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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	§	

ORDER NO. 19
ADDRESSING PENDING MOTIONS

A. Background

In a Second Order on Rehearing filed on March 1, 2022, the Commission granted the petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement DD 2014-B Grantor Retained Annuity Trust (the petitioners) and released the petitioners' tract of land from Marilee Special Utility District's service area under certificate of convenience and necessity (CCN) number 10150.

The only issue in this case that remains to be determined is the amount of compensation, if any, to be awarded to the CCN holder for the release. Under the schedule adopted in Order No. 16 filed on March 15, 2022, Commission Staff was to have filed its appraiser's report by June 9, 2022. In May 2022, Commission Staff moved for an order compelling the petitioners and the CCN holder to coordinate and engage with Commission Staff's appraiser. That motion was denied in Order No. 17 filed on May 20, 2022. In Order No. 17, however, the administrative law judge (ALJ) confirmed that, under 16 Texas Administrative Code (TAC) § 24.245(i)(2)(B), the petitioner and the CCN holder must each pay for half of the cost of Commission Staff's appraisal.

B. Commission Staff's Informational Filing and Request for Clarification and Abatement, and the Responses Thereto

On June 9, 2022, Commission Staff filed an "informational filing" and requested clarification of certain issues and abatement of the case. Commission Staff asserts that:

- Commission Staff's appraiser, Mr. Wilson, has been unable to prepare a report because the petitioners have not supplied him with the information necessary for him to begin the appraisal process;
- the petitioners have refused to provide meet with Mr. Wilson, Mr. Wilson "requires preliminary information from both parties," and Mr. Wilson cannot prepare his appraisal "without all the necessary information he . . . requires" from the parties;
- the petitioners, or the CCN holder, or both, have not provided assurances to Commission Staff's appraiser that each will pay half of his costs; and
- the petitioners have now sold the subject tract of land, and Commission Staff worries that this development renders this docket "unresolvable."

Commission Staff requests answers to the following questions:

1. Can the release of the tract of land proceed, given that the tract of land has been sold?
2. If the release can proceed, what entity will be responsible for the petitioners' portion of the fee for Commission Staff's appraiser?
3. Who will be obligated to compensate the CCN holder for the release of the tract of land?

Commission Staff also requests abatement of this proceeding pending clarification of the issues described above.

In pleadings filed on June 9 and 16, 2022, the CCN holder supports Commission Staff's requests and seeks answers to the following additional questions:

4. Having sold the tract of land, do the petitioners still have standing "to bring this proceeding?"
5. Must Commission Staff submit an appraisal if the petitioners refuse to pay for their half of the cost of preparing it?
6. Must Commission Staff submit an appraisal if the petitioners refuse to provide information to the appraiser?
7. Must Commission Staff submit an appraisal if the petitioners no longer own the tract of land?

The CCN holder also asserts that abatement is warranted because it is seeking judicial review of the order granting release. The CCN holder suggests various courses of action to address the issues raised by Commission Staff. First, the CCN holder suggests that the Commission could withdraw the Second Order on Rehearing (i.e., the order that granted release) and dismiss this case because, when they sold the tract of land, the petitioners relinquished standing to pursue this case. Second, the CCN holder asks the ALJ to certify the questions posed by Commission Staff and the CCN holder to the Commission. Third, the CCN holder asks the ALJ to abate the case so that Commission Staff can ask the Commission to reconsider its Second Order on Rehearing. Fourth, the CCN holder asks the ALJ to abate the case pending the CCN holder's judicial appeal of the Second Order on Rehearing.

In a pleading filed on June 16, 2022, the petitioners conceded that they are "statutorily responsible for paying half of the Commission's appraisal." The petitioners ask that the motions for abatement be denied.

C. The ALJ's Analysis

The ALJ orders as follows, by answering each of the questions posed above.

Question 1: Can the release proceed at all given that the tract of land has been sold?

Answer: It is not a matter of the release "proceeding." The release is an accomplished fact. The release was completed on March 1, 2022, with the issuance of the Second Order on Rehearing. The fact that the petitioners subsequently sold the tract of land does not "undo" the release.

Question 2: If the release can proceed, what entity will be responsible for the petitioners' portion of the fee for Commission Staff's appraiser?

Answer: As stated above, it is not a question of whether the release "can proceed." The release has already been completed. As to the question of payment, the petitioners remain responsible for half of the fee for Commission Staff's appraisal. The fact that the petitioners no longer own the tract is immaterial to the question of this payment.

Question 3: Who will be obligated to compensate the CCN holder for the release of the tract of land, assuming compensation is required?

Answer: If compensation is required, the petitioners remain responsible for paying it to the CCN holder. Under Texas Water Code (TWC) § 13.2541(f), “[t]he utility commission may require an award of compensation by the petitioner to the certificate holder in the manner provided by this section.” The fact that the petitioners no longer own the tract is immaterial to the question of this payment. Therefore, the petitioners are responsible for paying the compensation, if any, to be awarded to the CCN holder. In addition to being consistent with the text of the relevant statute, this outcome makes good sense and good policy. It is the petitioners who sought a specific kind of relief—release of their tract of land from the CCN holder’s service area. Having received the release they asked for, it is only fair that they should be responsible for paying any compensation that is due for such release.

Moreover, it is worth pointing out that, under TWC §§ 13.254(d) and 13.2541(a), and 16 TAC § 24.245(i)(6), until such compensation is paid by the petitioners to the CCN holder, no other retail public utility may provide water or sewer service to the released tract of land. Thus, so long as the petitioners refuse to pay any compensation that may be due, the new landowner will be unable to obtain service from another utility for the land.

Question 4: Having sold the tract of land, do the petitioners still have standing to bring this proceeding?

Answer: No one disputes that the petitioners owned the tract of land and, therefore, had standing to bring this proceeding up through the time that release was granted. That is, the petitioners obtained release while they had standing to seek such release. The only issue that now remains to be disposed of is the question of compensation. It is not necessary for the petitioners to continue to own the tract of land during the compensation phase of a streamlined expedited release proceeding.

Question 5: Must Commission Staff submit an appraisal if the petitioners refuse to pay for their half of the cost of preparing it?

Answer: Under TWC § 13.2541(i) and 16 TAC § 24.245(i)(2)(B), the cost of Commission Staff’s appraiser must be borne equally by the CCN holder and the petitioner, not by the Commission. Therefore, Commission Staff is not obligated to engage an appraiser and submit the appraiser’s report without first having received from the petitioner and the CCN holder either payment of each party’s half of the cost, or a firm commitment to pay its half of the costs.

Question 6: Must Commission Staff submit an appraisal if the petitioners refuse to provide information to Commission Staff's appraiser, Mr. Wilson?

Answer: It is understandable that Mr. Wilson would want to gather additional information (beyond that which is already in the record of this matter) in order to prepare his appraisal. However, as the Commission's ALJs have repeatedly held,¹ there is no right to conduct discovery in streamlined expedited release matters. The parties are free to exchange information on a voluntary basis, but the ALJ cannot enforce the Commission's discovery rules in such matters. In other words, under the laws applicable to streamlined expedited releases, the ALJ cannot force the petitioners to provide information to Mr. Wilson. Commission Staff has not identified any other law under which the petitioners or CCN holder can be compelled to provide information to Commission Staff's appraiser. Therefore, Commission Staff's appraiser must prepare an appraisal using the information available to him, regardless of whether the petitioners or the CCN holder refuse to answer his questions.

Question 7: Must Commission Staff submit an appraisal if the petitioners no longer own the tract of land?

Answer: Yes, consistent with the above analysis.

The ALJ further orders as follows:

- The deadline by which Commission Staff must file its appraiser's report is hereby extended. Commission Staff's appraisal is now due within 30 days after the date on which Commission Staff's appraiser obtains from both the petitioners and the CCN holder either payment of each party's half of the cost of Commission Staff's appraiser, or a firm commitment to pay their

¹ See, e.g., *Petition of River Bridge Ranch, LLC to Amend Crystal Clear Special Utility District's Certificate of Convenience and Necessity in Hays and Guadalupe Counties by Streamlined Expedited Release*, Docket No. 52889, Order No. 3 (Feb. 16, 2022); *Petition of Rodney Earl Mohnke, et. al. to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51973, Order No. 9 (Sept. 10, 2021); *Petition of Montgomery Estates, LLC to Amend CC Water Works, Inc.'s Certificate of Convenience and Necessity in Chambers County by Expedited Release*, Docket No. 51933, Order No. 5 (Feb. 15, 2022); *Petition of Hot Squares of Austin, Ltd. to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Caldwell County by Expedited Release*, Docket No. 52415, Order No. 6 (Mar. 29, 2022); *Petition of GJGTEB Holdings, LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Caldwell County by Expedited Release*, Docket No. 52630, Order No. 6 (Mar. 23, 2022); *Petition of Charles D. Carter to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release*, Docket No. 52916, Order No. 4 (Mar. 2, 2022); *Petition of Sater, LP to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52739, Order No. 8 (Feb. 28, 2022).

half of the costs. Beginning on August 1, 2022, and continuing thereafter at the first of each month, Commission Staff must file status reports as to the progress being made on this issue.

- The CCN holder's June 16, 2022 motion to dismiss for lack of standing or for failure to state a claim for which relief can be granted is denied.
- The CCN holder's request for the Commission to withdraw the order granting release for the tract of land is denied.
- The requests for abatement by Commission Staff and the CCN holder are denied.
- The CCN holder's request to certify issues to the Commission is denied.²

Signed at Austin, Texas the 15th day of July 2022.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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² Any party dissatisfied with this Order is free to appeal it under 16 TAC § 22.123.