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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 REPLY TO PETITIONER'S REPOSE TO COMMISSION
STAFF'S MOTION TO COMPEL**

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

On May 11, 2022, Staff (Staff) of the Public Utility Commission (Commission) filed a motion to compel coordination with Staff's appraiser. On May 13, 2022, the Petitioner filed a response. Staff now files this reply.

II. REPLY TO PETITIONER’S RESPONSE TO COMMISSION STAFF’S MOTION TO COMPEL

A. Once the Petitioner filed its Notice Regarding Appraiser, time was of the essence for Staff to secure an appraiser

Contrary to the Petitioner’s attempt to mischaracterize Staff’s motion, Staff’s request is reasonable: Staff simply requests that the parties be ordered to properly compensate Staff’s appraiser—in other words, to comply with the law. When the party seeking expedited release and the CCN holder are unable to agree upon an appraiser, an independent appraiser must be appointed to prepare a third appraisal report.¹ On October 25, 2021, the Petitioner filed its Notice Regarding Appraiser, which informed the parties, and the administrative law judge (ALJ), that they were unable to select an agreed-upon appraiser.² At that point, Staff became aware that to meet its own statutory deadline, it would need to appoint an appraiser to prepare a third report. Although several changes to the procedural schedule shifted the deadlines for those reports, Staff was nevertheless on notice from that date forward, that absent some very unlikely circumstances, it would still be required to file an appraiser’s report. Only two conditions could have obviated Staff’s requirement: (1) the parties ultimately agreed on an appraiser; or (2) the CCN holder failed to file an appraiser’s report on May 10, 2022.³ Neither of these two scenarios occurred, and given the contentious history of this proceeding, there was no reason to believe that they would.

B. Petitioner plucks the word “appoint” from the administrative code, while insisting on an interpretation with no controlling legal authority

Petitioner fixates on the word “appoint” and insists that the “appointment” of a Staff appraiser requires some sort of filing by the ALJ.⁴ Yet, Petitioner cites no legal authority for this. Neither the text of TWC § 13.2541 nor that of 16 § TAC 24.245 requires an order or other filing regarding the appointment of an appraiser. The Commission delegated the authority to appoint

¹ 16 TAC § 24.245(i)(2)(B).

² Petitioner’s Notice Regarding Appraiser (Oct. 25, 2021).

³ Order No. 16, Adopting New Procedural Schedule (Mar. 15, 2022).

⁴ Petitioner’s Response to Commission Staff’s Motion to Compel at 1-2 (May 13, 2022) (Petitioner’s Response).

third appraisers in Project No. 43517. In that project, the Commission signed an order addressing a similar situation with the appointment of third-party appraisers.⁵ The order explicitly states that, “to ensure timely implementation of the compensation process mandated by TWC § 13.254, the Commission deems it necessary to delegate to the executive director of the Commission authority to appoint a third appraiser.”⁶ The Legal Division of the Commission and its employees are the subordinates of the executive director, charged with the oversight of pending legal actions. No substantive reason or policy directive suggests that the executive director must himself appoint an independent appraiser in each stream-lined expedited release docket. The most reasonable inference is that Staff’s assigned legal counsel bears that responsibility. Regardless of whichever synonym the Petitioner prefers—appoint, select, choose, etc.—the effect is the same. This is Petitioner’s attempt to cling inexplicably to her interpretation of the letter of the law, while wholly ignoring its spirit, all for no discernible benefit.

Additionally, in the ALJ’s latest procedural schedule in Order No. 16, he specifically names Staff’s June 9, 2022 deadline: “Deadline for *Commission Staff’s* appraiser’s report [emphasis added].” This same language has consistently appeared in the ALJ’s procedural schedules. Petitioner never once objected to this language prior to Staff’s filing its motion. Thus, the pertinent legal framework does not prohibit Staff’s attorney from appointing an appraiser and does not require any additional filing.

C. Commission rules require Petitioner to work directly with Staff’s appraiser

When it comes to Petitioner’s complaint about “being required to engage or have direct communication with” Staff’s appraiser, Petitioner intentionally omits the language of the applicable Commission rule, the final sentence of 16 TAC § 24.245(g)(4)(B), preferring instead to redirect the ALJ to TWC 13.2541(i), which the Commission rule circumscribes.⁷ A close comparison of the two texts reveals why this is misleading. The two provisions, in relevant part, read as follows:

⁵ *Activities Related to Delegation Authority Generally to the Executive Director*, Project No. 43517, Order Delegating Authority to the Executive Direct to Appoint Appraisers (Nov. 20, 2015).

⁶ *Id.*

⁷ Petitioner’s Response at 2.

TWC § 13.2541(i)

The petitioner and the certificate holder shall each pay half the cost of the third appraisal.

16 TAC § 24.245(g)(4)(B)

The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraiser *directly to the commission-appointed appraiser* [emphasis added].

Petitioner chose to quote only the TWC provision, and not the TAC provision, because the language of the TAC provision is unambiguous. No further analysis is necessary: the Petitioner must pay the appraiser directly. Petitioner must somehow communicate with Staff's appraiser to pay him the Petitioner's half of the cost.

D. Petitioner's interpretation of the rules governing the compensation phase produces an outcome inconsistent with Commission intent for stream-lined expedited release

If the ALJ were to adopt Petitioner's line of reasoning, it would only frustrate the Commission's purpose for stream-lined expedited release dockets. The underlying purpose of 16 TAC § 24.245 is to provide a means of resolution when the parties are unable to agree upon an appraiser. To this end, the Commission, and the ALJ, saw fit to provide the parties 70 days to file their appraisers' reports and Staff an additional 30 days beyond the parties. Because stream-lined expedited release cases are not contested proceedings, there is no reason to believe that the Commission would have favored an unnecessary obstacle frustrating Staff's ability to perform its duty. Requiring an order or some other unspecified filing "appointing" an appraiser causes unnecessary delay. And Petitioner knows this delay will eat well into Staff's appraiser's 30-day window, itself already less than half of the parties' allotted timeframe, before Staff's appraiser will finally be able to begin his or her work.

III. CONCLUSION

Staff respectfully reaffirms its request for an order compelling the parties to coordinate with Staff's appraiser, Mr. Wilson. Working professionals understand that the successful completion of complex technical work requires successful planning to meet important deadlines. The Petitioner's insistence on this additional litigation tactic is unnecessary, particularly because the legal framework for expedited release dockets is designed to promote their efficient and prompt resolution. Counsel for the Petitioner knows this. But even if Petitioner's argument were correct, she is effectively asking that Staff's appraiser be unnecessarily forced to remain in limbo, prohibiting him from beginning any work on his report, until he has substantially less time to perform that work to meet his deadline, and potentially none at all.

In other words, Petitioner sincerely believes that time isn't of the essence, and that when the Commission in its rules, not to mention the ALJ in his orders, afforded Staff's appraiser 30 days to prepare his report, they were all mistaken. But the implication is that the Petitioner knows best: Staff's appraiser doesn't deserve what the Petitioner itself enjoyed, free of interference: the entirety of his legally allotted time frame to prepare his report. Not only does this make a mockery of the very purpose of stream-lined expedited release dockets, but it's also inconsiderate to Staff's appraiser, to the parties, to the ALJ, and to the Commission, all who want nothing more than the timely disposition this docket deserves. Thus, Staff re-urges its motion to compel the Petitioner to coordinate with Mr. Wilson so that Staff can fulfill its statutory obligation.

Date: May 19, 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 19, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann