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Received - 2022-07-28 12:18:44 PM
Control Number - 52434
ItemNumber - 40

DOCKET NO. 52434

PETITION BY CELINA PARTNERS, LTD.,	§	BEFORE THE
FOR EXPEDITED RELEASE FROM WATER	§	PUBLIC UTILITY COMMISSION
CCN NO 10150 HELD BY MARILEE	§	OF TEXAS
SPECIAL UTILITY DISTRICT IN	§	
COLLIN COUNTY	§	

PETITIONER’S NOTICE OF APPEAL OF COMPENSATION AWARD

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Celina Partners, Ltd. (“Petitioner”) files this Appeal of Compensation Award pursuant to 16 Texas Administrative Code Section 22.123. In support, Petitioner respectfully shows the Public Utility Commission (the “Commission”) as follows:

I. BACKGROUND

1. On August 16, 2021, the petitioner filed a Petition for Streamlined Expedited Release pursuant to Texas Water Code Section 13.2541 seeking to decertify approximately 295.854 acres of property (the “Property”) from Marilee Special Utility District’s (“Marilee’s”) Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.

2. On April 4, 2022, the Commission entered its Order granting the Petition (the “Order”). In the Order, the Commission provided as follows:

The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences on the date of this Order in accordance with the schedule adopted in Order No. 7. Any decision on compensation will be made by separate order.

3. On June 13, 2022, the petitioner and Marilee timely submitted appraisal reports for the Property. On July 13, 2022 the Commission submitted its appraisal report for the Property.

4. One July 18, 2022, the Administrative Law Judge issued a Notice of Approval Making a Determination on Compensation (“Notice”), awarding \$89,733.00 to Marilee in

compensation for the streamlined expedited release, and ordering the petitioner to pay that amount within 90 days of the order.

5. Accordingly, the petitioner now appeals this Notice and Order.

II. APPEAL OF NOTICE OF APPROVAL MAKING A DETERMINATION ON COMPENSATION

6. Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Petitioner is immediately prejudiced by the Order because PUC appraisal relied upon in the Order does not properly calculate the amount of “debt service,” does not consider the reasonableness and necessity of attorneys’ fees, and includes Marilee’s fee paid to its appraiser in this calculation.

A. Marilee’s Debt service calculation is hypothetical

7. The appraisal adopted by the PUC assigns debt service compensation based on theoretical capacity, not on actual stranded investment. Stranded investment means that a utility has assets that literally cannot be used – for example a well, pipeline, or other actual physical facilities. Further, the appraisal makes a mathematical calculation regarding “capacity” as the basis for the compensation but ignores the fact that this capacity can be used to serve other development. The petitioner requested information from Marilee regarding its debt and investment, which it failed to provide. Therefore, there is no reasonable basis for the assignment of \$68,271.00 in debt service as compensation to Marilee and the petitioner appeals this award.

B. Attorneys’ fees are not reasonable and necessary and improperly include appraisal fees.

8. The Commission's appraisal includes Marilee's appraisal fee as a portion of its attorney's fees. This is specifically impermissible under the statute. Texas Water Code Section 13.2541(i) provides as follows:

If the petitioner and the certificate holder cannot agree on an independent appraiser within 10 calendar days after the date on which the utility commission approves the petition, the petitioner and the certificate holder shall each engage its own appraiser *at its own expense*, and each appraisal shall be submitted to the utility commission within 70 calendar days after the date on which the utility commission approves the petition.

TEX. WATER CODE 13.2541(i) (emphasis added)

9. Clearly, Marilee's appraisal fee of \$4,288.00 should not be included in the compensation order. Moreover, Marilee's unsupported amount of attorney's fees, in the amount of \$17,174.00 (subtracting the appraisal fee) is neither reasonable nor necessary. The petitioner has incurred only slightly over \$12,000.00 in attorney's fees in this matter. The attorney's fees in Marilee's report are vastly overstated and reflect work that was performed on this file that had no efficacy, purpose or success. Accordingly, the petitioner further appeals the award of attorney's fees as not meeting the reasonable and necessary standard and impermissibly including appraisal fees.

III. PRAYER

For the aforementioned reasons, Petitioners prays that the ALJ Grant Petitioner's Appeal of the Notice and Order.

Respectfully submitted,

COATS ROSE, P.C

By:



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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following attorney of record on or before July 28th 2022 in accordance with 16 TEX. ADMIN. CODE §22.74(c).

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