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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 COMPEL COORDINATION WITH STAFF'S APPRAISER

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(l). The Petitioner filed an amended application on April 27, 2021. The Petitioner supplemented the amended application on April 28, 2021. On May 10, 2022, both the Petitioner and Marilee SUD filed appraiser's reports.

On March 15, 2022, the administrative law judge (ALJ) filed Order No. 16, establishing a deadline of May 10, 2022, for the Petitioner and the Marilee SUD to file appraisers' reports. Order No. 16 also established a deadline of June 9, 2022, for (Staff) of the Public Utility Commission (Commission) to file an appraiser's report.

II. MOTION TO COMPEL

a. Relevant Law

The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined at the time another retail public utility seeks to provide service in the removed area and before service is actually provided.¹ If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:^{2, 3}

If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense.⁴ Each appraiser must file its appraisal with the commission within 60 calendar days of the filing of the notice of intent.⁵ After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days.⁶ The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility.⁷ The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.⁸

¹ 16 TAC § 24.245(g).

² 16 TAC § 24.245(g)(4).

³ 16 TAC § 24.245(g)(4)(A) proceeds to state the requirements if an agreement upon a third-party appraiser was reached. Since both the Petitioner and Marilee SUD have filed appraiser's reports, only the following provision, 16 TAC § 24.245(g)(4)(B), applies.

⁴ 16 TAC § 24.245(g)(4)(B).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

b. Procedural History

In the interest of clarity, Staff briefly recaps several dates pertinent to this motion:

On October 12, 2021, the Commission filed an order releasing the tract of land identified in the first amended petition from the CCN holder's certificated service area under CCN No. 10150.⁹

On October 25, 2021, Petitioner filed notice that it and Marilee SUD were unable to select an agreed-upon appraiser.¹⁰

On November 5, 2021, Marilee SUD filed a motion for rehearing.¹¹

On January 14, 2022, the Commission filed an order on rehearing, again releasing the tract of land identified in the first amended petition from the CCN's holder's certificated service area under CCN No. 10150.¹²

On January 24, 2022, Petitioner again filed notice that it and Marilee SUD were unable to select an agreed-upon appraiser.¹³

On February 8, 2022, Marilee SUD filed a second motion for rehearing.¹⁴

On February 25, 2022, the Commission heard Marilee SUD's second motion for rehearing at the open meeting.

On March 1, 2022, the Commission filed its Second Order on Rehearing.¹⁵

On March 15, 2022, the ALJ filed Order No. 16, adopting a new procedural schedule, which solidified the parties' deadlines for the compensation phase.¹⁶

On March 25, 2022, Marilee SUD filed a third motion for rehearing.¹⁷

⁹ *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, Order at Ordering Paragraph No. 1 (Oct. 12, 2021) *superseded by* Order on Rehearing (Jan. 14, 2022).

¹⁰ Petitioner's Notice (Oct. 25, 2021).

¹¹ Marilee Special Utility District's Motion for Rehearing (Nov. 5, 2021).

¹² Order on Rehearing at Ordering Paragraph 1 (Jan. 14, 2022) *superseded by* Second Order on Rehearing (Feb. 14, 2022).

¹³ Petitioner's Notice (Jan. 24, 2022).

¹⁴ Marilee Special Utility District's Second Motion for Rehearing (Feb. 8, 2022).

¹⁵ Second Order on Rehearing (Mar. 1, 2022).

¹⁶ Order No. 16 Adopting New Procedural Schedule (Mar. 15, 2022).

¹⁷ Marilee Special Utility District's Third Motion for Rehearing (Mar. 25, 2022).

On April 4, 2022, the Office of Policy and Docket Management (OPDM) filed a memorandum stating that the Commission voted not to add the Motion for Rehearing to any open meeting agenda.¹⁸

On May 10, 2022, both Petitioner and Marilee SUD filed their respective appraiser's reports.^{19, 20}

c. Motion to Compel

When Petitioner filed its first notice regarding its inability to reach an agreement with Marilee SUD, Staff selected Robbie Wilson to prepare Staff's independent appraisal. Mr. Wilson then contacted counsel for both Petitioner and Marilee SUD on several occasions. To date, counsel for Petitioner has refused to coordinate with Mr. Wilson. 16 TAC § 24.245(g)(4)(B) requires the former CCN holder and prospective retail public utility to each pay half of the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.²¹ Because counsel for Petitioner has failed to engage with Staff's chosen appraiser, Staff respectfully requests that the parties be ordered to coordinate with Staff's appraiser so that Staff can fulfill its statutory obligation.

III. CONCLUSION

Staff respectfully requests an order compelling the parties to coordinate with Mr. Wilson, Staff's selected appraiser, so that Staff can fulfill the requirements of 16 TAC § 24.245(g)(4)(B).

¹⁸ Commission Voted to Not Add the Motion for Rehearing to any Open Meeting Agenda (Apr. 4, 2022).

¹⁹ Petitioner's Submission of Appraisal (May 10, 2022).

²⁰ Marilee Special Utility District's Submission of Appraisal Report (May 10, 2022).

²¹ 16 TAC § 24.245(g)(4)(B).

Date: May 11, 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 May 11, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann