

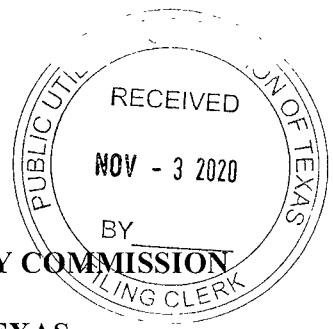


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DOCKET NO. 49863

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
§
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**ALAMO MISSION'S
SUPPLEMENT TO MOTION TO LIFT ABATEMENT**

Alamo Mission LLC ("Petitioner") respectfully files this Supplement to Motion to Lift Abatement ("Motion") of this Docket. Important recent activity has occurred that bears directly on the arguments presented in the Motion and upon Commission Staff's responsive Status Report. In particular, the underlying reason for the abatement, as well as Staff's recommendation to continue the abatement, is now finally resolved: Federal District Judge Robert Pitman has dismissed Rockett's federal lawsuit in its entirety.¹ Petitioner therefore provides this supplemental information and respectfully requests that its Motion to Lift Abatement be granted.

**I. THIS MATTER WAS ABATED PENDING RESOLUTION OF ROCKETT'S
FEDERAL DISTRICT COURT LAWSUIT CONCERNING ALLEGED 7 U.S.C.
§ 1926(B) PREEMPTION**

This Petition for Streamlined Expedited Release ("the Petition") has been pending for over one year.² Despite Commission Staff's initial assessment that all decertification criteria were met and recommendation to grant the Petition,³ the Administrative Law Judge ("ALJ") assigned to this docket subsequently abated the case "due to the pendency of the federal litigation" filed by

¹ *Rockett Spec Util Dist v. Shelly Botkin, et al.*, No. 1:19-cv-01007, in the United States District Court for the Western District of Texas, Austin Division (attached as Ex. 1).

² *Petition of Alamo Mission LLC to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Commission Dkt. No. 49863.

³ *Id.*, Commission Staff's Recommendation on Final Disposition, September 26, 2019.

Rockett, in which Rockett asserted it had “federally protected debt,” and challenged the Commission’s authority to act on the Petition under 7 U.S.C. § 1926(b).⁴

On October 1, Petitioner moved to lift the abatement, explaining that Rockett’s § 1926(b) claims had been addressed and rejected by Federal Magistrate Judge Mark Lane. As Judge Lane explained in his Report and Recommendation, Rockett does not have “federally guaranteed” debt. Rather, Rockett’s false claims that it has such debt are—in Judge Lane’s words—“absurd[,],” “wholly insubstantial,” “frivolous,” and “completely devoid of merit.”⁵ Absent federally guaranteed debt, Judge Lane explained, Rockett’s claim to “§ 1926(b) preemption” has no basis, and cannot support subject matter jurisdiction. Accordingly, Judge Lane recommended that Rockett’s federal lawsuit be dismissed.

Consistent with Judge Lane’s Report and Recommendation, Petitioner’s Motion to Lift Abatement explained that because Rockett has no federally guaranteed debt, § 1926(b) is no barrier to the Commission’s authority to decertify Petitioner’s property from Rockett’s CCN. Petitioner urged the Commission to lift the abatement and reinstitute proceedings on this Docket.

Commission Staff took a contrary view. In response to Petitioner’s Motion to Lift Abatement, Commission Staff countered that Judge Lane’s Report and Recommendation did not finally resolve Rockett’s federal lawsuit because, at the time Petitioner filed its Motion, the Report and Recommendation remained pending for adoption by Federal District Judge Robert Pitman.⁶ Staff also advised that *Crystal Clear Special Utility District v. Walker*, yet another federal lawsuit

⁴ *Id.*, Order No. 7 (abating the Docket and referencing Rockett’s federal litigation)

⁵ *Rockett Spec Util. Dist. v Shelly Botkin, et al*, No. 1:19-cv-01007, in the United States District Court for the Western District of Texas, Austin Division, at 5, 10, 11 (Report and Recommendation, attached as Ex 1 to Petitioner’s Motion to Lift Abatement).

⁶ *Petition of Alamo Mission LLC to Amend Rockett Special Utility District’s Water Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Commission Dkt. No. 49863, Commission Staff’s Status Report, October 15, 2020, at 2-3.

concerning the preemptive effect of 7 U.S.C. § 1926(b), remains pending at the Fifth Circuit.⁷ Because Staff believed that resolution of these federal matters may “directly pertain to” the resolution of this Docket, Staff recommended that the matter remain abated.⁸

II. THE FEDERAL PROCEEDINGS ARE DISMISSED; THE COMMISSION SHOULD NOW PROCEED WITH THE DECERTIFICATION OF PETITIONER’S PROPERTY FROM ROCKETT’S CCN

The concerns raised by Staff are now finally resolved. Federal District Judge Robert Pitman has adopted Magistrate Judge Mark Lane’s Report and Recommendation in full. Rockett’s federal lawsuit, challenging the Commission’s authority to act on the Petition, has been dismissed. Pursuant to Judge Pitman’s order, Rockett has no federally guaranteed debt, and 7 U.S.C. § 1926(b) is no impediment to the Commission fulfilling its obligation to decertify Petitioner’s property from Rockett’s CCN.

And because 7 U.S.C. § 1926(b) is inapplicable here, the pendency of *Crystal Clear Special Utility District v. Walker* at the Fifth Circuit is similarly irrelevant to this Docket. As Commission Staff explained, *Crystal Clear* concerns whether 7 U.S.C. § 1926(b) preempts Texas Water Code decertification provisions in cases where a water utility “is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b).”⁹ As Judges Lane and Pitman have concluded, Rockett is not federally indebted, and is therefore not entitled to the protections of § 1926(b). Whatever the outcome of *Crystal Clear*, the decision in that matter will have no impact on this Docket.

The Commission should delay these proceedings no longer.

⁷ *Id.* (referencing *Crystal Clear Spec Util Dist v Walker et al*, No. 1-17-cv-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019)).

⁸ *Id.*

⁹ *Id.*

III. CONCLUSION

As Commission Staff long ago concluded, the Petition meets the requirements for streamlined expedited release and should be approved because the Property “is located in a qualifying county (Ellis County), is not receiving water service, and the aggregated, contiguous tracts of land make up a single property that is at least 25 acres.”¹⁰ Petitioner agrees with the statements and conclusions reached by Commission Staff in its Recommendation.

The underlying reason for the abatement of this Docket is now fully resolved. Federal District Judge Robert Pitman has ruled that Rockett has no federally guaranteed debt. Therefore, 7 U.S.C. § 1926(b) is no obstacle to the Commission performing its statutory duty to decertify Petitioner’s property from Rockett’s CCN. The pendency of other federal litigation that may concern the reach of 7 U.S.C. § 1926(b) is inapplicable here and cannot justify any further delay in this Docket.

Petitioner is entitled to have its Petition addressed and resolved by the Commission. Commission Staff’s Recommendation issued on September 26, 2019 should be adopted, and the Petition should be approved without further delay.

¹⁰ Commission Staff’s Recommendation on Final Disposition, September 26, 2019, at 2.

Respectfully submitted,

JACKSON WALKER L.L.P.



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ATTORNEYS FOR ALAMO MISSION LLC

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 November 3, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROCKETT SPECIAL UTILITY DISTRICT,
a political subdivision of the State of Texas,

Plaintiff,

v.

SHELLY BOTKIN, et al.,

Defendants.

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1:19-CV-1007-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Defendants Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling, (Dkt. 21), Defendant Alamo Mission LLC's Motion to Dismiss, (Dkt. 24), PUCT Defendants' Motion to Dismiss and Brief in Support, (Dkt. 25), Defendant City of Red Oak Industrial Development Corporation's Expedited Request for Oral Argument on its Motion to Dismiss for Lack of Subject Matter Jurisdiction, (Dkt. 35), and all related briefing. (R. & R., Dkt. 43). In his report and recommendation, Judge Lane denied Red Oak's request for a hearing, (Dkt. 25), and recommended granting the remaining motions. (*Id.* at 13). Rockett Special Utility District ("Rockett") timely filed objections to the report and recommendation. (Objs., Dkt. 45).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Rockett timely objected to each portion of the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Rockett's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 42), is **ADOPTED**.

Accordingly, the Court **ORDERS** that Defendant Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling, (Dkt. 21), Defendant Alamo Mission LLC's Motion to Dismiss, (Dkt. 24), and the PUCT Defendants' Motion to Dismiss and Brief in Support, (Dkt. 25), are **GRANTED**.

IT IS FURTHER ORDERED that this case be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

The Court will enter final judgment in a separate order.

SIGNED on November 3, 2020.

A handwritten signature in black ink, appearing to read 'R. Pitman', is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE