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PETITION BY 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	§	

PETITIONER'S RESPONSE TO ORDER NO. 6

Petitioner hereby provides its response to HMW's "Response to Petition Approved as Administratively Complete" pursuant to Order No. 6, in which the Administrative Law Judge ("ALJ") granted the Petitioner the opportunity to respond to HMW's pleading, which the ALJ identified as both a motion to dismiss and a motion to reconsider.

A. HMW Has No Right to Assert Its Motion to Dismiss and Motion to Reconsider

It is well established that petitions for expedited release under TWC §13.2541 and 16 TAC § 24.245(h) are not contested cases and that no opportunity for a hearing exists. (*See*, Petition of Sunbelt Estates, LLC to Amend the City of Elmdorf's Water Certificate of Convenience and Necessity in Bexar County by Expedited Release, Docket No. 49564, Order (Sep. 27, 2019); Order No. 7 Denying Motion to Strike and Dismiss and Denying Motion to Direct Responses to Discovery, Docket No. 49280 (Nov. 20, 2019)). The applicable procedural steps for a streamlined expedited release initiated by landowner set for in TWC § 13.2541 are extremely limited. Pursuant to TWC § 13.2541(c), "The utility commission shall grant the petition not later than the 60th day after the date the landowner files the petition." Pursuant to Order No. 5, the ALJ deemed the

Petition to be administratively complete, and therefore “to have been filed,” effective July 15, 2021. Neither TWC § 13.2541 nor any other provisions of the Water Code allow a third-party, whether as a designated intervenor or otherwise, to avail itself of motions to dismiss or motions to reconsider. Because streamlined expedited releases are not contested cases and because TWC § 13.2541 otherwise prohibits such procedural challenges, the ALJ should reject both motions and the relief requested therein.

B. Response to Motion to Dismiss

Without waiving its argument that the motion is not properly before the ALJ, to the extent the ALJ finds that HMW does have the right to “file a response to the administratively complete petition,” as set out in the Order No. 5 procedural schedule, such right must necessarily be limited to the context of what constitutes “administratively complete” pursuant to TWC § 13.2541. Specifically, any such right must be limited to whether the Petition provides that: “the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity in the manner provided by this section and is entitled to that release if the landowner’s property is located in a [qualifying county].” HMW’s motion to dismiss assertion that decertification violates a TNRCC order falls outside of that area of inquiry, as does HMW’s assertion of a violation of its rights under TWC § 13.252 and § 49.215. Those assertions are not available pursuant to TWC § 13.2541. Any claim HMW might have under those assertions must await a proper procedural challenge.

Further without waiving its argument that the motion is not properly before the ALJ, to the extent the ALJ finds that HMW did properly assert arguments and requested relief relating to its assertions that: (i) decertification violates a TNRCC order, and (ii) decertification is a violation

under TWC § 13.252 and § 49.215, the Petitioner adopts the argument and position of Commission Staff on those issues as set forth in Commission Staff's Corrected Supplemental Recommendation on Administrative Completeness.

C. Response to Motion to Reconsider

Order No. 6 identifies two HMW arguments as comprising a motion to reconsider: (i) that the Petitioner has not proved a conveyance to the correct Max Mohnke, and (2) that the chain of title cannot establish ownership of the tract due to the mineral estate. Without waiving its argument that HMW's motion to reconsider is not properly before the ALJ, the Petitioner asserts that the ownership information it presented in the Petition, as supplemented in Petitioners' Response to Order No. 2, confirms that the Petitioner has satisfied TWC § 12.2541 as it relates to whether it is "the owner of a tract of land that is at least 25 acres." Commission Staff recommended (Docket ID No. 16) and the ALJ found (Docket ID No. 17) that the Petitioner provided a satisfactory showing as to the ownership of the tract. HMW's arguments raise no issues that were not previously considered in those determinations, and thus HMW's arguments do not support a reversal of that previous finding.

On the merits, HMW's arguments regarding Max Mohnke's ownership interest is simply wrong, as established by the information the Petitioner presented in support of the Petition. HMW's argument that the information the Petitioner presented "does not constitute evidence of anything over any party's objection" is confused and confusing. Regarding HMW's argument regarding the ownership of the mineral estate, the Petitioner agrees with the position Commission Staff has articulated--that sole ownership of a real property's mineral rights is not relevant for administrative completeness, recognizing that 16 Tex. Admin. Code § 24.245(h)(3)(E)

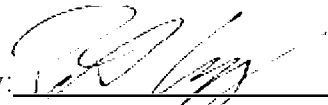
does not reference mineral rights and instead is appropriately read to apply only to surface rights given the nature of the Petition. (see, Document ID No. 15)

D. Conclusion

For the reasons detailed above, the Petitioner requests that the ALJ issue an order denying the relief requested by HMW in its “Response of HMW Per Order No. 5” and that administrative approval of the expedited release be issued by September 13, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify by my signature above that on the 31st day of August, 2021, a true and correct copy of the above and foregoing document was forwarded via electronic mail to all parties of record to:

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