



## Filing Receipt

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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 \*

**Second/Amended Motion for Rehearing**

Comes now the HMW Special Utility District (“HMW”), filing its Second/Amended Motion for Rehearing (“Motion”), and states as follows:

I.

Without conceding the point, this Motion assumes that the Administrative Law Judge’s (“ALJ”) determination of compensation is a “final order” under the Rules of the Public Utility Commission (“PUC”). The ALJ’s order determining compensation is **not** final for reasons set forth by HMW in prior pleadings. Nevertheless, the ALJ has not clarified whether its finality is the position of the PUC. Therefore, this Motion is filed within the required 25 days to preserve HMW’s rights under PUC rules if the order determining compensation is ever deemed a final order.

II.

HMW incorporates by reference and asserts in this Motion each of the points set forth in its pleadings in this case that pertain to decertification, the PUC’s authority and whether this is a contested case, including but not limited to its Motion for Rehearing dated November 23, 2022. Decertification is a prerequisite to the purported determination of compensation. Consequently, the latter determination cannot stand if the decertification is invalid.

III.

HMW further asserts the following:

1. The order determining compensation is not signed by the Commissioners. Hence, the order is not a final order under the PUC’s own rules. See PUC Rule 22.263. Moreover, the decertification order itself suggests that the full Commission, not the ALJ, will issue any

subsequent order on the compensation issue. Contrary to what the PUC or Respondents may argue, no basis exists for the order on compensation to merely be an authorized extension of the order for decertification. See Order No.34.

2. The determination that the disputed 99 acres comprising this portion of HMW's certificate of convenience and necessity ("CCN") is worth a mere \$68.00 is (a) ridiculous on its face, and (b) so outlandish that it cannot be seen as compliant with either Water Code Sections 13.254(g) or 13.2541(f)-(h). Common sense dictates that it could not be clearer that any water provider would realize more than \$68.00 following the development of the CCN to provide water service. None are stated, but the findings of fact, if any, that purport to support this conclusion are erroneous.
3. The ALJ treated the enumerated categories in Water Code Section 13.254(g) as the sole categories worthy of consideration in determining compensation. The ALJ obviously failed to consider, or even mention, the category pertaining to "other relevant factors" for determining compensation. This approach was and is an abuse of discretion under applicable Texas law that pertain to the exercise of discretion and the refusal to exercise it when required, including Government Code 2001.174 and applicable case law.
4. Neither can the order pass muster under the applicable standards of review of PUC orders. *Id.*, at Paragraphs 2001.174(1) and (2)(A)-(F). The findings of fact, if any, that purport to support this conclusion are erroneous.
5. The order also fails to carry out the intent of its enabling statute, which is to provide just and adequate compensation to the holder of a decertified CCN. Water Code Section 13.2541(f)-(h). To be just and adequate, compensation must first be realistic. If it is not, any notion of fairness or just and adequate compensation is simply unattainable.
6. Compensation is required to be determined in accordance with Chapter 21, Texas Property Code. Chapter 21 prescribes, in effect, a fair market value standard for just and adequate compensation under Water Code Section 13.254(g). Property Code Section 21.042. The ALJ's order on compensation clearly fails to meet this standard, and particularly so considering the ALJ's further failure to give the slightest consideration to the "other relevant factors" standard in Section 13.254(g).
7. The order on compensation also violates the legal and evidentiary standards set forth in what is commonly termed the substantial evidence rule. Government Code 2001.174(1) and (2)(A)-(F). The legal errors regarding discretion and the application of applicable law are set forth above. In addition, and regardless of its financial assumptions, the appraisal presented by HMW is overwhelming evidence that a finding of \$68.00 is simply nonsensical and cannot be sustained under even the minimal evidentiary standards of the substantial evidence rule. Further, the evidence, if any, on which the ALJ may have relied in support of the conclusion of \$68.00 as just and adequate compensation, does not amount to a scintilla of evidence, even under the minimal standards of the substantial evidence rule. Any findings of fact that purport to support the ALJ's conclusion on just and adequate compensation are (1) erroneous and (2) fail as substantial evidence under Government Code 2001.174.

Wherefore, premises considered, HMW prays that its Motion for Rehearing be granted, that

the PUC rule in favor of HMW on the decertification and/or compensation issues, or alternatively remand this case to the ALJ with appropriate instructions for the further conduct of this proceeding, and to grant such other relief as is 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 to Extend Date for Motion for Rehearing was served on the addressees shown above and the Texas PUC staff on this 15th day of April, 2022, as provided by 16 TAC Section 22.74.

/s/

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Patrick F. Timmons, Jr.