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Received - 2022-02-03 01:18:28 PM

Control Number - 50404

ItemNumber - 84

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 MOTION TO AMEND PROCEDURAL SCHEDULE

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(l). The Petitioner filed an amended application on April 27, 2021. The Petitioner supplemented the amended application on April 28, 2021.

On October 12, 2021, the Commission filed an order in this docket granting the expedited release of the tract of land identified in the first amended petition. However, on November 5, 2021, Marilee SUD timely filed a motion for rehearing. On December 2, 2021, the Commission filed an order extending time to act on the motion for rehearing to the maximum extent allowed under Texas Government Code § 2001.146(e). On January 14, 2022, The Office of Policy and Docket Management (OPDM) filed its Order on Rehearing. On January 27, 2022, OPDM filed another Order on Rehearing, attaching the map and certificate referenced in order paragraphs 4, and 5, respectively. OPDM explained that the map and certificate were inadvertently omitted from the Order on Rehearing filed on January 14, 2022 and stated that the Order on Rehearing with the attached map and certificate filed on January 27, 2022, replaced the prior order.

I. BACKGROUND

a. Relevant Law

16 TAC § 22.123(b)(2) provides, "...A motion for reconsideration of an interim order issued by the commission shall be filed within five working days of the issuance of the written interim order..."¹ 16 TAC § 22.123(b)(6)(A) provides, "if after five working days of the filing of a motion no commissioner has, by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied."² Texas Government Code § 2001.146(e) provides:

"A state agency or a person authorized to act for the agency may, on its own initiative or on the motion of any party for cause shown, by written order extend the time for filing a motion or reply or taking agency action under this section, provided that the agency or person extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. An extension may not extend the period for agency action beyond the 100th day after the date the decision or order that is the subject of the motion is signed."³

Texas Government Code § 2001.146(f) further provides:

"In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, the 100th day after the date the decision or order that is the subject of the motion is signed."⁴

b. Analysis

On December 14, 2021, the administrative law judge (ALJ) filed Order No. 13, requiring the petitioner and CCN Holder to select an agreed-upon appraiser within 10 days after the Commission approves expedited release, or in the event agreement on an appraiser could not be reached, requiring the Petitioner and the CCN holder to file appraisal reports within 70 days after the Commission approved the expedited release.

The Commission filed an order approving expedited release on October 12, 2021. However, on November 5, 2021, Marilee SUD timely filed its motion for rehearing

¹ 16 Tex. Admin. Code (TAC) § 22.123(b)(2).

² 16 TAC § 22.123(b)(6)(A).

³ Tex. Gov't Code Ann. § 2001.146(e) (Apr. 14, 2021).

⁴ Texas Government Code § 2001.146(f) (Apr. 14, 2021).

pursuant to 16 TAC 22.123(b)(2). On December 2, 2021, the Commission filed an order extending the time to act on the motion for rehearing to the maximum extent allowed under Texas Government Code § 2001.146(e), which is 100 days. On January 14, 2022, the Commission filed an Order on Rehearing, releasing the tract of land from Marilee SUD's certificated service area. In addition, the Commission amended Marilee SUD's CCN No. 10150 to reflect the removal of this tract of land from the service area.

On January 27, 2022, the Commission filed an Order on Rehearing including the map and certificate that was inadvertently omitted from the Order on Rehearing filed on January 14, 2022. The memo filed with the Order on Rehearing filed on January 27, 2022, states that it "replaces the order on rehearing filed on January 14, 2022."⁵

In effect, the Commission's final order approving expedited release was filed on January 27, 2022. The one hundredth day after the date of that decision is May 7, 2022. May 7, 2022 is a Saturday and the Commission is closed on Saturdays. Pursuant to 16 § TAC 22.4(a), the deadline is extended to the next day on which the Commission is open for business. The next day on which the Commission is open for business is May 9, 2022. Therefore, Staff respectfully recommends that a new procedural schedule be adopted to account for the pertinent statutes and their timelines.

II. PROPOSED PROCEDURAL SCHEDULE

On January 24, 2022, Petitioner filed a notice to the Commission that it and Marilee SUD was unable to select an agreed-upon appraiser, and consequently would be filing an independent appraisal report. Assuming an effective date of January 27, 2022, for the Commission's order granting streamlined expedited release, Staff proposes the following procedural schedule:

⁵ *Petition of 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 to Amend Marilee Special Utility District 's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 50404 (Jan. 27, 2022).*

<i>Because the Petitioner and CCN holder are unable to select an agreed-upon appraiser</i>	
Expedited release granted	January 27, 2022
Deadline for reports from petitioner's appraiser and from CCN holder's appraiser	April 7, 2022 (70 days after the expedited release is granted)
Deadline for Commission Staff's appraiser's report	May 9, 2022 (100 days after the expedited release is granted) ⁶
Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to CCN holder	Within 60 days after the Commission receives the final appraisal
Deadline for petitioner to pay any compensation due to CCN holder	Within 90 days of the Commission's final order on compensation

III. CONCLUSION

Staff respectfully requests an order adopting the proposed procedural schedule.

⁶ As noted above, May 7, 2022, is 100 days after the Commission's final order approving expedited release was filed on January 27, 2022. May 7, 2022, is also a Saturday. However, under 16 § TAC 22.4(a), the deadline is extended to the next day on which the Commission is open for business. The next day that the Commission is open for business is May 9, 2022.

Date: February 3, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 February 3, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann