order in this proceeding should also be revised for consistency. The revised proposed order attached to this memorandum is consistent with the draft order in Docket No. 51114.

Finally, I propose delegating to the Office of Policy and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.

<sup>1</sup> *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114 (pending).

**DOCKET NO. 51367**

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

**PROPOSED ORDER**

This Order addresses the petition of Destiny Development, LLC, as the agent for Ms. Cyd Bailey, for streamlined expedited release of a tract of land in Wise County from the service area under certificate of convenience and necessity (CCN) number 10284. West Wise Special Utility District is the holder of CCN number 10284. For the reasons stated in this Order, the Commission releases the tract of land from West Wise's certificated service area. In addition, the Commission amends West Wise's CCN number 10284 to reflect the removal of this tract of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to West Wise, which will be addressed by a separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioner**

1. Ms. Cyd Bailey authorized Destiny Development, LLC and its attorneys to act on her behalf to seek the streamlined expedited release of the tract of land.
2. Destiny Development is a limited-liability company registered with the Texas secretary of state under filing number 803530185.

**CCN Holder**

3. West Wise Special Utility District is a special utility district in Wise County operating under chapter 65 of the Texas Water Code.
4. West Wise holds CCN number 10284 that obligates West Wise to provide retail water service in its certificated service area in Wise County.

**Petition**

5. On September 25, 2020, on behalf of Ms. Bailey, Destiny Development filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10284.
6. The petition includes the unsworn declaration of Cyd Bailey dated September 21, 2020, a warranty deed that contains a metes-and-bounds description of the tract of land, a vicinity map, and a site map.
7. On October 14, 2020, the petitioner filed a general location map, a site location map, and digital data for those maps.
8. In Order No. 3 filed on October 27, 2020, the administrative law judge (ALJ) found the petition administratively complete.

**Notice**

9. The petitioner sent a copy of the petition to West Wise contemporaneously with the submission of the petition.
10. In Order No. 3 filed on October 27, 2020, the ALJ found the notice sufficient.

**Intervention and Response to Petition**

11. On October 2, 2020, West Wise filed a motion to intervene.
12. In Order No. 2 filed on October 14, 2020, the ALJ granted the motion to intervene.
13. On November 3, 2020, West Wise filed a response to the petition.

**The Tract of Land**

14. The tract of land for which the petitioner seeks expedited release is approximately 31.139 acres and is in Wise County.
15. The petitioner's tract of land is located within the CCN holder's certificated service area.

**Ownership of the Tract of Land**

16. The petitioner was conveyed the tract of land by a warranty deed dated February 4, 2020.

**Qualifying County**

17. Wise County abuts Tarrant County.
18. Tarrant County has a population greater than one million people.

**Water Service**

19. The tract of land is not receiving actual water service from the CCN holder.
20. The CCN holder has constructed new facilities in the area of, but not on, the tract of land.
21. The CCN holder is in the process of replacing its water treatment plants.
22. The CCN holder has not committed any facilities or lines to the tract of land for water service.
23. The CCN holder has no facilities or lines that provide water service to the tract of land.
24. The CCN holder has not performed any acts or supplied anything to the tract of land.

**Map and Certificate**

25. On November 10, 2020, Commission Staff filed its recommendation that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's service area.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over the petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 TAC § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. An authorized agent of the landowner may file a petition for streamlined expedited release of the landowner's tract of land.

7. The petitioner is the agent of Ms. Bailey, the owner of the tract of land, and is authorized to petition for the streamlined expedited release of the tract of land.
8. Under Texas Civil Practice and Remedies Code § 132.001, an unsworn declaration made under that section may be used in lieu of a written verification required by a rule.
9. Ms. Bailey's unsworn declaration substantially complies with the requirements in Texas Civil Practice and Remedies Code § 132.001 and the requirement in 16 TAC § 24.245(h)(3) that a petition for streamlined expedited release and supporting documentation be verified by a notarized affidavit.
10. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
11. Ms. Bailey owns the tract of land, which is at least 25 acres, for which streamlined expedited release is sought through the petition.
12. Wise County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
13. The tract of land is not receiving water service under TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
14. Ms. Bailey is entitled under TWC § 13.2541(b) to the release of her tract of land from the CCN holder's certificated service area.
15. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to Ms. Bailey's tract of land.
16. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.2541(b).
17. The Commission processed the petition in accordance with the TWC and Commission rules.
18. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in

the real property records of Wise County no later than the 31st day after the date the CCN holder receives this Order.

19. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the 31.139-acre tract of land identified in the petition from the CCN holder's service area under CCN number 10284.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioner's tract of land.
3. The Commission amends water CCN number 10284 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on November 10, 2020.
5. The Commission approves the certificate filed by Commission Staff on November 10, 2020.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 3. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the \_\_\_\_\_ day of December 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**