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| PETITION BY RESIDENTS OF GRAND LAKES MUNICIPAL UTILITY DISTRICT NO. 2 APPEALING THE WATER RATES ESTABLISHED BY THE DISTRICT'S BOARD OF DIRECTORS | § § § § § | BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS |
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GRAND LAKES MUNICIPAL UTILITY DISTRICT NO. 2'S RESPONSE TO PETITIONERS' MOTION TO RECUSE ALJ KATIE MOORE MARX

COMES NOW, Grand Lakes Municipal Utility District No. 2 (GLMUD) and files this Response to Petitioners' Motion to Recuse Administrative Law Judge (ALJ) Katie Moore Marx pursuant to Order No. 8.¹ GLMUD respectfully shows as follows:

I. BACKGROUND

On July 23, 2024,² the ALJ filed a Proposal for Decision (PFD) recommending that the Public Utility Commission of Texas (Commission) dismiss the appeal filed against GLMUD on May 7, 2024, due to lack of jurisdiction.³ The following day, on July 24, 2024, Petitioners⁴ made seven (7) different filings all related to the PFD, including a Motion to Recuse the ALJ from this proceeding (Motion).⁵ On July 28, 2024, the Commission issued Order No. 8, establishing deadlines for responses and a ruling on the motion to recuse the ALJ. Accordingly, this Response is timely filed.

II. THE ALJ DOES NOT MEET GROUNDS FOR RECUSAL

Petitioners baselessly argue that the ALJ must be recused from this proceeding under Tex. Rule of Civil Procedure (TRCP) 18b(b) and 16 Tex. Admin. Code (TAC) §§ 22.3(c), (e). Under these rules, a judge may be recused when “the judge’s impartiality might reasonably be questioned,” or “the judge has a personal bias or prejudice concerning the subject matter or a party.”⁶ In a motion to recuse an ALJ filed at the Commission, the motion shall be made on

¹ Order No. 8. – Establishing Deadlines for Responses and Ruling (Jul. 24, 2024) (Order No. 8).

² Proposal for Decision with Memorandum (Jul. 23, 2024) (PFD).

³ *Id.* at 1.

⁴ It is still unclear as to whether Mr. Wakilch has authority to represent the other signatories to the appeal.

⁵ Petitioners' Motion to Recuse ALJ Katie Moore Marx for Conscious Tampering with the Case (Jul. 24, 2024) (Motion to Recuse).

⁶ Tex. R. Civ. Proc. (TRCP) 18b(b)(1), (2).

personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.⁷

Petitioners have pleaded absolutely no personal knowledge or evidence of any impartiality or prejudice held by the ALJ such that she should be recused from adjudicating this proceeding. The Motion repeatedly uses words like “malicious,” “reprehensible,” “misleading,” and “unwarranted” to describe the ALJ’s actions through the PFD, yet provides no proof or personal knowledge to support these egregious assertions—only assumptions and personal grievance. Nowhere in this Motion is there evidence that the ALJ has acted with bias toward the Staff or GLMUD. Petitioners argue that simply because the ALJ followed the plain letter of the law, she should be recused. After spending six (6) pages excoriating the ALJ for issuing a PFD that does not side with Petitioners, the Motion finally argues that the PFD errs in recommending dismissal of the appeal for lack of jurisdiction because there is a dispute regarding the effective date.⁸ The issue surrounding the scrivener’s error was briefed in detail.⁹ The PFD correctly found that the scrivener’s error does not invalidate legal documents and made the appropriate findings of fact to reflect the black letter of the law.¹⁰ Simply because the ALJ performed her duties in analyzing the relevant laws controlling the outcome of this case does not render her biased or prejudiced. The logic behind Petitioners’ Motion would effectively remove all decisionmakers for performing their duties under the law. Moreover, if every losing party filed a motion to recuse the judge adjudicating the case, our legal system would grind to a halt. While recusal is certainly warranted and appropriate in specific, enumerated instances, there is no evidence to warrant such a motion in this proceeding.

The only purported “evidence” Petitioners use to support their Motion are emails between Staff counsel and the undersigned counsel conferring on a procedural schedule.¹¹ The Motion accuses the ALJ of failing to take action against PUC attorney for communicating with the undersigned counsel. Petitioners failed to include that, pursuant to traditional Commission

⁷ 16 Tex. Admin. Code (TAC) § 22.3(c)(1).

⁸ Motion to Recuse at 7.

⁹ Grand Lakes Municipal Utility District No. 2’s Motion to Dismiss and Response to Petition (Jun. 4, 2024) (Motion to Dismiss).

¹⁰ PFD at Findings of Fact No. 4; *see* Motion to Dismiss at 3-4.

¹¹ Motion to Recuse at 5-7.

practice, the ALJ issued three (3) separate orders requiring all parties to confer and file comments on how the proceeding should be processed and/or a procedural schedule.¹² Counsel were obeying Commission orders and ensuring that established deadlines would be met.

The other “evidence” Petitioners provided are arguments akin to exceptions and address disagreement with the PFD’s Conclusions of Law. In fact, most of these arguments are copied and pasted from Petitioners’ exceptions filed on July 23, 2024.¹³ GLMUD will address these exceptions on the ordered due date, but notes that these arguments are specious, inflammatory, and not based in law or fact. These arguments are not evidence, so much as a disagreement on the facts, misrepresentation of the controlling law, and are traditionally addressed in motion practice.

The facts are simple: the Petitioners did not meet the statutorily required deadline for filing a rate appeal, GLMUD moved to dismiss on those grounds, the Staff concurred, and the ALJ issued a PFD recommending dismissal. Because Petitioners disagree with the positions taken by other parties, as supported by *the law* and affirmed by the ALJ, Petitioners have lobbed unwarranted and harassing filings, grievances, and threats against those individuals. The ALJ issued a PFD in line with Commission precedent and statutory requirements. She did not show bias, malice, prejudice, or intend to inflict harm. The ALJ has acted in the ordinary course of business, issuing rulings on a normal schedule. One party’s frustration with the timing and process does not equate to another party’s intended malice and prejudice.

Petitioners have shown that they are impatient and uneducated regarding Commission standards and practice. They have repeatedly resorted to baseless, unfounded harassment of the participating parties and their attorneys, and now lob fabricated complaints against the ALJ for performing her duties. Petitioners’ Motion is completely baseless, provides no supporting evidence or personal knowledge as required under the rules, and should be denied.

¹² Order No. 1 – Requiring Responses and Addressing Other Procedural Matters (May 9, 2024) (Order No. 1); Order No. 2 – Granting Extension, Overruling Objection to Extension, Requiring Proof of Representation, and Revising Deadlines (May 16, 2024) (Order No. 2); Order No. 6 – Establishing Deadlines for Responses to Interim Rates, Requiring Commission Staff Comments, Denying Petitioners’ Request, Lifting Stay, Requiring Proof of Representation, and Establishing Procedural Schedule (Jun. 10, 2024) (Order No. 6).

¹³ Petitioners’ Exceptions to the ALJ’s Baseless Proposal for Decision. The PFD is based on conscious, malicious tampering with the facts, evidence, and law. Petitioners will shortly report ALJ Katie Moore Marx to the State Commission on Judicial Conduct at 6-7 (Jul. 23, 2024) (Petitioners’ Exceptions).

III. PETITIONERS HAVE CONTINUALLY VIOLATED THE COMMISSION'S STANDARDS OF CONDUCT

The Commission's procedural rules require that "[e]very person appearing in any proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer, and all other persons participating in the proceeding."¹⁴ This requirement applies to *pro se* parties appearing before the Commission—not just attorneys. Petitioners have repeatedly violated this requirement for professional courtesy and decorum, going so far as to file baseless grievances against the Staff attorney assigned to this case and the undersigned counsel at the State Bar of Texas, and allegedly at the Texas Department of Public Safety, Travis County District Attorney, Austin Police Department, and the Governor's Office.¹⁵ Petitioners have repeatedly made false, harassing, accusatory, and derogatory comments about the attorneys in this case, the board members and outside counsel for GLMUD—statements for which an attorney would be reasonably sanctioned.

As discussed above, Petitioners' grievance extends from required conference on procedural schedule and processing of this case.¹⁶ The accusations are baseless and are made for the purpose of harassment. With this Motion, the Petitioners have extended their pattern of harassment to the ALJ, threatening to file complaints with the Governor's Office, State Office of Administrative Hearing (SOAH), the Travis County District Attorney, and "inviting the media to look into the case."¹⁷ Petitioners have made over seven (7) filings since the ALJ issued the PFD related to the ALJ's purported "tampering" of the case. There is no evidence of tampering, nor is there any evidence of wrongdoing on behalf of any party, including the ALJ, in this case except for Petitioners.

16 TAC § 22.3(e)(7) allows the ALJ, if she determines that a motion for recusal was frivolous or capricious, the movant may be sanctioned in accordance with 16 TAC § 22.161. As discussed at length above, the Motion provides no evidence of bias or impartiality. Furthermore, the PFD's findings of fact and conclusions of law are supported by the extensive briefing and controlling law. Cause exists to find that the Petitioners' Motion is frivolous, causing expenditure

¹⁴ 16 TAC § 22.3(a).

¹⁵ Motion to Recuse at 4-5.

¹⁶ Order No. 1; Order No. 2; Order No. 6.

¹⁷ Motion to Recuse at 8.

of more legal expenses to respond to the Motion and accompanying pleadings, as it contains no evidence or personal knowledge as required under 16 TAC § 22.3(e)(1). Furthermore, the Motion is capricious, as it was filed for the purpose of harassment, contains unwarranted allegations of wrongdoing, and is completely divorced from law or fact.

Sanctions may be imposed on a party, after notice and an opportunity for hearing, for filing such a Motion.¹⁸ GLMUD does not wish to incur any additional expenses related to litigating this appeal. However, if the Commission does not adopt the PFD and this appeal continues at SOAH, GLMUD has good cause to file for sanctions against Petitioners and will seek sanctions to the extent allowed by law for such continued harassment and unprofessional behavior.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, GLMUD respectfully requests that the Commission deny the Motion for Recusal. GLMUD further requests any other relief to which it may be entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



JAMIE L. MAULDIN
State Bar No. 24065694
jmauldin@lglawfirm.com

RICHARD A. ARNETT II
State Bar No. 24131230
rarnett@lglawfirm.com

**ATTORNEYS FOR GRAND LAKES
MUNICIPAL UTILITY DISTRICT NO. 2**

¹⁸ 16 TAC § 22.161(b)(1).

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 via electronic mail on July 29, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.



A handwritten signature in black ink, appearing to read 'J. Mauldin', is positioned above a horizontal line.

JAMIE L. MAULDIN