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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
OF TEXAS**

COMMISSION STAFF'S STATUS REPORT

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this report. In support thereof, Staff would show the following:

I. BACKGROUND

On August 16, 2019, Alamo Mission LLC (Alamo) filed a petition for streamlined expedited release of approximately 166.594 acres from Rockett Special Utility District's (Rockett) water certificate of convenience and necessity No. 10099, in Ellis County, under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(l).¹

Order No. 7, issued on November 15, 2019, abated this proceeding due to the pendency of federal litigation. On July 27, 2020, Order No. 9 was issued, continuing the abatement. In that order, Staff was required to file a report regarding the status of the litigation by October 15, 2020. This pleading, therefore, is timely filed.

II. STATUS REPORT

On October 1, 2020, Alamo filed a motion to lift the present abatement in this matter. Alamo's motion is based upon three arguments: first, that 7 U.S.C. § 1926(b) does not bind the Commission, as TWC § 13.2541 explicitly forbids the Commission from denying a petition on the basis of a federal loan; second, that a Federal Magistrate Judge has concluded that Rockett does not have a federally guaranteed debt, and therefore, cannot be afforded protection under section 1926(b); and, third, even if Rockett had a federally guaranteed debt, it does not provide or make water service available, and therefore, is not entitled to section 1926(b) protection.

¹ Effective July 2, 2020, the former 16 TAC § 24.245(l) is now § 24.245(h).

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On October 8, 2020, Rockett filed a response to that motion, asserting that the abatement should be maintained. The response addresses Alamo's three arguments thusly: first, that section 1926(b) was found to preempt TWC § 13.254(a-6) in *Crystal Clear Special Utility District v. Walker, et al*;² second, that the Magistrate Judge's report still awaits final judgment and is not yet binding; and third, that the Commission lacks the jurisdiction to resolve the question of whether service has been made available under section 1926(b).

The three points of contention are grounded in three separate federal matters. First, as to the question of federal preemption, the district court in *Crystal Clear* held: "[t]o the extent the Tex. Water Code § 13.254(a-5) directs PUC Officials to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b), the statute is preempted and is void."³ However, an appeal of that ruling is currently pending before the Fifth Circuit Court of Appeals. At present, the parties appear to be engaged in briefing on various motions, with oral argument, if forthcoming, not yet scheduled.

Second, as Alamo noted in its motion, the Magistrate's Report in *Rockett Special Utility District v. Shelly Botkin, et. al.*, Cause No. 1:19-cv-1007-RP stated that Rockett does not have a federally guaranteed debt.⁴ As such, Rockett would not be afforded protection under 7 U.S.C. § 1926(b). However, as Rockett indicated in its response, the matter is still awaiting final ruling from the District Court judge, and therefore, is not finalized.⁵

Finally, the question of the Commission's jurisdiction to determine whether service has been made available under section 1926(b) is one that need not be addressed at this juncture. The Fifth Circuit Court's opinion in *Green Valley Special Utility District v. City of Schertz, Texas* has announced a new standard for evaluating whether a utility is entitled to protection

² *Crystal Clear Spec Util. Dist. v. Walker, et al*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

³ *Id.* at *2.

⁴ Alamo Mission LLC's Motion to Lift Abatement at 2 (Oct. 1, 2020). Staff acknowledges Alamo's frustration that this docket has been abated solely because of Rockett's claim of federal indebtedness, which is now in doubt. However, that does not change the fact, that the district court judge must weigh in on the magistrate's decision before it is final.

⁵ Rockett Special Utility District's Response and Objection to Petitioner's Motion to Lift Abatement at 1 (Oct. 8, 2020).

under section 1926(b) because it is “providing service.”⁶ However, the Commission will not need to apply that new standard unless and until: (1) it is determined that Rockett has a federally guaranteed debt in *Rockett Special Utility District v. Shelly Botkin, et. al.*; and (2) the appeal of the district court’s decision in *Crystal Clear* is resolved such that it is clear whether the bar on denying a petition for streamlined expedited release based on the fact that the CCN holder has a federally guaranteed loan is pre-empted by federal law.⁷

Given that *Rockett Special Utility District v. Shelly Botkin, et. al.* and *Crystal Clear Special Utility District v. Walker, et al.* directly pertain to the instant matter, and remain unresolved, Staff recommends that this matter remain abated.

III. CONCLUSION

Staff respectfully requests an order consistent with the foregoing report.

Dated: October 15, 2020

⁶ *Green Valley Spec. Util. Dist. v. City of Schertz, Tex.*, 969 F.3d 460, 477 n. 36 (5th Cir. 2020) (“Though the en banc court need not tease out exactly *what* facilities are necessary or precisely *how nearby* they must be located, the utility must have *something* in place to merit § 1926(b)’s protection.”).

⁷ TWC § 13.2541(d).

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 via electronic mail on October 15, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray