



## Filing Receipt

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**DOCKET NO. 51973**

Petition of Rodney Earl Mohnke, et al to \* Before the Public Utility Commission  
Amend HMW Special Utility District’s Water \* of Texas  
Certificate of Convenience and Necessity in \*  
Harris County by Expedited Release \*

**RESPONSE TO OWNER COMMENTS/OBJECTION TO APPRAISAL FILING**

Comes now the HMW Special Utility District of Harris and Montgomery Counties(“HMW”), filing its Comments/Objection to Appraisal Filing, filed with Public Utility Commission(“PUC”) on January 24, 2022, in the above-styled Petition for Decertification of Rodney Earl Mohnke, et al (“Petition”), and states as follows:

I.

This responds to the effort by the property owners(“Owners”) to dismiss HMW’s timely-filed appraisal, with the hope of eliminating its consideration by the PUC for the purpose of determining compensation. More specifically, the Owners complain that the appraisal fails to address any of the factors for determining compensation that are set forth in Water Code Section 13.254(g).

The Owners position is obviously erroneous on the face of the statute.

The relevant portion of Subsection (g) provides as follows:

“...The factors ensuring that the compensation to a retail public utility is just and adequate shall include:...; and other relevant factors”. The utility commission shall adopt rules governing the evaluation of these factors. (Emphasis supplied).

Thus, from the face of the statute it’s clear that (1) the enumerated factors are not exclusive, (2) the inclusion of the language “other relevant factors” is clear from its plain meaning, (3) their consideration is mandatory, based on the use of “shall”, and (4) the commission may exercise discretion to determine what those factors are.

The Texas Supreme Court agrees. The word “includes” is a term of enlargement and not of limitation or exclusive enumeration”. *Entergy Gulf States, Inc. v. Summers*, 282 SW3d 433, 440-441(Tex. Sup. 2009).

At the outset, it’s clear that the Texas Legislature recognized that factors other than those enumerated in Section 254(g) could affect compensation value. Accordingly, it used mandatory language to require their consideration. In contrast, the Owners argue that HMW’s appraisal must be dismissed because it does not directly discuss less relevant factors and instead focuses on factors not enumerated that are more significant.

Thus, the Owners’ approach would ignore the mandate of the statute to consider any relevant factors because, in their view, HMW allegedly failed to comply with the Owners’ imaginary requirement to discuss the enumerated factors.

In addition, no language in Section 254(g) or in PUC Rule 245(j)(2), the rule governing consideration of the “relevant factors”, requires that HMW’s appraisal consider all or any of the enumerated factors in Section 254(g). Among other issues, enforcing such a requirement now, merely because the Owners prefer it, is both contrary to law and applying a hitherto unknown requirement without notice to HMW and other holders of a Certificate of Convenience and Necessity(“CCN”).

The fact is that the Owners want to avoid the clearly relevant debate about the true value of a CCN, and by extension the amount of compensation owed to HMW if its CCN is fully or partially taken. They know perfectly well that their valuation of a few hundred dollars is ridiculously low and without any relationship to reality. They rightly fear that any independent appraisal will acknowledge the true value of to HMW of the property proposed to be decertified. Instead, they want to have that value for themselves through plans to develop their property without bothering to fairly compensate HMW as the law requires.

## II.

Further, the pertinent PUC rules share the conclusion reached by HMW, meaning the PUC may determine the “other relevant factors” for compensation valuation purposes. See PUC Rule 24.245(j)(2).

The PUC Rules further provide for the resolution of the compensation issue by a PUC-appointed appraiser, consistent with the requirements of the statute.

Among other factors that it may determine, the PUC and its appraiser should consider the following factors:

1. The methodology of both appraisal reports.
2. The commonsense assessment that all or any portion of a CCN is an asset containing value. Section 254(g) plainly embraces that concept, but the Owners do not accept it. This is the underlying reason for this dispute.
3. The fact that in this instance, existing HMW facilities are closer to the property than those of any other retail water provider.
4. The fact that in the near future a retail water provider will supply water to the property, as developed, probably for years to come. That provider will generate earnings based on its ability to meet the needs of future customers residing on a then-developed property. If the provider is not HMW, the true value of compensation will be the present value assessment of that provider’s estimated net income.

Wherefore, premises considered, no action should be taken on the Owners’ complaints, the PUC should proceed on the determination of compensation as provided by law, and such other and further relief as the PUC deems just.

Respectfully submitted,

Law Offices of Patrick F. Timmons, Jr., P.C.

/s/

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Certificate of Service

I hereby certify that a true copy of the foregoing Motion was served on the Applicant, PUC staff and all other parties on this 31st day of January, 2022, as provided by 16 TAC Section 22.74.

/s/

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Patrick F. Timmons, Jr.