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DOCKET NO. 52532

**PETITION OF E REAL ESTATE, LLC § PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE (TRACT 3) §**

COMMISSION STAFF'S CORRECTIONS AND EXCEPTIONS TO THE PROPOSED ORDER

On June 29, 2022, the Office of Policy and Docket Management (OPDM) filed a Proposed Order and Memorandum requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission), E Real Estate, LLC (E Real Estate), and Marilee Special Utility District's (Marilee SUD) to file any corrections or exceptions to the Proposed Order on or before July 13, 2022. Therefore, this pleading is timely filed.

I. CORRECTIONS AND EXCEPTIONS

Staff has reviewed the Proposed Order and respectfully proposes the following corrections and exceptions to the Proposed Order:

1. Revise Finding of Fact No. 7.
 7. On October 8, ~~2022~~ 2021, the petitioner filed supplemental information which includes better copies of the maps and deed provided with the petition.
2. Add additional conclusions of law under Conclusion of Law No. 18, regarding compensation.
 19. The Commission has authority to determine the amount of compensation to be awarded after granting streamlined expedited release under TWC §§ 13.254 and 13.2541.
 20. Under 16 TAC § 24.245(i)(2), if the petitioner and CCN holder cannot agree on compensation and cannot agree upon an independent appraiser, they must each engage their own appraiser at their own expense, and each appraiser's report must be submitted to the Commission within 70 days after release is granted. After receiving the appraisals, the Commission must appoint a third appraiser who must make a determination of compensation within 100 days after release is granted. The

determination by the Commission's appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the CCN holder and the petitioners.

21. Under TWC § 13.2541(i) and 16 TAC § 24.245(i)(2)(B), the petitioner and CCN holder must each pay half the cost of the Commission-appointed appraisal directly to the Commission-appointed Appraiser.
3. Revise Ordering Paragraph No. 7.
 7. 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. 5. Any decision on compensation will be made by a separate order. If it becomes necessary for the Commission to appoint a third appraiser to make a determination on compensation, the petitioner and CCN holder must engage with the Commission-appointed appraiser to extent required by the business practices of the Commission-appointed appraiser.

Due to ongoing issues with the compensation phase in other pending streamlined expedited release dockets, Staff recommends that it has become absolutely necessary for the petitioner and CCN holder to be *ordered* to engage with the Commission-appointed appraiser, according to the business practices of the Commission-appointed appraiser. Notably, in Docket Nos. 50404¹ and 52101,² Staff has had difficulty in getting counsel for the petitioners in those dockets to engage with Staff's selected appraiser.³ Further, in Docket No. 51973,⁴ after the Commission-appointed

¹ *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404, Commission Staff's Informational Filing and Request for Clarification and Abatement (Jun. 9, 2022).

² *Petition Of CCD-North Sky, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52101, Commission Staff's Request for Extension (Jun. 22, 2022) and Commission Staff's Request for Extension (Jul. 11, 2022).

³ *See Activities Related to Delegation Authority Generally to the Executive Director*, Project No. 43517, Order Delegating Authority to the Executive Director to Appoint Appraisers (Nov. 20, 2015) for Staff's authority to select the Commission-appointed appraiser.

⁴ *Petition of Rodney Earl Mohnke, Stephen Lee Mohnke, Melvin Max Mohnke, Kenneth Wayne Mohnke, Kathleen Ann Mohnke-Blakely, and Mel Mohnke, Trustee of the Mohnke Living Trust Dated to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51973, Notice of Noncompliance (Jun. 7, 2022)

appraiser submitted the third appraisal report and the Commission entered a notice of approval making a determination on compensation, the Commission-appointed appraiser has yet to receive payment from the petitioner and CCN holder, despite the notice of approval ordering both to pay half the cost of the Commission-appointed appraiser within 30 days of the order. In consideration of these pending dockets and the high likelihood for future dockets to have similar issues, which includes and is not limited to waiting for a notice of approval to be filed making a determination on compensation and ordering a petitioner and CCN holder to pay half the cost of the Commission-appointed appraiser, Staff's ability to select and work with an appraiser from its limited list to timely satisfy the requirements under TWC § 13.2541(i) and 16 TAC § 24.245(i)(2)(B) is wholly frustrated, such that Staff cannot adhere to the Legislature's intent for the Commission-appointed appraiser's appraisal report to be filed within 100 days after the order granting the streamlined expedited release.

Additionally, given that the statute and rule require the petitioner and CCN holder to each *engage* its own appraiser at its own expense, which presumably would require both to follow the business practices of their engaged appraisers, it would be illogical if both were not required or ordered to *engage* with the Commission-appointed appraiser, especially since both are responsible for the costs and have to directly pay the Commission-appointed appraiser. It would also be illogical if the Commission-appointed appraiser had to change their business practices such as requiring a retainer or having signed engagement letters from the petitioner and CCN holder before performing the appraisal, especially since both are responsible for the costs and have to directly pay the Commission-appointed appraiser. The Legislature did not intend for such illogical procedures to be allowed in order for the Commission-appointed appraiser to provide their services. Therefore, Staff recommends that the orders granting release should also order the petitioner and CCN holder to engage with the Commission-appointed appraiser, according to the business practices of the Commission-appointed appraiser, in the event a Commission-appointed appraiser becomes necessary.

II. CONCLUSION

Staff respectfully recommends that the Proposed Order be revised in accordance with the corrections and exceptions proposed above.

Dated: July 13, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on July 13, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Scott Miles
Scott Miles