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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**

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PUBLIC UTILITY COMMISSION

2020 DEC 22 AM 11:39

OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

ORDER NO. 13

DENYING MOTION TO DISMISS AND ADDRESSING PROCEDURAL MATTERS

In this matter, Alamo Mission LLC seeks streamlined expedited release of land it owns from Rockett Special Utility District's water CCN number 10099. Rockett has been admitted as an intervenor.

I. Rockett's Motion to Dismiss

On November 12, 2019, Rockett filed a motion to dismiss this proceeding, arguing that Alamo Mission's petition should be dismissed because Rockett is indebted on a loan guaranteed by the United States Department of Agriculture (USDA) and has provided or made service available to the land owned by Alamo Mission, thereby entitling Rockett to the protections provided under 7 U.S.C. § 1926(b).

On November 3, 2020, in *Rockett Special Utility District v. Botkin*, Cause No. 1:19-CV-1007-RP (W. Dist. Tex), a federal district court found that Rockett is not indebted on a federal loan and, therefore, cannot invoke the protection of 7 U.S.C. § 1926(b). In Order No. 12 the administrative law judge (ALJ) requested briefing from all parties to this docket addressing the effect of the ruling in the federal litigation on this docket.

Rockett filed briefing on December 4, 2020, in which it maintained that it is federally indebted, that the federal court order reached the wrong conclusion as to its indebtedness, that it is appealing the federal court order, and that a decision on the motion to dismiss in this docket should remain pending while the outcome of Rockett's appeal in the federal courts is resolved.

Alamo Mission filed its brief on December 8, 2020. Alamo Mission argues that the federal district court's decision conclusively determined that Rockett's ground for dismissal—that the present docket is preempted because Rockett has a federally guaranteed debt entitling its service area to protection—is without merit.

On December 16, 2020, Rockett filed a supplement to its motion to dismiss. Rockett now asserts that, on December 8, 2020, the USDA issued a Loan Note Guarantee and, as a result, Rockett is now federally-indebted and entitled to protection against streamlined expedited release under 7 U.S.C. § 1926(b). Rockett also explained that it has filed a new federal lawsuit in light of the new alleged loan.

On December 18, 2020, Commission Staff filed its brief. Commission Staff argues that there is no court order enjoining the Commission from acting on a petition for streamlined expedited release when a claim is raised under 7 U.S.C. § 1926(b).

The administrative law judge concludes that the motion to dismiss should be denied. The question of whether Rockett had, prior to December 8, 2020, a federal loan has been answered by the federal court decision. The question of whether Rockett now has a federal loan need not be, and cannot be, answered in this case. Under the law in effect at the time Alamo Mission's petition was filed and, therefore, applicable to this case—Texas Water Code (TWC) § 13.254(a-6)—the Commission “may not deny a [streamlined expedited release] petition . . . based on the fact that a certificate holder is a borrower under a federal loan program.” Thus, the question of whether Rockett possesses a federal loan is immaterial to the determination to be made in this case. Accordingly, Rockett's motion to dismiss is denied.

II. The Procedural Schedule

The undersigned ALJ assumed responsibility for this case on November 13, 2020. In Order No. 12 filed on that date, the ALJ adopted a procedural schedule that contemplated a second phase, addressing compensation, to commence in the event that streamlined expedited release is granted. As Alamo Mission has now correctly pointed out, the petition in this case was filed on August 16, 2019 and, therefore, is governed by the law in effect at that time—TWC § 13.254(a-5). Unlike petitions for streamlined expedited release filed on or after September 1, 2019, a petition filed prior to that date does not entail a subsequent compensation phase. Accordingly, the portion of the procedural schedule in Order No. 12 that contemplates a compensation phase is hereby withdrawn.

Signed at Austin, Texas on the 22nd day of December 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'HB', is written over a horizontal line.

HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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