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PUBLIC UTILITY COMMISSION
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PETITION OF LEGACY EQUESTRIAN § PUBLIC UTILITY COMMISSION
CENTER LLC TO AMEND MARILEE §
SPECIAL UTILITY DISTRICT'S § OF TEXAS
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN COUNTY §
BY EXPEDITED RELEASE §

ORDER ON APPEAL OF ORDER NO. 6

This Order addresses Marilee Special Utility District’s appeal of Order No. 6. The Commission agrees with the administrative law judge that a Commission order granting a petition for streamlined expedited release is a final order that concludes that proceeding and that the determination of compensation for such a release is a separate proceeding. The Commission also agrees that a landowner that successfully petitions the Commission for a streamlined expedited release of a tract of land is responsible for the one-half the cost of a third appraiser and for payment of compensation to the decertified utility even if the landowner sells the tract of land after the Commission grants the petition for release. Accordingly, the Commission denies Marilee’s appeal.

I. Background

Legacy Equestrian Center LLC filed a petition requesting the streamlined expedited release of a tract of land from the certificated area of Marilee Special Utility District.¹ The Commission granted the release of Legacy’s tract of land from Marilee’s certificated service area.² Marilee then filed a motion for rehearing³ that was overruled by operation of law on April 25, 2022.

As required, Legacy and Marilee each engaged its own appraiser and filed their appraisals.⁴ Subsequently, Marilee and Commission Staff filed a joint request for clarification and abatement. In the joint request, Commission Staff stated that they learned from counsel for Legacy that the

¹ Petition (Aug. 16, 2021).

² Order (Mar. 1, 2022).

³ Marilee SUD’s Motion for Rehearing (Mar. 25, 2022).

⁴ Marilee SUD’s Submission of Appraisal (May 10, 2022); Legacy Equestrian’s Submission of Appraisal (May 10, 2022).

tract of land at issue had been sold by Legacy.⁵ Commission Staff and Marilee requested clarification on two issues: whether the streamlined expedited release can proceed at all given that the ownership of the tract of land has changed and, if so, what entity will be responsible for the petitioner's portion of the fee for the third appraiser the Commission is required to appoint.⁶ Additionally, Marilee requested clarification on which party will be obligated to compensate it for the release of the tract of land.⁷ Finally, Commission Staff requested abatement of the proceeding pending clarification of these issues.⁸

In Order No. 6, the administrative law judge (ALJ) determined that Legacy's tract of land had been released by the Commission's order granting the petition and consequently that there is no need for clarification on whether the release can proceed.⁹ Further, the ALJ found that the petitioner, Legacy, is statutorily responsible for paying one-half of the cost of the third appraisal.¹⁰ Finally, the ALJ found that under TWC § 13.2541(f), Legacy is responsible for paying the amount of compensation to be awarded, if any, to Marilee SUD.¹¹ For these reasons, the ALJ also denied the request for abatement as unnecessary.¹²

Following Order No. 6, Marilee filed a motion to certify the issues raised in the joint filing for clarification to the Commission.¹³ In Order No. 8, the ALJ declined to certify the issues to the Commission and stated that the appropriate mechanism to contest Order No. 6 would have been to file an appeal of the interim order.¹⁴ Since the deadline to file such an appeal had passed, the ALJ found good cause to extend the deadline for Marilee to file an appeal of Order No. 6.¹⁵ Marilee

⁵ Joint Request for Clarification and Abatement at 1 (Jun. 2, 2022).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ Order No. 6 at 1 (Jun. 10, 2022)

¹⁰ *Id.* (citing Tex. Water Code § 13.2451(i)).

¹¹ *Id.*

¹² *Id.*

¹³ Merilee's Motion to Certify Issues at 4 (Jun. 16, 2022).

¹⁴ Order No. 8 at 1 (Jun. 27, 2022).

¹⁵ *Id.*

then filed an appeal of Order No. 6.¹⁶ In its appeal, Marilee argues that, because the petitioner sold the tract of land, Legacy no longer has standing to file the petition for release, that therefore there is not petitioner in this case, and that the case “is not final until [Marilee] has been compensated and until and subsequent judicial review of this case has been concluded.”¹⁷ Marilee argues in the alternative that the proceeding should be abated pending judicial review of the order releasing the tract of land in Travis County district court.¹⁸

II. Discussion

The owner of a tract of land may request that the Commission release the tract from a certificated service area by one of several methods.¹⁹ The method at issue in this case is known as a streamlined expedited release.²⁰ Under this method, the landowner may petition the Commission for release and, if the landowner demonstrates that certain requirements are met, the landowner “is entitled to that release.”²¹ The Commission is directed to grant such a petition within 60 days after the petition is filed.²²

If the Commission grants a petition for streamlined expedited release, no other retail public utility may provide service to that tract of land unless just and adequate compensation has been paid to the decertified retail public utility.²³ The Commission may require that the petitioning landowner pay compensation to the certificate holder.²⁴ The amount of compensation, if any, is determined by one or more appraisers²⁵ and the amount finally determined by the specified appraisal process is “binding on the Commission.”²⁶ The compensation must be determined no

¹⁶ Marilee’s Appeal of Order No. 6 (Jun.30, 2022).

¹⁷ Marilee’s Appeal of Order No. 6 at 4–5.

¹⁸ *Id.* at 5–6.

¹⁹ *See*, TWC §§ 13.254, .2541; 16 TAC § 24.245.

²⁰ *See*, TWC § 13.2541(b); 16 TAC § 24.245(h).

²¹ TWC § 13.2541(b).

²² TWC § 13.2541(c).

²³ TWC §§ 13.254(d); .2541(a).

²⁴ TWC § 13.2541(f).

²⁵ *See* TWC 13.2541(g)–(j); .254(g).

²⁶ TWC § 13.2541(g).

later than the 60th day after the Commission receives the final appraisal,²⁷ which in certain circumstances could be up to 100 days after the Commission grants a petition for streamlined expedited release.

A petition for streamlined expedited release and the determination of compensation for that release are two separate proceedings combined for administrative efficiency and convenience under one control number. The Commission's order granting a petition for streamlined expedited release is a final order on the petition that resolves all issues related to the petition. That order is subject to motions for rehearing and subject to judicial review: Marilee filed a petition for judicial review.²⁸

The determination of compensation is mandated by law and is not initiated by any party. The usual practice, as happened in this case, is that the ALJ establishes the deadlines for the petitioner (Legacy) and the certificate holder (Marilee) to file their appraiser's reports and for Commission Staff to file the third appraiser's report.²⁹ These deadlines are dependent on the Commission granting the petition for release and are triggered off the date of the Commission's order.³⁰

Legacy filed a petition for streamlined expedited release of a tract of land that it owned, and it owned that tract at the time the Commission granted its petition. When the Commission issued its order, Legacy's tract was removed from Marilee's certificated service area and Marilee's certificate of convenience and necessity was amended to reflect the removal of that tract of land. No action on the part of Legacy, including the sale of the property, can change these results. Thus, as the ALJ stated, there was no need for clarification on whether the release could proceed because the release occurred upon issuance of the Commission's order. Of course, the Commission's order is subject to judicial review.

²⁷ TWC § 13.2541(j)(1).

²⁸ *Marilee Special Util. Dist. v. Pub Util Comm'n*, No. D-1-GN-22-002608 (126th Dist. Ct., Travis County, Tex., petition filed Jun. 7, 2022),

²⁹ *See*, Order No. 2, finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule at 2 (Sep. 15, 2021)

³⁰ *See id.*

Marilee’s argument that Legacy no longer has a right to file the petition for release is unavailing. Its contention that the proceeding on the petition for release does not end “until it has been compensated and until subsequent judicial review has been concluded” is inconsistent with applicable law and unsupported by citation to any legal authority. As the owner of the tract in issue from the time the petition was filed until the Commission granted the release, Legacy “is entitled to that release.”³¹

A landowner that files a petition for streamlined expedited release is subject to certain specified obligations that are relevant here if the Commission grants the petition. The petitioning landowner must pay compensation to the certificate holder.³² The petitioning landowner must, if it cannot agree with the certificate holder on an independent appraiser, hire its own appraiser at its own expense and submit an appraisal to the Commission.³³ And the petitioning landowner must pay one-half of the cost of a third appraiser appointed by the Commission.³⁴

Legacy filed a petition for streamlined expedited release and, when the Commission granted the requested release, became subject to the statutory obligations regarding compensation discussed above. Legacy agrees that it is subject to these obligations. The statute and Commission rules clearly lay out these payment obligations and no further clarification is needed. Marilee’s assertion that “[t]here is now no petitioner to compensate [Marilee]” is incorrect: Legacy has a legal obligation to compensate Marilee and the Commission has the obligation to ensure that Legacy pays compensation to Marilee no later than the 90th calendar day after the date the amount of compensation has been determined.³⁵

In addition, Marilee’s request to abate the determination of compensation—the only matter left to be determined—until the conclusion of judicial review of the Commission’s order granting the release of Legacy’s tract of land is inconsistent with the prescribed compensation deadlines. Further, there is no provision that allows the Commission to delay the determination and payment of compensation until after judicial review has been completed on the Commission’s decision to

³¹ TWC § 13.2541(b).

³² TWC § 13.2541(f), (j)(1).

³³ TWC § 13.2541(i).

³⁴ TWC § 13.2541(i).

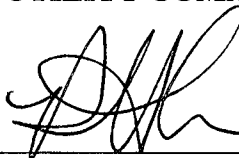
³⁵ TWC § 13.2541(j)(2).

grant the release of Legacy's property. Such a delay would contravene the applicable deadlines in statute.

For the reasons discussed in this Order, the Commission denies Marilee SUD's appeal of Order No. 6.

Signed at Austin, Texas the 6th day of September 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



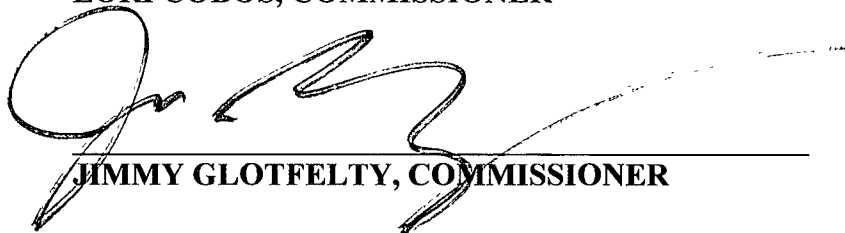
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