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DOCKET NO. 50404

PETITION OF STERLING DEASON	§	PUBLIC UTILITY COMMISSION
O'DONNELL AND DARWIN DEASON,	§	
CO-TRUSTEES OF THE STERLING	§	OF TEXAS
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	§	

COMMISSION STAFF'S INFORMATIONAL FILING AND REQUEST FOR CLARIFICATION AND ABATEMENT

I. BACKGROUND

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 for streamlined expedited release to amend Marilee Special Utility District's (Marilee SUD) water Certificate of Convenience and Necessity (CCN) No. 10150 in Collin County under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(I). On May 10, 2022, both the Petitioner and Marilee SUD filed appraiser's reports.

On May 17, 2022, the administrative law judge (ALJ) filed Order No. 17, clarifying the parties' payment obligation but denying Staff (Staff)'s for the Public Utility Commission (Commission) motion to compel. On June 2, 2022, Staff received an email from counsel for the Petitioner stating that the property at issue has been sold, not only further complicating the matter of payment obligations but also calling into question whether the prospective retail public utility has the authority to serve the removed area under 16 TAC § 24.245(i)(6). In this informational filing, Staff draws the ALJ's attention to a recurring procedural hurdle in several expedited and streamlined expedited release dockets. Because the content of this informational filing directly affects Staff's ability to meet its deadline, Staff respectfully requests clarification of several issues. Staff further requests that this docket be abated pending that clarification.

II. INFORMATIONAL FILING

A. Relevant Background

In the interest of clarity, Staff briefly recaps this docket's most recent procedural history. Staff filed its Motion to Compel Coordination with Staff's appraiser, Mr. Wilson, on May 11, 2022. The Petitioner filed a response in which it agreed it is responsible "for one-half of [Staff's] appraiser's fees and fully supports any order that confirms its responsibility."¹ In Order No. 17, the ALJ confirmed the Petitioner's and Marilee SUD's responsibility to each pay one-half of the cost of Mr. Wilson's appraisal. Staff's motion to compel was denied.

B. Petitioner has refused to meet Staff's appraiser's requirements

Staff's appraiser is unable to prepare a report because the Petitioner has not supplied him with the information necessary for him to begin the appraisal process. Mr. Wilson requires preliminary information from both parties as well as an assurance that he will receive payment directly from both parties. At this point, since he has received neither the preliminary information nor an agreement for payment upon delivery of his appraisal report, he is under no contractual or legal obligation to perform any work. When Mr. Wilson agreed to prepare Staff's appraiser's report, his decision was predicated on the assumption that the parties would engage in a good faith effort to work together with him through the compensation phase. He had the reasonable expectation that should his report become necessary, the parties would compensate him as the law requires. Petitioner did state that it is responsible "for one-half of [Staff's] appraisers fees and fully supports any *order* [emphasis added] that confirms that responsibility."² But a promise to pay at some indefinite point in the future does not provide Mr. Wilson with any security or legally enforceable assurances of prompt payment upon completion of his work. Moreover, Mr. Wilson cannot be forced to alter his business practices for these parties. A reasonable person would not expect a third-party appraiser to prepare a report without all the necessary information he or she requires and without a legally enforceable guarantee of payment for his or her services.

¹ Petitioner's Response to Commission Staff's Motion to Compel (May 13, 2022).

² *Id.*

C. Staff cannot meet its deadline to file an appraiser’s report because the Petitioner has not provided Staff’s appraiser with required information and guarantee of payment.

Despite Staff’s earnest attempts to comply with the ALJ’s deadline, the Petitioner’s refusal to work with Staff’s appraiser has rendered impossible Staff’s ability to meet that deadline. Throughout this proceeding, counsel for Staff has repeatedly asked counsel for the Petitioner to work with Staff’s appraiser. As demonstrated in Exhibit A, the most recent email chain addressing this issue, counsel for Staff has repeatedly tried to ensure that Staff’s appraiser receives what he needs from the Petitioner to begin preparing his report. Staff’s appraiser has stated in no uncertain terms that before he begins preparing Staff’s appraiser’s report, he must have both the additional information he requires and a guarantee of payment. To date, counsel for the Petitioner has not confirmed with Mr. Wilson that her client would provide him that information. Nor has she provided him any guarantee of payment.

D. Staff cannot meet its deadline to file an appraiser’s report because the Petitioner recently sold the property

The Petitioner’s sale of the property during ongoing expedited and streamlined expedited release dockets has now become a predictable course of action, a recurring pattern, on the part of the Petitioner’s counsel. First, in Docket No. 52916, the petitioner sold the property after the petition was filed but before the ALJ filed a notice of approval.³ The ALJ commented that “everyone’s time has been wasted on processing a petition which the petitioner lacked the legal right to pursue.”⁴ Counsel for the Petitioner is the same in this docket as in Docket No. 52916.⁵ Second, despite the ALJ’s comments in that order, counsel for the Petitioner employed this same tactic roughly two months later in Docket No. 52435.⁶ In that docket, the petitioner also sold the property for which the petitioner sought expedited release before the ALJ issued a notice of

³ *Petition of Charles D. Carter to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity by Streamlined Expedited Release*, Docket No. 52916, Order No. 6 (Apr. 6, 2022).

⁴ *Id.*

⁵ Docket No. 52916, Petitioner’s Motion to Dismiss (Apr. 7, 2022).

⁶ *Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52435, Joint Request for Clarification and Abatement (Jun. 2, 2022).

approval.⁷ As a result of that sale, Staff along with Marilee SUD filed a joint request for clarification and abatement.⁸ Here, counsel for Staff recently received an email from counsel for the Petitioner, stating that her client sold the property and that she was not in contact with the buyer. That email is attached as Exhibit B.

At this juncture, this docket now appears unresolvable. This outcome surely wasn't the Commission's intent when it prepared the language governing expedited and streamlined expedited release dockets. Counsel for the Petitioner has purposefully frustrated the intent of the Commission's compensation phase rules. The stonewalling, the evasive responses to Staff's reasonable questions, the refusal to provide Staff's appraiser with the information he needs or a guarantee of payment before beginning his work, and the sale of the property prior to the conclusion of the compensation phase, all coalesce to call into question Petitioner's good faith and fair dealing in filing this petition for streamlined expedited release.

III. REQUEST FOR CLARIFICATION AND ABATEMENT

Because the Petitioner no longer owns the property for which it is seeking expedited release, Staff requests clarification on how to proceed. As in Docket No. 52435, Staff requests clarification regarding whether release can proceed at all, given that the property has now changed hands, and, if the release can proceed, what entity will be responsible for the Petitioner's half of Staff's appraiser's fee. Staff also requests an abatement of this proceeding pending a determination of these issues.

IV. CONCLUSION

In exhausting all available avenues to comply with its statutory obligation, Staff has arrived at an impasse. So far, Staff's appraiser has received neither the preliminary information he requires nor a guarantee of payment from the Petitioner. Because Mr. Wilson will not begin work on a report until he has both, Staff cannot meet its deadline to file an appraiser's report by June 9, 2022, and will remain unable to do so for the indefinite future. Finally, because the Petitioner has sold the property before the conclusion of this proceeding, Staff respectfully requests that this proceeding be abated, pending clarification of the issues described above.

⁷ *Id.*

⁸ *Id.*

Date: June 9, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Phillip Lehmann
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on June 9, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann

Staff's Exhibit A

Phillip Lehmann

From: rwilson@advanceappraisalgroup.com
Sent: Wednesday, June 1, 2022 11:52 AM
To: Phillip Lehmann; nscott@coatsrose.com
Subject: Re: Docket No. 50404: Staff's Appraiser Report

Follow Up Flag: Follow up
Flag Status: Flagged

WARNING: EXTERNAL SENDER. Always be cautious when clicking links or opening attachments. NEVER provide your user ID or password.

Good Morning Attorneys Phillip and Natalie,

Thank you Atty Lehmann for checking in with us. First, sorry for the slight delay which is due to my "Memorial Day" weekend vacation with my family.

Regards Docket No. 50404 and as the PUC's appointed appraiser for this assignment, you are correct that we (appraisers) cannot move forward without "*background information from both parties to discuss the scope of the project*" and to agree on compensation that both parties will pay the appraiser(s).

I am ready to move forward with this assignment as soon as all parties are ready to meet with us to discuss the appraisal scope of work/expectations, provide relevant documents, and agree to compensation that both parties will be equally responsible for. Thank you.

Robbie Wilson, ASA, RA, SRA
AQB Certified USPAP Instructor
Dallas, TX 75244
rwilson@advanceappraisalgroup.com
469-569-3595 Direct

On May 26, 2022 3:26 PM Phillip Lehmann <phillip.lehmann@puc.texas.gov> wrote:

Good Afternoon Natalie,

I wanted to check in with you since the latest order from the ALJ. I've CC'd Staff's appraiser, Mr. Wilson. He needs background information from both parties to discuss the scope of the project. Will your client be working with Mr. Wilson by providing information necessary to prepare Staff's report?

Sincerely,

-Phillip Lehmann

Staff's Exhibit B

Phillip Lehmann

From: Natalie Scott <nscott@coatsrose.com>
Sent: Thursday, June 2, 2022 9:57 AM
To: Phillip Lehmann
Cc: Michaela Z. Powell; rwilson@advanceappraisalgroup.com
Subject: RE: Marilee SUD's Original Petition for Judicial Review - pertaining to PUC Docket 52435

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I learned yesterday that my client closed on the sale of the property last Thursday. I have not been engaged by the buyer.

I think it would be appropriate for Mr. Wilson to speak with our appraiser.

Natalie Scott

Director

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A PROFESSIONAL CORPORATION

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** Effective December 1, 2019, our Austin office address will now be Terrace 2, 2700 Via Fortuna, Suite 350, Austin, Texas 78746 **