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DOCKET NO. 51973

Petition of Rodney Earl Mohnke, et al to Amend * Before the Public Utility Commission
Water Certificate of Convenience and * of the State of Texas
Necessity of HMW Special Utility District *
By Expedited Release *

Response to Motion to Compel

Comes now the HMW Special Utility District(“HMW”), filing its Response to Motion to Compel(“Response”), and states as follows:

Introduction

1. This Response addresses the Petitioners’ Motion to Compel dated March 17, 2022 (“Motion”), regarding the Public Utility Commission’s (“PUC”) Order No. 34, Paragraph 6. Paragraph 6. would require HMW to record the purported final order for decertification of a portion of HMW’s Certificate of Convenience and Necessity(“CCN”) in the real property records of Harris County.

This Motion does not respond to the substance of the Determination of Compensation, dated today, by the PUC’s Administrative Law Judge.

The PUC should deny the Motion if it has not already done so in other actions taken today.

The Motion Seeks to Subvert HMW’s Right to Appeal

2. The Motion seeks to require HMW to acknowledge, by recording, a questionable order to decertify that HMW has both opposed and made every effort to contest and appeal. The purpose of the Motion is to make it appear in the public records of Harris County that decertification is final in this docket, thereby legitimizing the title of the Petitioners to the “decertified” property.

This is subterfuge. Regardless of the PUC’s ultimate ruling, Petitioners know that requiring compliance with Water Code Section 13.254(r) is in effect notice to the public of the finality of decertification. Requiring HMW to do so would subvert the actual purpose of 13.257(r) and (s),

which is to record a finalized amendment to a certificate of convenience and necessity.

Further, requiring HMW to record the transaction would hinder its right to appeal to the district court because of protections afforded to third party purchasers. See Texas Property Code Section 13.004(b). The net result would be to prompt HMW to file for record additional documentation that (1) its right to provide water service is encumbered by recording Order No.34, and (2) the PUC's order is contested on appeal. This result alone is a sufficient basis to deny the Motion.

Further, the PUC has no authority to grant the Motion because its disposition of this docket is not final.

Order No. 34 Is Not a Final Order

3. Order No. 34 is not enforceable as suggested by the Petitioners if it is not a final order of the PUC. While HMW opposes it in its entirety, this is a bifurcated proceeding in which the PUC has stated that it will enter to separate orders, one on decertification and one on compensation. See PUC Order 34, Paragraph 7. This statement in effect concedes that the PUC itself does not know whether Order No. 34 is its final order in this docket.
4. In an abundance of caution, and because no other case is known in which the PUC has purported to finally determining part of a pending case, without determining all of it, HMW filed a Petition for Review of Order No. 34 in the 250th District Court. Thus, the district court already has jurisdiction of the decertification issue.

In an order received today, the PUC's administrative law judge entered an order that purports to rule on compensation. That order is not final because it continues to be subject to a motion for rehearing to the PUC.

5. In addition, and assuming Order No. 34 becomes a final order and is appealed, the 250th District Court will have jurisdiction of both the decertification and compensation issues by virtue of HMW's Petition for Review. The validity of the purported decertification will continue to be in issue until that and any subsequent appeals are resolved.

In any case, the CCN “amendment” that Petitioners desire HMW to record under Water Code Section 13.257(r) has not yet occurred because the substance of Order No. 34 is either not final or currently on appeal. While the Petitioners may claim that the PUC retains enforcement jurisdiction, any PUC action on the Motion to Compel while the decertification is itself on appeal is contrary to law and an unwarranted interference with the jurisdiction of the district court.

Requiring HMW to Record the Amendment Would Be a Fraud on the Public

6. As noted in Paragraph 2. above, requiring the recording Order No. 34, standing alone and at this stage of the proceeding, is a fraud on the public because of its legal effect, which would be to validate the existence of Order No. 34 without noting that it is on appeal. Further, it would involve HMW in the fraud by forcing it to falsely acknowledge the finality of a transaction it has opposed, and to jeopardize its own right to provide water service to the allegedly decertified property. It would further require the filing by HMW of sufficient documentation in the Harris County Real Property Records to show the false nature of the recorded documents.
7. Granting or denying the Motion is a discretionary act of the PUC. For the reasons set forth, the PUC should exercise its discretion to deny the Motion.

Wherefore, premises considered, HMW prays that the Motion be denied.

Respectfully submitted,

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/s/

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Certificate of Service

I hereby certify that a true copy of the foregoing Response to Motion to Compel was served on the addressees shown above and the Texas PUC staff on this 21st day of March, 2022, as provided by 16 TAC Section 22.74.

/s/

Patrick F. Timmons, Jr.