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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

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OF TEXAS  
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**ALAMO MISSION LLC'S MOTION TO STRIKE  
ROCKETT'S SURREPLY TO PETITIONER'S REPLY**

Alamo Mission LLC ("Petitioner") files this Motion to Strike Rockett Special Utility District's ("Rockett") Surreply to Petitioner's Reply filed with the Public Utility Commission of Texas on October 11, 2019. Petitioner shows:

On October 11, 2019, Rockett filed a Surreply to Petitioner's Reply (Item 21 in this Docket), raising new arguments in support of its position that 7 U.S.C. § 1926(b) preemption applies to this case and that the Property was "receiving service," despite the fact that Rockett was not actually serving the property when the Petition was filed. The ALJ should strike Rockett's Surreply for the following reasons:

First, while Rockett continues to assert that the Petition should be dismissed because Rockett has incurred federal debt and 7 U.S.C. § 1926(b) preemption applies, any federal debt incurred by Rockett is not relevant to this proceeding and may not properly be considered by the PUC. The statutory language is clear: "The utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program."<sup>1</sup>

Second, the Surreply should be stricken as improperly filed. Neither the PUC's rules nor Order No. 2 in this docket provides for surreplies. Indeed, the *only* substantive pleading Rockett

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<sup>1</sup> Tex. Water Code Ann. § 13.2541(d); *see also* 16 Tex. Admin. Code § 24.245(l)(7).

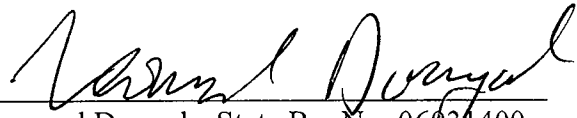
was permitted to file under Order No. 2 was its Response to the Petition, which was required to be filed by September 24, 2019. Rockett's Surreply is in contravention of Order No. 2 and the PUC's rules, is untimely, and should be stricken from the record.

Third, Rockett's Surreply should be stricken because the Petitioner has the right to open and close the argument. The right to open and close the argument is a valuable right, and the refusal of it by the trial court has been held to be reversible error.<sup>2</sup> Rockett's attempt to "close" the argument with its Surreply is improper.

For these reasons, Petitioner requests that the ALJ grant this motion, strike Rockett's Surreply from the record, and disregard it in its entirety.

Respectfully submitted,

JACKSON WALKER L.L.P.



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<sup>2</sup> See *Mayfield v. Son*, 278 S.W. 462, 464 (Tex. Civ. App. - Austin 1925).

**CERTIFICATE OF SERVICE**

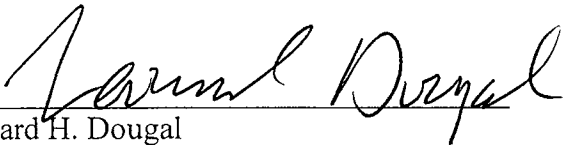
I hereby certify that on the 16th day of October, 2019, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

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