



Control Number: 49863



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PUC DOCKET NO. 49863

PETITION OF ALAMO MISSION LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND ROCKETT SPECIAL	§	
UTILITY DISTRICT'S WATER	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN ELLIS COUNTY	§	
BY EXPEDITED RELEASE	§	

**ROCKETT SPECIAL UTILITY DISTRICT'S
RESPONSE TO PETITIONER'S MOTION TO STRIKE
AND MOTION FOR LEAVE**

COMES NOW, ROCKETT SPECIAL UTILITY DISTRICT ("Rockett") and files its Response to Petitioner's Motion to Strike filed by Alamo Mission LLC ("Petitioner") in this Docket pursuant to 16 Texas Administrative Code (TAC) § 22.78. In support thereof, Rockett SUD respectfully would show as follows:

Overview

1. Petitioner filed its Motion to Strike Rockett's Supplemental Filing, Item 13 of this Docket, on October 2, 2019 ("Motion to Strike"). 16 TAC § 22.78(a) provides that a responsive pleading shall be filed within five working days after receipt of the pleading to which the response is made; therefore, this response to the Motion to Strike is timely filed.

2. The Petition for Expedited Release pursuant to Texas Water Code (TWC) § 13.254(a-5) was filed by Petitioner in this Docket on August 16, 2019 (the "Petition"). On September 26, 2019, Rockett became indebted on a loan guaranteed by the United States Department of Agriculture (USDA) as contemplated by 7 U.S.C. § 1926(a)-(b); thus, Rockett immediately filed the Supplement to its Response, Item 11 in this Docket ("Supplement"), to give notice to the Public Utility Commission of Texas (PUC) and the Petitioner that Rockett enjoys the protections of 7 U.S.C. § 1926(b) ("1926(b)") and the

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ruling of U.S. District Judge Yeakel in the Western District of Texas on March 27, 2019¹, since both directly affect this Docket.

**Petitioner's Motion to Strike should be dismissed,
as federal law supersedes state law under the Supremacy Clause**

3. In Petitioner's Motion to Strike, Item 13 of this Docket filed on October 2, 2019, Petitioner states that Rockett's Supplement was untimely filed per 16 TAC § 245(l)(5) and should not be accepted. However, the Petition and the matter of this Docket is now preempted by federal law, as U.S. District Judge Yeakel ruled that TWC § 13.254(a-5) and (a-6) is preempted by 7 U.S.C. § 1926 and is void.² In accordance with the Supremacy Clause³, federal law supersedes state law, including state procedural rules. Despite the PUC's procedural rules as to when documents may be filed, the entire matter is preempted by federal law under the Supremacy Clause, and those PUC procedural rules cannot be used to evade or interfere with 1926(b) protections.

4. Rockett's Supplement is in effect a warning that the PUC must not act in a manner that is contrary to federal law or contrary to the spirit of the March 27, 2019 ruling by Judge Yeakel. Actions taken by any person or entity, that interferes with Rockett's federal rights under 1926(b), are also a violation of 1926(b). Thus, any further actions taken by Petitioner and the PUC would be a willful and intentional violation of federal law, including 42 U.S.C. § 1983, under which 1926(b) is enforced.

Motion for Leave

5. Even if the PUC acts in violation of the Supremacy Clause as it relates to the specific circumstances of Rockett in this Docket, 16 TAC § 22.76(a)(2) provides that

¹ *Crystal Clear Special Utility District v. Walker, et. al.* No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

² See *id.*, at *2.

³ U.S. Const. art. VI, § 2.

a pleading may be amended with leave of the presiding officer, provided, among other things, that it is filed at least seven days before the hearing on the merits. A hearing on the merits has not been set in this Docket.

6. Due to the circumstance that Rockett became federally indebted *after* Rockett timely filed its Response in this Docket, there was urgency that Rockett give notice to all parties of its eligibility for 1926(b) protection and the ruling of Judge Yeakel, as it directly relates to the Petition and this Docket; thus, Rockett immediately filed its Supplement and inadvertently left out the specific request for leave in its Supplement.

7. Rockett respectfully requests leave to file its Supplement, Item 11 of this Docket, as the other requirements of 16 TAC § 22.76(a)(2) were fulfilled when Rockett filed its Supplement on September 30, 2019, including that the Supplement was properly served to all parties in this Docket. Because Rockett properly served the Supplement, and for efficiency and conservation of materials as the Supplement was approximately 76 pages, Rockett respectfully requests that the presiding officer accept the Item 11 filed in this Docket to be incorporated as part of this request for leave.

PRAYER

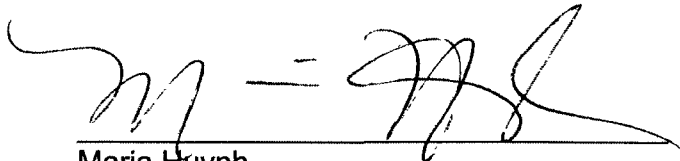
WHEREFORE, PREMISES CONSIDERED, Rockett respectfully requests leave to file its Supplement, previously filed in this Docket as Item 11, for such Supplement to be incorporated and made part of this request for leave, and that Petitioner's Motion to Strike be dismissed, in light of the matters in this Docket now being preempted by federal law under the Supremacy Clause, as provided herein.

Rockett also requests that the PUC immediately suspend and/or dismiss all further proceedings in this matter, for the reason that TWC § 13.254(a-5) and (a-6) have been

determined void in the context in which the subject of a proceeding before the PUC involves an entity which is entitled to the protection of § 1926(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

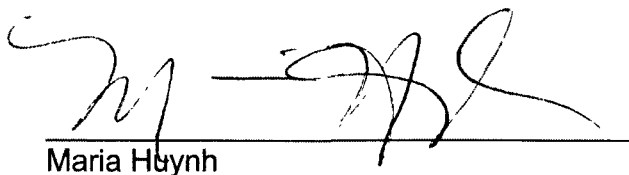
I certify that a true and correct copy of this document was served on the following parties of record on October 2, 2019, in accordance with 16 TAC § 22.74.

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