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PETITION OF RODNEY EARL	§	PUBLIC UTILITY COMMISSION
MOHNKE, STEPHEN LEE MOHNKE,	§	
MELVIN MAX MOHNKE, KENNETH	§	OF TEXAS
WAYNE MOHNKE, KATHLEEN ANN	§	
MOHNKE-BLAKELY, AND MEL	§	
MOHNKE, TRUSTEE OF THE	§	
MOHNKE LIVING TRUST DATED	§	
DECEMBER 7, 1996, TO AMEND H-M-	§	
W SPECIAL UTILITY DISTRICT'S	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN HARRIS COUNTY	§	
BY EXPEDITED RELEASE	§	

**ORDER NO. 6
PROVIDING OPPORTUNITY TO RESPOND TO MOTION TO RECONSIDER AND
MOTION TO DISMISS AND DENYING, IN PART, THE MOTION TO DISMISS**

This Order addresses H-M-W Special Utility District's August 4, 2021 Response to Petition Approved as Administratively Complete. In its response, H-M-W asserts the petition is not and cannot be administratively complete and objects to the finding of administrative completeness found in Order No. 5 filed on July 15, 2021. H-M-W also argues that the petition should be dismissed for various reasons.

Although the pleading is not entirely clear, the administrative law judge (ALJ) deems H-M-W's August 4, 2021 Response to Petition Approved as Administratively Complete to constitute, in addition to being a response: (1) a motion to reconsider the finding of administrative completeness; and (2) a motion to dismiss.

I. Motion to Reconsider the Finding of Administrative Completeness

H-M-W objects to the finding of administrative completeness, arguing that the petitioner cannot prove ownership of the tract of land at issue. Specifically, H-M-W argues that (1) the petitioner has not proved a conveyance to the correct Max Mohnke, and (2) the chain of title as set forth cannot establish ownership of the tract of land at issue because petitioners have not shown

ownership of the mineral estate. The ALJ is deferring ruling on this motion until the time for responses, specified below, has passed.

II. Motion to Dismiss

H-M-W argues that the petition should be dismissed because it is preempted by a Texas Natural Resource Conservation Commission (TNRCC)¹ order; it violates the rights of H-M-W under Texas Water Code (TWC) §§ 13.252 and 49.215; it is an unconstitutional taking of property, without due process; it is an unconstitutional retroactive application of TWC § 13.2541; the petitioner cannot show ownership of the tract of land; and H-M-W is providing water service to the tract of land. Each of these arguments will be briefly discussed, in turn.

A. Preemption under the TNRCC order

H-M-W argues that the tract of land at issue lies within the certificated service area of H-M-W's certificate of convenience (CCN) number 10342. H-M-W claims it received CCN number 10342 from Coe Utilities, Inc. Coe sold its assets in 1996, including the CCN and its certificated service area, to H-M-W, which subsequently converted from a water supply corporation to a water district in 1998. According to H-M-W, the TNRCC entered an order dated March 13, 1998 transferring CCN number 10342 to H-M-W.² H-M-W argues that the TNRCC order governs, and that decertifying a portion of the certificated service area of CCN number 10342 impermissibly violates the TNRCC order.

The ALJ construes this argument as a motion to dismiss for “other good cause shown” under 16 Texas Administrative Code (TAC) § 22.181(d)(11). The ALJ is deferring ruling on this motion until the time for responses, specified below, has passed.

B. Violation of H-M-W's rights under TWC §§ 13.252 and 49.215

H-M-W next argues that water districts, such as H-M-W, can expand without geographic limits and without possessing a CCN under TWC § 49.215, and that under TWC § 13.252, the

¹ The TNRCC is the predecessor agency to the Texas Commission on Environmental Quality.

² See, An Order Granting a Request for Conversion to and Creation of H-M-W Special Utility District of Harris and Montgomery Counties; Appointing Temporary Directors; and Authorization to Issue Certificates of Convenience and Necessity No. 10342 and 20734 to H-M-W Special Utility District of Harris and Montgomery Counties, Docket No. 97-0964-DIS (Mar. 13, 1998)(attached to H-M-W's response).

petitioner or any of petitioner's successors, who are likely to be a water provider, will possess or be required to obtain a CCN, and therefore would be interfering with H-M-W's CCN.

The ALJ construes this argument as a motion to dismiss for "other good cause shown" under 16 TAC § 22.181(d)(11). The ALJ is deferring ruling on this motion until the time for responses, specified below, has passed.

C. Unconstitutional taking of property and retroactive application of TWC § 13.2541

H-M-W next argues that this petition should be dismissed because the relief it seeks would constitute an unconstitutional taking of property without due process and an unconstitutional retroactive application of TWC § 13.2541. Specifically, H-M-W argues that decertification would violate Article I, Sections 13 and 16 of the Texas Constitution.

The ALJ construes this argument as a motion to dismiss for "other good cause shown" under 16 TAC § 22.181(d)(11). It is not necessary to defer ruling on these constitutional arguments or to wait for responsive briefing on them. Commission ALJs lack the authority to consider constitutional issues. Accordingly, the ALJ denies H-M-W's motion to dismiss with regard to these constitutional arguments.

D. Proof of ownership and providing water service

H-M-W next argues that the petition should be dismissed because the petitioner cannot prove ownership of the tract of land and that H-M-W is providing water service to the tract of land. H-M-W's arguments on these points address the merits of the petition; they do not identify a ground for dismissal specified in the Commission's dismissal rule, 16 TAC § 22.181(d). Accordingly, to the extent that these arguments are intended to be construed as part of a motion to dismiss, the ALJ denies the motion with regard to these two arguments.³

³ By denying H-M-W's motion on these grounds, the ALJ is not precluding H-M-W from asserting the same facts in opposition to the merits of the petition.

III. Allowing Responses and Addressing Procedural Deadlines

Under 16 TAC § 22.181(e)(3), the party that initiated the proceeding or any other affected party shall have 20 days from the date of receipt to respond to a motion to dismiss. Under 16 TAC § 22.78(a), a responsive pleading is due within five working days after receipt of the pleading, or by order of the presiding officer. Due to the lack of clarity in H-M-W's response as to whether it was intended to be a motion to reconsider and a motion to dismiss, and the ALJ deeming certain arguments as a motion to dismiss, the petitioners and Commission Staff may file responses to H-M-W's motion to dismiss and motion to reconsider by August 31, 2021, which is 20 days from the date of this Order.

In the schedule adopted in Order No. 5, the ALJ specified that August 25, 2021 was the "deadline for the petitioners to file a reply to H-M-W SUD's response and Commission Staff's recommendation on final disposition." This deadline is hereby extended to August 31, 2021.

Signed at Austin, Texas the 11th day of August 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE