



Control Number: 49863



Item Number: 16

Addendum StartPage: 0

DOCKET NO. 49863

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

§  
§  
§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
OF TEXAS

RECEIVED  
2019 OCT - 5 PM 2:02  
PUBLIC UTILITY COMMISSION

**ALAMO MISSION LLC'S REPLY TO  
ROCKETT SUD'S RESPONSES TO PETITION FOR EXPEDITED RELEASE AND  
MOTION TO STRIKE**

COMES NOW Alamo Mission LLC ("Petitioner") and files this Reply to Rockett Special Utility District's ("Rockett") Response and Objection to Petition for Expedited Release filed with the Public Utility Commission of Texas on September 24, 2019, Rockett's Supplemental Response filed on September 27, 2019, and Rockett's Response to Petitioner's Motion to Strike. Order No. 2 of this Docket provided a deadline of October 8, 2019 for Petitioner's reply to Rockett's response and Commission Staff's recommendation on the final disposition. This Reply is timely filed.

**I. OVERVIEW**

Petitioner filed a Petition for Streamlined Expedited Release, seeking to decertify approximately 167 acres of real property in Ellis County (the "Property") from Rockett's CCN No. 10099. Rockett filed a response in opposition to the Petition, based on the erroneous argument that Rockett is providing service to the Property and incorrectly asserting that Rockett "continues to provide water service to the Property through a 5/8" x 3/4" water meter."<sup>1</sup> That statement is plainly false. The purported single active meter is in fact an old empty meter box, which is locked off, has no water meter in it and has plainly been unused for a long time.<sup>2</sup> Legal precedent, and

<sup>1</sup> Rockett's Special Utility District's Response and Objection to Petition for Expedited Relief ("Rockett's Response"), p. 2.

<sup>2</sup> Affidavit of Travis J. Snook, attached hereto as **Exhibit 1**.

the PUC's decisions, are clear – a property is not “receiving water service” under such circumstances.<sup>3</sup> Even Rockett's own customer service policies, set forth in Section E of its current Rate Order, make clear that when it removes a water meter from a meter box it considers water service to the property to have ended, and a new service request under Section G of Rockett's Rate Order is required for “activation of service.”<sup>4</sup>

Not only is Rockett *not* providing service to the Property, but Rockett has also informed Petitioner that Rockett it is *not capable* of providing water to the Project which is proposed on the Property, due Rockett's lack of available water supply and its inability to secure the needed water.<sup>5</sup> Rockett's conclusion that it is unable to supply the Project occurred after Rockett and its engineer were provided the full details of the Project, its timing and water needs.

Rockett also incorrectly claims, citing a federal district court order in an entirely separate case,<sup>6</sup> that the PUC is precluded by 7 U.S.C. § 1926(b) from considering the Petition because Rockett has recently incurred federal debt. The federal district court decisions cited by Rockett do not control here. And Rockett is not entitled to § 1926(b) protection because it has not “provided or made service available” to the disputed area.

PUC Staff has reviewed the Petition and concluded that it meets the requirements for expedited release.<sup>7</sup> Petitioner is entitled to expedited release under the applicable statute and rules, and its Petition for Streamlined Expedited Release should be granted.

---

<sup>3</sup> See *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019); *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App. – Austin 2014).

<sup>4</sup> Rate Order from Rockett's website at <https://rockettwater.com/all-forms-and-reports> (last visited 9.26.2019).

<sup>5</sup> Supplemental Affidavit of David Thomas, attached hereto as **Exhibit 2**.

<sup>6</sup> Rockett incorrectly identifies one of the district court's orders as Fifth Circuit decisions. *E.g.*, Rockett's Supplemental Filing at 2, 3 (citing *Crystal Clear Spec. Util. Dist. v. Marquez*, 316 F. Supp. 3d 965 (W.D. 2018)). Rockett also relies on *Crystal Clear Special Utility District v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. 2019). These orders arise in the same litigation. The name change reflects changing PUC Commissioners.

<sup>7</sup> Commission Staff's Recommendation on Final Disposition, September 26, 2019 (“Staff's Recommendation”).

## II. FACTUAL BACKGROUND

### a. Rockett is unable to provide the water that Petitioner needs for its operations on the Property.

The Property is owned by Petitioner in fee simple title and is to be used for a large high-technology data center (the “Project”), which will provide major economic benefits to the region, both during and after construction.<sup>8</sup> The Project requires a significant amount of reliable water supply for its operations.<sup>9</sup>

Prior to filing the Petition, Petitioner held meetings and had discussions with Rockett regarding Rockett’s ability to serve the Project with water.<sup>10</sup> Rockett ultimately determined it was unable to provide water service to the Project.<sup>11</sup> Specifically, Rockett’s General Manager made clear that Rockett “*does not currently have available water supply necessary to serve the Project and will not be capable of procuring additional water supply in the requested timeline. . . [Rockett] does not have any existing water service or water pipelines that can provide service to the Project site as requested.*”<sup>12</sup> Petitioner was therefore forced to pursue other options in securing the water necessary for the Project.

### b. No water facilities are serving the Property.

Contrary to Rockett’s assertions in its Response, there are no water facilities serving the Property.<sup>13</sup> A representative of the Petitioner has visited the location at which Rockett alleges a water meter is located and discovered an empty water meter box at that location.<sup>14</sup> The meter box was difficult to locate and was covered with dead weeds and filled with dirt.<sup>15</sup> There was *no water*

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at Attachment A (emphasis added).

<sup>13</sup> Exhibit 1; Exhibit 2.

<sup>14</sup> Exhibit 1; Rockett’s Response, at Exhibit A.

<sup>15</sup> Exhibit 1.

*meter* in the meter box, and there was a large lock on a closed valve on the utility side of the meter box.<sup>16</sup> The meter box is clearly inactive and not serving the Property. Petitioner searched other parts of the Property, including searching the entire length of the Property along East Ovilla Road, but was unable to locate any additional water facilities or water meters.<sup>17</sup>

In addition, the current tenant at the Property, Mr. Brian Meister, has *never* received water service at the Property from Rockett since his lease began in 2016.<sup>18</sup>

### **III. THE PROPERTY IS NOT “RECEIVING SERVICE” FROM ROCKETT.**

The Water Code provides that the owner of a tract of land that is 25 acres or larger and located in certain counties may petition for, and is *entitled to*, expedited release of that tract from a CCN if the tract “is not receiving water or sewer service.”<sup>19</sup> As Staff has concluded, and contrary to Rockett’s assertions, the Property is *not* receiving service and is entitled to expedited release from Rockett’s CCN.<sup>20</sup>

Rockett argues that the Property is not subject to expedited release because it is “currently providing water service to the Property.”<sup>21</sup> Rockett asserts four grounds for its purported service to the Property:

1. An existing 12” waterline located on the South portion of the Property;
2. Use and transmission of water to customers through the 12” waterline;

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Exhibit 2.

<sup>19</sup> Water Code 13.254(a-5). This section was redesignated, effective September 1, 2019, as Water Code § 13.2541(b).

<sup>20</sup> “Service” means “any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.” Tex. Water Code § 13.002(21).

<sup>21</sup> Rockett’s Response, p. 1. Of note, in various places, Rockett argues in terms of its “providing water service.” As discussed by the Austin Court of Appeals in a similar case, however, the question is *not* whether Rockett was “providing water service,” but whether the Property was “receiving water service.” See *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App. – Austin 2014). In this case, neither was true – Rockett was not providing service, and the Property was not receiving service from Rockett.

3. Past and (alleged) current provision of water through a 5/8" x 3/4" water meter tap at the Property; and

4. Past establishment of accounts for former users at the Property.

Given the actual facts here, none of these grounds constitute service.

Rockett's first two related points – that a waterline is located on the property and that such line is used to transmit water to customers – have been expressly rejected by both the PUC and the courts as a basis for concluding that a property is receiving service.<sup>22</sup> For instance, the PUC rejected a CCN holder's argument that the property at issue was receiving water service in a case in which two active water lines crossed the property, one active water line was adjacent to the property, and two inactive water meter boxes were located on the property.<sup>23</sup> On appeal, the Austin Court upheld the PUC's conclusion that the property was not receiving water service.<sup>24</sup> In a similar case, the Austin Court likewise upheld the PUC's conclusion that a property was not receiving water service and stated that "the mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was 'receiving water service.'"<sup>25</sup>

Rockett also argues that it "has provided and continues to provide water service to the Property through a 5/8" x 3/4" water meter."<sup>26</sup> This contention, however, is demonstrably false. Rockett is clearly *not* providing service – the only meter box on the property is inactive, *does not contain a water meter*, and is locked.<sup>27</sup> The empty meter box was covered with dead weeds, filled

---

<sup>22</sup> See, e.g., *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019); *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App. – Austin 2014).

<sup>23</sup> *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259, at \*4 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App. – Austin 2014).

<sup>26</sup> Rockett's Response, p. 2.

<sup>27</sup> Exhibit 1.

with dirt, and could not have been used recently. The current tenant at the Property has confirmed that he has *never* received water service from Rockett since his lease began in 2016.<sup>28</sup>

Moreover, Rockett's own customer service policies, set forth in Section E of its current Rate Order, make clear that when it removes a water meter from a meter box it considers water service to the property to have ended, or in Rockett's words to have been "disconnected." Thereafter, Rockett requires completion of the requirements of Section G of its tariff for "activation of service."<sup>29</sup> Specifically, the Rate Order states as follows:

14. j) Removal of Meter. After *water service has been disconnected* and no request has been made for re-service or fees paid for such re-service within 45 days, the District reserves the right to *remove the meter(s) from the property*. The District will re-install the meter(s) *after the requirements for activation of service* have been completed in accordance with Section G of the Rate Order.<sup>30</sup>

Finally, Rockett asserts that its establishment of past accounts for former users of the Property supports its position that the Property is receiving water service. This argument is also without merit. The fact that a previous property owner requested a meter or service does not support the conclusion that the Property is receiving service, such that an expedited decertification petition may be defeated. Indeed, the PUC has concluded, in an order upheld by the Austin Court of Appeals, that the *only* relevant time period for consideration is the time that a petition for expedited release is filed and that "[w]hether a tract might have previously received water or sewer service is irrelevant."<sup>31</sup>

---

<sup>28</sup> Exhibit 2.

<sup>29</sup> Furthermore, under the Rate Order, a meter box without a meter is clear evidence that service has been disconnected for at least 45 days.

<sup>30</sup> From Rockett's website at <https://rockettwater.com/all-forms-and-reports> (last visited 9.26.2019) (emphasis added).

<sup>31</sup> *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259, at \*8 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019); *see also*, *Mountain Peak Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-16-00796-CV, 2017 WL 5078034, at \*4 (Tex. App. – Austin Nov. 2, 2017), *review denied* (Mar. 1, 2019) (upholding a PUC Order that allowed a landowner to carve out a 6.7 acre segment of land that was actually receiving water service and to decertify the remainder of the tract).

Several recent PUC cases are consistent with this general principle – that in determining whether a property is receiving service, the PUC will consider only the situation at the time the petition is filed. As an example, in one case, the CCN holder argued against decertification, despite the fact that the property was not receiving actual water service, because it had a pipeline near the property at issue, was serving adjacent land, and had the capacity to serve the property at issue, but the PUC concluded that the property was not receiving water service and that expedited decertification was appropriate.<sup>32</sup>

In another case, the PUC rejected the CCN holder's argument that it was providing service where it showed, among other things, that it had a waterline less than a mile from the tract, it had plans to put a well less than a quarter mile from the tracts, and it had been planning for at least ten years to bring water to the property, including expanding its water system to provide service to the property.<sup>33</sup> The PUC approved the petition after finding that the tracts were *not* receiving water service, as the CCN holder had not performed acts or supplied anything to the property, and there were no committed facilities or lines providing water service to the tract.<sup>34</sup> Finally, the PUC has found that a tract was not receiving water service where the CCN holder had lines committed to the property, including a line that ran alongside the property and another line located 400 feet from the property, it included in its long-range planning an assumption that the property would be fully developed, and had incurred debt in order to be able to provide service within its certificated service area.<sup>35</sup>

---

<sup>32</sup> *Petition of Tejas Creek, Ltd. To Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 48824, Final Order.

<sup>33</sup> *Petition of Sunbelt Estates, LLC to Amend the City of Elmendorf's Water Certificate of Convenience and Necessity in Bexar County by Expedited Release*, Docket No. 49564. Note that the Final Order in this case was issued on September 27, 2019, and it is still subject to a potential motion for rehearing.

<sup>34</sup> *Petition of Sunbelt Estates*, Final Order. Of note, this is the standard articulated in many of the PUC cases.

<sup>35</sup> *Petition of John Kimbro to Amend Monarch Utilities I, LP's Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 49360. Note that the Final Order in this case was issued on September 27, 2019, and it is still subject to a potential motion for rehearing. *See also, Petition of Tyler Oak Springs Development, LLC to Amend Liberty Utilities (Tall Timbers Sewer) Corp.'s Sewer Certificate of Convenience and Necessity in Smith County by Expedited Release*, Docket No. 49460 (rejecting the CCN holder's argument that it was providing sewer service to a tract by maintaining the sewer CCN service area, maintaining a local office and personnel, obtaining a



The law is clear – in determining whether a property is “receiving service,” a fact-driven inquiry into whether the CCN holder has performed acts or supplied anything to the tract is necessary. The mere existence of water lines or facilities on a property, past service, and even concrete plans for future service do not mean a property is “receiving water service” and thus ineligible for expedited release. Here, the existence of water lines, a single old, unused, locked meter box that does not even contain a water meter, and any past service to the property are clearly insufficient to support a conclusion that the Property is “receiving service.” The Property is not receiving water service, and the Petition should be granted.

#### **IV. PREEMPTION**

Rockett contends it is entitled to immediate dismissal of the Petition because it has recently incurred federal debt.<sup>36</sup> Specifically, Rockett contends that 7 U.S.C. § 1926(b) preemption applies—meaning that its service area may not be curtailed and its property is not, by virtue of federal preemption, available for expedited release under Water Code § 13.254(a-5). At the outset, the PUC should not consider this untimely argument. Rockett improperly raised this issue for the first time in an untimely Supplemental Filing, and as discussed in Petitioner’s October 2, 2019 Motion to Strike, the federal preemption issue is not relevant to the proceeding, was not timely raised, and was not filed after requesting leave. Petitioner reurges its Motion to Strike and does not waive such motion by addressing Rockett’s federal preemption argument in this Reply.

If the PUC considers Rockett’s untimely preemption argument, it should reject it. Rockett contends that a federal district court decision in a separate matter controls and essentially prohibits

---

TPDES permit, operating a sewer treatment plant within three miles of the property, and building facilities with a capacity capable of serving the property). The Final Order in the *Tyler Oak Springs* case was also entered on September 27 and subject to a motion for rehearing.

<sup>36</sup> Based on Rockett’s filings, it appears that Rockett does not have a federal loan, but that it may have secured a loan from a private bank that has been guaranteed by the federal government. Supplemental Filing at Exhibit C.

the PUC from considering the Petition. Rockett is wrong. On its face, the decision does not apply here. And because Rockett has not provided or made service available to the disputed property, it is not entitled to § 1926(b) preemption in any event.

Rockett's reliance on the federal district court decision in *Crystal Clear Special Utility District v. Walker* is misguided at best. Far from imposing the broad preemptive effect that Rockett suggests, the order—by its terms—is limited to only the parties and the proceedings in that action.<sup>37</sup>

Moreover, the *Walker* order is not a facial finding that Water Code § 13.254(a-5) is, for all purposes, preempted for any utility with federal debt. Rather, the order properly recognizes that § 1926(b) preemption comes into play only when a utility with federal debt is “otherwise entitled to the protections of 7 U.S.C. § 1926.”<sup>38</sup> Courts have consistently held that a water utility is entitled to the protection of § 1926(b) only when the utility can demonstrate that it has “provided or made service available.”<sup>39</sup> To prove that it has “provided or made service available,” a utility must prove *both* a legal right or duty to serve a particular area and the physical ability to do so.<sup>40</sup> Otherwise, property of “a federally indebted utility could never be decertified, even if it admittedly could not provide service.”<sup>41</sup>

This is precisely the situation here. As demonstrated above, Rockett is not providing—and is admittedly not capable of providing—water service to the Property. Accordingly, Rockett is not entitled to § 1926(b) protection.

---

<sup>37</sup> *Crystal Clear Spec. Util. Dist. v. Walker*, No. 1:17-CV-2554-LY, 2019 WL 2453777, at \*2 (W.D. Tex. 2019) (“[T]he PUC, its officers, employees, and agents are permanently enjoined from enforcing in any manner the order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm’n, Petition of Las Colinas San Marcos Phase I LLC, Docket No. 46148 (Final Order).”).

<sup>38</sup> *Id.*

<sup>39</sup> *Creedmoor-Maha Water Supply Corp. v. Tex. Comm’n on Envtl. Quality*, 307 S.W.3d 505, 522-23 (Tex. App.—Austin 2010, no pet.) (collecting cases).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 521.

Attempting to avoid the plain import of binding Texas precedent, Rockett invokes the Fifth Circuit’s decision in *North Alamo Water Supply Corp. v. City of San Juan* to argue that because the Property is within Rockett’s CCN, Rockett has, by definition, demonstrated it has “provided or made service available” to the Property.<sup>42</sup> Rockett’s reliance on *North Alamo* is also misguided. In preemption decisions, Texas courts are “*obligated* to follow only higher Texas courts and the United States Supreme Court.”<sup>43</sup> The only Texas court to consider the scope of § 1926(b) preemption is the Third Court of Appeals, and it has consistently held that merely demonstrating that property is within a utility’s CCN is insufficient to show that the utility has “provided or made service available.”<sup>44</sup> Rather, and as just explained, more is necessary—the utility must demonstrate that it is actually capable of providing the service requested.

Moreover, in *North Alamo*, the Fifth Circuit did not find § 1926(b) preemption solely on the basis of the water utility’s CCN. Rather, it specifically concluded that the utility had—as a factual matter—“made service available.” The utility demonstrated that it (1) provided water service to subdivisions adjacent to the disputed areas; (2) had lines and adequate facilities to provide service to the disputed areas; and (3) had not refused service to anyone who requested service in its certificated area.<sup>45</sup> Preemption was—in that instance—appropriate.

In contrast, Rockett admittedly is not and cannot provide water service to the Property. Therefore, it is not entitled to § 1926(b) preemption. The PUC should conduct with the decertification proceedings as required under Water Code § 13.254(a-5).

---

<sup>42</sup> Supplemental Filing at 3 (citing *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-16 (5th Cir. 1996)).

<sup>43</sup> *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993) (per curiam).

<sup>44</sup> *Mountain Peak Spec. Util. Dist. v. Pub. Util. Comm’n*, No. 03-16-00796-CV, 2017 WL 5078034, at \*7-9 (Tex. App.—Austin Nov. 2, 2017, pet. denied); *Creedmoor-Maha Water Supply Corp. v. Tex. Comm’n on Envtl. Quality*, 307 S.W.3d 505, 522-23 (Tex. App.—Austin 2010, no pet.).

<sup>45</sup> *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 916 (5th Cir. 1996).

#### IV. NO PROPERTY IS RENDERED USELESS OR VALUELESS.

The version of the statute in effect at the time the Petition was filed allowed that compensation be provided for any property that the PUC determined was “rendered useless or valueless to the decertified retail public utility as a result of the decertification.”<sup>46</sup> No property will be rendered useless or valueless if the Petition is approved, however, as Rockett’s facilities can still be used and useful in providing service in the remainder of its CCN service area.<sup>47</sup> Granting the Petition would have no effect on Rockett’s title to any of its property or facilities, whether located on the Property or elsewhere, and Rockett was not generating any type of revenue stream as a result of the Property’s inclusion in its certificated area.

Indeed, Rockett did not make any argument that property might be rendered useless or valueless in either its Response or its Supplement to the Response. No compensation is owed to Rockett.

#### V. OWNERSHIP

Finally, Rockett erroneously argues that certain wording in the Special Warranty Deed somehow affects Petitioner’s ownership of the Property. The wording raised by Rockett merely deals with the *condition* of the property and certain *representations and warranties* regarding the Property’s condition. That wording does not affect the ownership. Petitioner is the true owner of the Property.<sup>48</sup>

---

<sup>46</sup> Tex. Water Code § 13.254(d).

<sup>47</sup> See *Petition of Tejas Creek, Ltd. To Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 48824, Final Order.

<sup>48</sup> Exhibit 2.

## **VI. PUC STAFF'S RECOMMENDATION**

On September 26, 2019, PUC Staff filed its Recommendation on Final Disposition in this docket. Staff concluded that the Petition meets the requirements for expedited release and should be approved after finding that the Property “is located in a qualifying county (Ellis County), is not receiving water service, and that the aggregated, contiguous tracts of land make up a single property that is at least 25 acres.”<sup>49</sup> In addition, PUC Staff stated that no property will be rendered useless or valueless as a result of the Petition.<sup>50</sup>

Petitioner agrees with the statements and conclusions reached by Staff in its Recommendation. Staff’s Recommendation should be adopted, and the Petition should be approved.

## **VII. CONCLUSION**

Rockett is *not* providing service to the Property, and has made clear that it is *not capable* of providing the requested service to Petitioner’s proposed Project on the Property. Under Rockett’s own service policies, the Property has been disconnected and would require action by the owner for new activation of service. Additionally, because Rockett has not provided or made service available to the Property, § 1926(b) preemption does not apply and does not preclude the PUC from considering the Petition. Petitioner has fully satisfied the criteria found at Water Code § 13.254(a-5) for decertification from Rockett’s CCN, no property is rendered useless or valueless, and Petitioner is entitled to the streamlined expedited release of the Property.

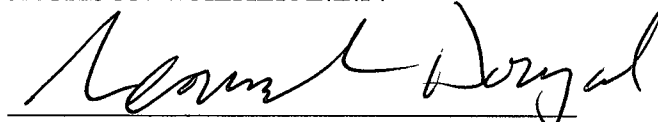
---

<sup>49</sup> Staff’s Recommendation at p. 2.

<sup>50</sup> *Id.*

Respectfully submitted,

JACKSON WALKER L.L.P.



Leonard Dougal - State Bar No. 06031400

Ali Abazari – State Bar No. 00796094

100 Congress, Suite 1100

Austin, Texas 78701

Telephone: (512) 236-2000

Facsimile: (512) 391-2112

Email: ldougal@jw.com

ATTORNEYS FOR ALAMO MISSION LLC

**CERTIFICATE OF SERVICE**

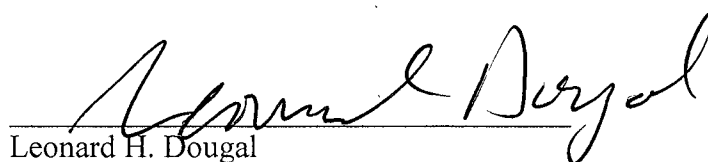
I hereby certify that on the 4<sup>th</sup> day of October, 2019, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

Steven Gonzalez  
Karen S. Hubbard  
Attorney-Legal Division  
Public Utility Commission  
1701 N. Congress  
P. O. Box 13326  
Austin, Texas 78711-3326  
steven.gonzalez@puc.texas.gov  
karen.hubbard@puc.texas.gov

Attorney for the Public Utility Commission

Maria Huynh  
James W. Wilson  
James W. Wilson & Associates, PLLC  
103 West Main Street  
Allen, Texas 75013  
mhuynh@jww-law.com  
jwilson@jww-law.com

Attorneys for Rockett Special Utility District



Leonard H. Dougal

## **EXHIBIT 1**

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	§	

**AFFIDAVIT OF TRAVIS J. SNOOK**

STATE OF TEXAS       §  
                                  §  
COUNTY OF ELLIS     §

Travis J. Snook, having been duly sworn by the undersigned authority, does state under oath the following:

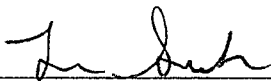
1. My name is Travis J. Snook. I am over the age of 18 and competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit and they are true and correct.
2. I work as Data Center Mechanical Engineer for Google, LLC a company which is affiliated with Alamo Mission LLC, the Petitioner in this docket. My business address is 3651 Railroad Parkway, Midlothian Texas 76065.
3. On September 16, 2019, I personally visited the property that is the subject of the Petition in this docket (the "Property"). The purpose of my visit was to look for any water facilities or water meters that might be on or near the Property. As part of my search, I walked the entire length of the Property along East Ovilla Road, which forms the Property's southern boundary.
4. During the search, I came upon an old empty water meter box, located outside the fence line, and adjacent to East Ovilla Road. The meter box was difficult to locate and was covered with dead weeds. Given the condition of the meter box and the surrounding vegetation I could tell that the meter box had not been used in many months, or even years.
5. After my colleague removed the top of the meter box, we saw that there was no water meter in the meter box. The meter box was clearly inactive and was not serving the Property. The interior of the meter box was filled with dirt, which dirt also clogged a pipe coming out of the meter box. There was a large lock on a closed valve on the utility side of the meter box. Attached hereto as Attachment "A" are two true and accurate photos which I took of the meter box, which accurately show the condition of the meter box as we found it.



6. I have reviewed the "Response and Objection to Petition for Expedited Release" in this docket filed by Rockett Special Utility District (the "Rockett Response"). Numbered Sections 4 and 8 of the Response state "Rockett . . . continues to provide water service to the Property through a 5/8" x 3/4" water meter . . ." In fact, there is no such meter on the Property, only an empty meter box. Those statements by Rockett are not accurate.
7. I have reviewed a recent survey of the legal boundaries of the Property. The large lock on the closed valve in the meter box, and virtually the entirety of the meter box itself, is not located on the Property, rather those facilities are located outside the Property boundary, and fence, in the road right-of-way adjacent to the Property.
8. I have reviewed the map at Exhibit "A" of the Rockett Response. While the map is difficult to read given its small scale, the old empty meter box which I located is at approximately the same location on East Ovilla Road as the circled "x" on the Exhibit "A" map. But, the map is not correct to the extent it purports to show the meter box is located on the Property.

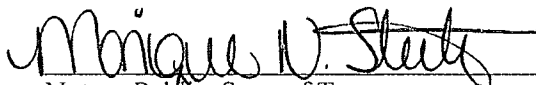
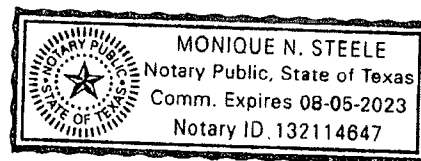
FURTHER AFFIANT SAYETH NOT.

SIGNED this 26 day of September, 2019.



TRAVIS J. SNOOK

SWORN TO AND SUBSCRIBED BEFORE ME by TRAVIS J. SNOOK on September 26, 2019.

  
Notary Public, State of Texas

**ATTACHMENT "A"**

**PHOTOS**







## **EXHIBIT 2**

**DOCKET NO. 49863**

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

**SUPPLEMENTAL AFFIDAVIT OF DAVID THOMAS**

David Thomas, having been duly sworn by the undersigned authority, does state under oath the following:

1. My name is David Thomas. I am over the age of 18 and competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit and they are true and correct.
2. I give this affidavit in my capacity as Manager and I am an authorized representative of Alamo Mission LLC, a Delaware limited liability company ("Alamo Mission" or "Petitioner"). My business address is 2801 Centerville Road 1st Fl., PMB 811 Wilmington DE, 19808.
3. This is a supplement to my affidavit dated August 15, 2019 in this docket, and is provided on behalf of the Petitioner in reply to the "Response and Objection to Petition for Expedited Release" in this docket filed by Rockett Special Utility District (the "Rockett Response").
4. Ownership. The property, that is the subject of the Petition (the "Property"), is owned by Alamo Mission LLC in fee simple title, and there are no contingencies or conditions associated with the grant and conveyance of ownership.
5. Proposed Data Center Project. The Property is proposed to be utilized by Alamo Mission for a large high-technology data center (the "Project") which during and after construction will provide major economic benefits to the region. The Project requires a significant amount of reliable water supply for its operations.
6. Rockett's Inability to Serve. Prior to filing the Petition, Alamo Mission held meetings and discussions with Rockett Special Utility District ("Rockett") regarding its ability to serve the Project with water. Alamo Mission provided to Rockett all the required engineering information and fees for Rockett to assess its ability to serve the Project. After completing its evaluation, Rockett's General Manager informed Alamo Mission's engineering consultant, Ms. Stephanie Sunico of Stantec, that Rockett was unable to provide water service to the Project, which is also known as Project Bonnet. Specifically, Rockett's General Manager made clear that Rockett "does not currently have available water supply necessary to serve the Project and will not be capable of procuring additional water supply".

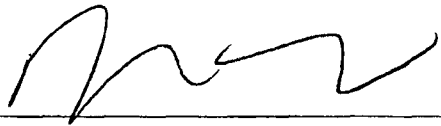
**3**

in the requested timeline. . . [Rockett] does not have any existing water service or water pipelines that can provide service to the Project site as requested.” Attached hereto as Attachment “A” is a true and correct copy of the email statement of Rockett’s General Manager on Rockett’s inability to serve.

7. Given Rockett’s clear statement of its inability to provide the needed water service for the Project, Alamo Mission choose to not pursue securing water from Rockett.
8. Current Tenant. The current tenant at the Property is Mr. Brian Meister (“Tenant”), whose lease began in 2016, and predated Alamo Mission’s ownership of the Property. After investigation and due inquiry, we have confirmed that the Tenant has not requested or received water service from Rockett at the Property since the initiation of the Tenant’s lease. Further, there is currently no active water meter on the Property or serving the Property.

FURTHER AFFLIANT SAYETH NOT.

SIGNED this 26 day of September, 2019.



DAVID THOMAS

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

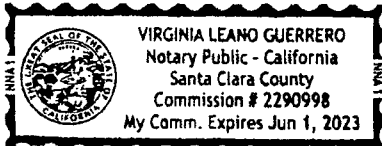
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                   §  
   §  
COUNTY OF Santa Clara           §

On Sept. 26, 2019 before me, Virginia Leano Guerrero, Notary  
Public, personally appeared David Thomas,  
Name(s) of Signer(s)

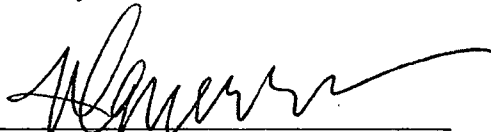
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct



Place Notary Seal Above

WITNESS my hand and official seal.

  
Signature of Notary Public





## ATTACHMENT "A"

**From:** Kay Phillips <kphillips@rockettwater.com>  
**Sent:** Wednesday, June 26, 2019 4:08:22 PM  
**To:** Sunico, Stephanie  
**Subject:** RE: Project Bonnet Follow Up

Hi Stephanie,

According to the analysis of the District's consulting engineer, it has been determined the District does not currently have available water supply necessary to serve the Project and will not be capable of procuring additional water supply in the requested timeline. The District jointly owns a water treatment plant with the City of Waxahachie (the "Plant"), and the District is currently utilizing 100% of the District's portion of the Plant's capacity. Additional water supply is not available to the District from the Plant, and the District does not have any existing water service or water pipelines that can provide service to the Project site as requested. It is correct that the District does not have any outstanding federal debt currently.

Thank you,

*Kay Phillips*  
*General Manager*  
*Rockett Special Utility District*  
*PO Box 40, Red Oak, Texas 75154*

*126 Alton Adams Dr, Waxahachie, Tx 75165*  
*(972) 617-3524 X 112*  
*(469) 517-0989 Fax*

---

