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DOCKET NO. 52267

PETITION OF MOUNT ZION WATER	§	PUBLIC UTILITY COMMISSION
SUPPLY CORPORATION TO AMEND	§	
ITS CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY FOR PARTIAL	§	
DECERTIFICATION IN ROCKWALL	§	
COUNTY	§	

ORDER NO. 8
DENYING COMMISSION STAFF’S MOTION TO DISMISS AND NOTIFYING
PARTIES OF INTENT TO DISMISS

I. MOTION TO DISMISS

On December 13, 2021, Commission Staff filed a motion to dismiss this docket because the approximate 11.11 acres Mount Zion Water Supply Corporation requests to decertify is not located within its certificate of convenience and necessity (CCN) number 10088 in Rockwall County. Commission Staff argues the petition is not necessary and therefore it should be dismissed as a moot question or obsolete petition under 16 Texas Administrative Code (TAC) § 22.181(d)(2). In Order No. 7 filed on January 4, 2022, the administrative law judge (ALJ) granted Mount Zion an extension to respond to the motion to dismiss until January 10, 2022. Mount Zion never responded to Commission Staff’s motion to dismiss.

Under 16 TAC § 22.181(d)(2), a proceeding may be dismissed if it raises moot questions or the petition is obsolete. Here, Commission Staff argued that, because the Commission cannot decertify that which is not certificated, the case is moot or the petition is obsolete. However, “a case becomes moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties - that is, if the issues presented are no longer ‘live’, or if the parties lack a legally cognizable interest in the outcome.” *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 162 (Tex. 2012). In civil litigation, “a court cannot decide a case that has become moot during the pendency of the litigation.” *Id.* (emphasis added). “A case becomes moot when a justiciable controversy between the parties ceases to exist.” *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). In other words, a controversy must exist at every stage of the legal proceeding or the case becomes moot.

If the approximate 11.11 acre tract of land was not within the CCN at the time Mount Zion filed its petition, the petition did not become moot or obsolete. Accordingly, Commission Staff's motion to dismiss cannot be granted. The ALJ denies the motion to dismiss.

II. NOTICE OF INTENT TO DISMISS

Under 16 TAC § 22.181(a) and (e), dismissal of a proceeding may be made “upon the motion of the presiding officer or the motion of any party.” Under 16 TAC § 22.181(e)(2), a presiding officer's motion must be provided by written order or stated on the record. By copy of this order, the parties are notified that the ALJ intends to file a proposal for decision to dismiss this proceeding under 16 TAC § 22.181(d)(8) for Mount Zion's failure to state a claim for which relief can be granted due to the tract of land in which it seeks release of not being within its CCN. As specified in 16 TAC § 22.181(e)(3), Mount Zion and Commission Staff may file written responses to this order by no later than 20 days following receipt of the order.

Signed at Austin, Texas the 4th day of March 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE