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DOCKET NO. 51973

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, TRUSTEES OF THE	§	
MOHNKE LIVING TRUST, TO	§	
AMEND H-M-W SPECIAL UTILITY	§	
DISTRICT’S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
HARRIS COUNTY BY EXPEDITED	§	
RELEASE	§	

COMMISSION STAFF’S RESPONSE TO ORDER NO. 10

On April 1, 2021, Rodney Earl Mohnke, Stephen Lee Mohnke, Melvin Max Mohnke, Kenneth Wayne Mohnke, Kathleen Ann Mohnke-Blakely, and Mel Mohnke, Trustee of the Mohnke Living Trust dated December 7, 1996 (collectively, Petitioner) filed a petition to amend H-M-W Special Utility District’s (HMW SUD’s) water certificate of convenience and necessity (CCN) in Harris County by streamlined expedited release. Petitioner sought the expedited release of 99.2669 acres of land that lie within HMW SUD’s CCN number 10342. HMW SUD filed a Motion to Intervene on June 4, 2021, which was granted.

On January 25, 2022, the administrative law judge (ALJ) filed Order No. 10, requiring Staff (Staff) of the Public Utility Commission (Commission) to file a response to Petitioner’s objection to HMW SUD’s appraisers report on or before January 31, 2022. Therefore, this pleading is timely filed.

I. COMMISSION STAFF’S RESPONSE

As provided by 16 Texas Administrative Code (TAC) § 24.245(i)(2)(B)¹, in the event streamlined expedited release is granted and Petitioner and HMW SUD are unable to select an

¹ See 16 Texas Admin. Code § 24.245(i), providing “[i]f the former CCN holder and landowner have agreed upon the amount of compensation to be paid to the former CCN holder, they *must* make a joint filing with the commission stating the amount of compensation to be paid. If the former CCN holder and landowner have not agreed upon the compensation to be paid to the former CCN holder, the monetary amount of the compensation *must* be determined by a qualified individual or firm serving as an independent appraiser under the following procedure. If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the

agreed-upon appraiser, the deadline for petitioner **and** HMW SUD to make a filing stating that they have been unable to select an agreed-upon appraiser and affirming that they will pay half of the cost of Commission Staff's appraiser is within 10 days after the Commission approves the streamlined expedited release.² The Order granting the streamlined expedited release was issued on November 2, 2021, making the deadline for the parties to file notice of the inability to select an agreed-upon appraiser and affirming they will pay half of the cost of Commission Staff's appraiser November 12, 2021. Staff respectfully notes that this statement was not filed by the parties. In addition, Staff respectfully notes as stated in its filing dated July 13, 2021 that "[i]t is critical for Staff to know as soon as possible after the Commission grants the petition whether Staff needs to secure the services of a third appraiser. *If the petitioner and CCN holder are unable to agree, and fail to make this filing, Staff may need additional time to file its appraiser's report.*"³

In the event that the parties are unable to select an agreed upon appraiser, both Petitioner **and** HMW SUD were required in accordance with 16 Texas Administrative Code (TAC) § 24.245(i)(2)(B) to submit reports from their respective appraisers "within 70 days after the Commission approves expedited release[.]", making the deadline to file such reports January 11, 2022. While HMW SUD has filed their appraiser report, Petitioner has not filed a competing appraisers report.

Order No. 5 further states that Staff is required to select and submit its appraiser report within 100 days after the Commission approves the streamlined expedited release. However, the appraiser report from Staff must select an amount of compensation that is between the two amounts submitted by each parties' competing appraiser reports. Specifically, 16 TAC § 24.245(i)(2)(B) provides the following:

"If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section, the former CCN holder and landowner must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 70 calendar days after the commission grants streamlined expedited release. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within

commission grants streamlined expedited release[.] the former CCN holder and landowner **must** each engage its own appraiser at its own expense." (*emphasis added*).

² 16 Texas Administrative Code (TAC) § 24.245(i)(B).

³ *Commission Staff's Corrected Supplemental Recommendation on Administrative Completeness* at 4-5 and footnote 8, Docket No. 51973 (July 13, 2021) (*emphasis added*).

100 days after the date the commission grants streamlined expedited release. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the former CCN holder and landowner. The former CCN holder and landowner must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.”

However, in this instance, Petitioner has failed to submit a competing appraiser report at all and instead has asked that the Commission deem HMW SUD’s report invalid; and to grant an amount of compensation of zero under 16 TAC § 24.542.⁴ Importantly, the valuation of “zero” is not the result of a competing appraisers report, but instead is based upon a claim that HMW SUD’s appraisal report is invalid and therefore should essentially be considered to have not been submitted at all under 16 Tex. Admin. Code § 24.254.⁵

Staff respectfully but vigorously disagrees with Petitioner’s argument. HMW SUD has submitted their appraisal report, whereas Petitioner has failed to submit an appraisal report whatsoever. Staff does not believe it is in the public interest to reward the inaction of Petitioner in this instance, while punishing the compliance of HMW SUD as set by Order No. 5. If Petitioner wishes to discredit HMW SUD’s appraisal report, the proper remedy is to submit a competing appraisal as outlined in Order No. 5 and as contemplated by the Commission rules as outlined above.

For the reasons described above, Staff is unable to submit a competing appraiser’s report within 100 days after the Commission has approved streamlined expedited release in this matter as set by Order No. 5. Therefore, to allow the parties to potentially identify an agreed upon appraiser, and to provide the Petitioner an opportunity to submit a competing appraiser report in compliance with Commission rules and Order No. 5, Staff respectfully requests that the procedural schedule be revised as recommended below. Staff notes that it has been granted extensions to file its third appraisal report in past related matters during similar procedural roadblocks.⁶

⁴ *Petitioner’s Objection to HMW Appraisal Report* at 3, Docket No. 51973 (Jan. 24, 2022).

⁵ *Id.*

⁶ *See Commission Staff’s Motion for Extension and to Require Payment for Third Appraiser’s Report*, Docket No. 50787 (March 18, 2021); *see also Order No. 7 Granting Extension*, Docket No. 50787 (March 23, 2021), in which a party would not agree to pay half the cost of the third appraisal as required by Tex. Water Code § 13.2541, resulting in a delay in Commission Staff’s ability to secure the work of its appraiser report.

Finally, in the event that the Petitioner fails to submit a competing appraisers report, Staff requests that, in accordance with 16 TAC § 25.254(g)(6), “[i]f the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or file an appraisal within the timeframes required by this subsection, the presiding officer may recommend dismissal of the notice of intent to provide service to the removed area.”

II. PROPOSED REVISED PROCEDURAL SCHEDULE

Staff respectfully proposes the following procedural schedule for the further processing of this matter:

Event	Date
<i>In the event streamlined expedited release is granted and petitioner and HMW SUD can select an agreed-upon appraiser</i>	
Deadline for petitioner and HMW SUD to make a filing stating that they have selected an agreed-upon appraiser	Within 10 days after the Commission files a subsequent order in this docket
Deadline for appraiser’s report	Within 70 days after the Commission files a subsequent order in this docket
Deadline for Commission’s final order determining the amount of monetary compensation, if any, owed by petitioner to HMW SUD	Within 60 days after appraiser's report
Deadline for petitioner to pay any compensation due to HMW SUD	Within 90 days of the Commission’s final order on compensation
<i>In the event streamlined expedited release is granted and petitioner and HMW SUDr are unable to select an agreed-upon appraiser</i>	
Deadline for petitioner and HMW SUD to make a filing stating that they have been unable to select an agreed-upon appraiser and affirming that they will pay half of the cost of Commission Staff’s appraiser ⁷	Within 10 days after the Commission files a subsequent order in this docket ⁸
Deadline for report from Petitioner’s appraiser.	Within 70 days after the Commission files a subsequent order in this docket
Deadline for Staff’s appraiser’s report	Within 100 days after the Commission files a subsequent order in this docket
Deadline for Commission’s final order determining the amount of monetary compensation, if any, owed by petitioner to HMW SUD	Within 60 days after the Commission receives the final appraisal
Deadline for petitioner to pay any compensation due to HMW SUD Water Code § 13.2541(i).	Within 90 days of the Commission’s final order on compensation

⁸ It is critical for Staff to know as soon as possible after the Commission grants the petition whether Staff needs to secure the services of a third appraiser. If the petitioner and CCN holder are unable to agree, and fail to make this filing, Staff may need additional time to file its appraiser’s report.

III. CONCLUSION

Staff respectfully recommends that an order be issued consistent with the above recommendations.

Dated: January 31, 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 via electronic mail on January 31, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz
Kevin R. Bartz