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PETITION OF REDBIRD DEVELOPMENT, LLC	§	BEFORE THE
TO AMEND DOBBIN PLANTERSVILLE	§	PUBLIC UTILITY COMMISSION
WATER SUPPLY CORPORATION'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN MONGOMERY COUNTY	§	
BY EXPEDITED RELEASE	§	

**DOBBIN PLANTERSVILLE WATER SUPPLY CORPORATION'S
REPLY TO REDBIRD'S RESPONSE**

COMES NOW, Dobbin Plantersville Water Supply Corporation (Dobbin Plantersville) and files this Reply to Redbird's Response as authorized by the Administrative Law Judge in Order No. 4. In support hereof, Dobbin Plantersville respectfully shows the following:

I. PROCEDURAL BACKGROUND

On May 6, 2021, Redbird Development, LLC ("Redbird") filed with the Public Utility Commission of Texas ("PUC" or "Commission") a petition for a streamlined expedited release ("SER") of approximately 372.2 acres of Dobbin Plantersville's Certificate of Convenience and Necessity ("CCN") No. 11052 service area ("SER Property"). The Redbird development comprises at total of approximately 388.5 acres. In his May 7, 2021, Order No. 1, the administrative law judge ("ALJ") established a deadline of June 14 for Dobbin Plantersville to file a response to the petition.

In his June 9, 2021, Order No. 2, the ALJ granted Dobbin Plantersville's Motion to Intervene. The Order also granted Dobbin Plantersville's motion for an extension of its deadline until June 30 to respond to the Petition.

On June 29, Dobbin Plantersville filed a response to the petition and a motion to dismiss. On July 7, Redbird filed a response to the motion to dismiss (which was mis-named as a response to the Dobbin Plantersville response). On July 13, 2021, Redbird filed a supplement to its response

to the motion to dismiss. On July 8 Dobbin Plantersville filed a Motion for Leave to File a reply to Redbird's response. In Order No. 4, the ALJ granted leave with a deadline of July 15, 2021; therefore, this reply is timely filed.

II. REPLY TO REDBIRD'S RESPONSE

A. REDBIRD ASKS FOR A DECISION BASED ON SPECULATION

Redbird's contention is premised on speculation that it will actually build 575 homes (connections) *all at once*. Although Redbird contends it "intends" to do so, there is no evidence to support the claim/allegation that Redbird has the financial ability to actually construct 575 homes between an unspecified date in 2022 and an unspecified date in 2025. The manager of Redbird, who is not an engineer, uses these dates to conclude that water service to these speculative 575 homes would exceed Dobbin Plantersville's ability to satisfy the water demand "within a reasonable period of time."

Redbird is making predictions that may never come true. Most developments are "phased" so the developer does not have too large of an investment in infrastructure (water and sewer lines, etc.) in case lot sales do not occur as predicted. Redbird's prediction is merely a wish without evidentiary support that the wish will ever come true, and the SER Property should not be released based on guesswork. It is common for developers to exaggerate anticipated water needs as a means to attempt to remove property from a CCN. On information and belief, this case is no different.

As stated by Steve Duncan, Dobbin Plantersville engineer,

In summary, Dobbin Plantersville currently has excess capacity, which would allow it to serve approximately 100 additional connections. There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity. Dobbin Plantersville could expand the Water Plant #4 because it has acquired property adjacent to the plant to allow expansion. In discussions with Redbird, Dobbin Plantersville stated that alternatively, it could build a new water plant on the SER Property on property that Redbird would provide. The new plant could be built to have the capacity to serve the entire SER Property with both potable water and fire flow.

See Duncan Affidavit, Exhibit A to Dobbin Plantersville's Response to Redbird's Petition, and Motion to Dismiss. Thus, Redbird's Petition must be denied because Dobbin Plantersville is making service available to the SER Property.

B. REDBIRD ASKS FOR CONSIDERATION OF ISSUES OUTSIDE THE PUC'S JURISDICTION

Additionally, Redbird contends that somehow fire flow needs weigh into its need to be released and to the analysis of whether Dobbin Plantersville can make service available within a reasonable period of time. Under Section 1926(b) and Texas Water Code and PUC rules for determining "providing service," Redbird's anticipated fire flow needs are not factored into the "made service available" analysis. See *Rural Water Sewer & Solid Waste Mgmt., Dist. No. 1, Logan Cty., Oklahoma v. City of Guthrie*, 654 F.3d 1058, 1066–67 (10th Cir. 2011). There is no requirement that Dobbin Plantersville make fire flow available under its CCN. The CCN is designed to ensure the safe and adequate supply of running household water to customers within its boundary. Even if fire flow were a consideration in an SER decision, Steve Duncan has testified that fire flow could be made available. See quotation in Section B, above. Thus, Redbird's Petition should be denied because Dobbin Plantersville is making service available to the SER Property.

C. 1926(b) FEDERAL LAWSUIT PRECLUDES A DECISION IN THIS CASE

On July 9, 2021, Dobbin Plantersville filed suit in the United States District Court for the Western District of Texas, Austin Division, in Case 1:21-cv-00612. A copy of the Original Complaint was previously submitted for official notice. The Defendants include the Commissioners of the Public Utility Commission and the Executive Director of the Public Utility Commission, in their official capacities (collectively, PUC Defendants) and Redbird Development. The Complaint is brought under 7 U.S.C. section 1926(b), 42 U.S.C. section 1983, and the U.S. Constitution, article VI, clause 2.

The lawsuit seeks a declaration that Texas Water Code section 13.2541(d) on which the decertification petition in this case relies, is preempted; a permanent injunction against Redbird from further presentation or prosecution of its decertification petition in this docket; a permanent prospective injunction against the PUC Defendants from any action on the decertification petition in this docket; and costs and damages. Thus, Redbird's Petition must be dismissed to allow the federal court to rule on the 1926(b) preclusion issue.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Dobbin Plantersville respectfully requests the Commission to deny the Petition because it cannot lawfully be granted under Texas Water Code section 13.2541. Alternatively, if the Commission is inclined to grant the Petition, Dobbin Plantersville requests that the Petition be dismissed to allow adjudication of the issue of Section 1926(b) protection from encroachment on Dobbin Plantersville CCN 11052. Dobbin Plantersville does not seek a Commission decision on such pre-emption, relying on the “England Reservation.” In the further alternative, if the Commission grants the Petition, Dobbin Plantersville seeks just and adequate compensation for the decertification of portions of its water CCN No. 11052. Dobbin Plantersville also seeks all and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

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**ATTORNEY FOR DOBBIN
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CERTIFICATE OF SERVICE

Pursuant to Docket No. 50664, Second Order Suspending Rules (July 16, 2020) the undersigned hereby certifies that a copy of foregoing Dobbin Plantersville Water Supply Corporation’s Motion to Take Official Notice was served on all parties of record in this proceeding on July 15, 2021, by electronic mail.

Mary K. Sahs

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