



Control Number: 49863



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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
OF TEXAS

**ROCKETT SPECIAL UTILITY DISTRICT'S
RESPONSE TO PROPOSED ORDER**

COMES NOW, ROCKETT SPECIAL UTILITY DISTRICT ("Rockett") and files this Response to Proposed Order filed on December 22, 2020 (the "Proposed Order"). The Proposed Order requires any party to file corrections or exceptions to the Proposed Order on or before January 4, 2021; thus, this Response is timely filed. In support thereof, Rockett respectfully shows as follows:

**I. THE PROPERTY CANNOT BE RELEASED, AS THE PROPERTY DOES NOT
QUALIFY FOR EXPEDITED RELEASE**

Rockett has provided in this proceeding that the Property cannot be released from Rockett's territory and Rockett's Certificate of Convenience and Necessity (CCN) No. 10099 cannot be amended, under Texas Water Code (TWC) § 13.254(a-5), because, *inter alia* the Property is receiving water "service" as defined by state law. As explained further herein, the Proposed Order states incorrect facts and conclusions of law regarding Rockett's "service" to the Property, including Rockett's facilities and waterlines serving the Property which are committed or dedicated to providing such water service, and Rockett's performance of many acts and supplying water to the Property.

II. RESPONSE, OBJECTION AND CORRECTIONS TO FINDINGS OF FACT

The Proposed Order incorrectly states that Rockett, as the CCN holder of the tract of land in which Alamo Mission LLC ("Petitioner") is seeking to decertify in this proceeding (the "Property"), has not committed or dedicated any facilities or lines, does not have any facilities or lines, and has not performed any acts for or supplied anything to the tract of land. Conversely, Rockett has provided facts and details in this proceeding that Rockett is providing water service to the Property, in which the Proposed Order ignores or misconstrues the information provided.

The Commission's findings of fact and conclusions of law violate Texas Government Code Section 2001.174(2), which states that a court:

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;
- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Tex. Gov't Code. Section 2001.174(a)(A)-(F). The proposed findings of fact and conclusions of law violate each category in sections (A) through (F) as described in more detail below.

A. The Meter Box Is Located *On* The Property

The Proposed Order incorrectly states that no meters exist on the Property and that a water meter box is located outside of the southern boundary of the tract.¹ Rockett provided a depiction prepared by Rockett's consulting engineer of record with a water connection tap (meter box) located *on* the Property, accompanied by the affidavit of Rockett's General Manager Kay Phillips stating that Rockett provided water service to the Property through a 5/8" x 3/4" meter installed in the meter box, along with copies of the service agreement and a check for the deposit of the meter evidencing water service to the Property.² Petitioner confirmed that the meter box is located on the Property but outside of a fence line, not outside of the Property boundaries.³ Although there is

¹ Proposed Order at 4, ¶ 29-30 (Dec. 22, 2020).

² Rockett Special Utility District's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

³ Alamo Mission LLC's Reply to Rockett SUD's Response to Petition at 5, Exhibit 1 ¶ 3 (Oct. 4, 2019).

not currently a meter in the meter box, Rockett can drop in a meter in the meter box and immediately turn on water in an hour or less, as attested by Rockett's general manager.⁴

Facts #29-30 in the Proposed Order must be corrected to reflect that no meter is currently installed in the existing meter box located *on* the southern boundary of the tract, as it is imperative along with other findings to conclude whether the Property was "receiving water service" as provided further below.

B. Rockett's 12" Waterline Is Located *On* The Property

The Proposed Order states that Rockett owns a 12" waterline that "runs parallel to the southern boundary of the [Property]." ⁵ However, this is misleading as the 12" waterline is located *on* the Property. Rockett provided a depiction prepared by Rockett's consulting engineer of record reflecting the location of the 12" waterline is *on* the Property, which was accompanied by the affidavit of Rockett's General Manager.⁶

Although the 12" waterlines does run parallel to the southern boundary of the Property, the word choice as written in the Proposed Order does not clearly convey that the 12" waterline is located *on* the Property. This fact #34 in the Proposed Order must be corrected, as it is an imperative fact along with other findings to conclude whether the Property was "receiving water service" as provided further below.

C. Petitioner Requested A Large Volume Of Water Per Year By 2021, Without Providing Verifiable Data And Required Information For Proper Analysis

The Proposed Order misleads in the statement that Rockett informed Petitioner that it does not have sufficient water supply and any existing waterlines that can provide service to the Property as requested by Petitioner.⁷ Petitioner refused to provide Rockett with actual volume requirements, so Rockett was unable to estimate its capabilities based on the lack of information provided by Petitioner at that time. This is not a reflection of Rockett's ability to provide water service, but rather a reflection of Petitioner's refusal to provide forthcoming, quantitative data to Rockett.

⁴ Rockett Special Utility District's Surreply to Petitioner's Reply at 3, Exhibit A (Oct. 11, 2019).

⁵ Proposed Order at 4, ¶ 29-30 (Dec. 22, 2020).

⁶ Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

⁷ Proposed Order at 4-5, ¶ 35 (Dec. 22, 2020).

The requirement to allow release of the Property from Rockett's CCN is *not* whether Rockett has the water supply to provide a massive and speculative amount of water to the Property within a very short time period as requested by Petitioner. Rather, the Commission must determine whether the Property is *currently* receiving water "service"⁸ including any lines and facilities committed to provide such "service." This fact #35 in the Proposed Order as written should be removed, as it falsely suggests that a CCN holder must be able to provide the exact water quantity requested in the amount of time demanded by Petitioner (even if there is no support for such demand); or, alternatively, the fact should be revised to accurately reflect the circumstances.

Petitioner refused to provide verifiable data and required documentation as listed in the non-standard service application submitted to Rockett to support its specific request for water, which denied Rockett's engineer the ability to determine what sufficient improvements would be required for Petitioner's specific request of water usage and timeline.⁹ Although various representatives of Petitioner were told that the information was needed, the representatives demanded an analysis and response based on the grossly deficient information.¹⁰ Further, Petitioner submitted an email from Rockett's general manager regarding a misleading statement that Rockett could not provide water service; however, Petitioner failed to also submit the preceding email where Petitioner's representative Stephanie Sunico elicited a specific response from Rockett.¹¹ Petitioner requested a large volume of water annually, with a very high per day usage by 2021 without showing any water plans or details of the use of water including how much water would be allotted for fire flow or fire protection, or other required documentation.¹²

These details are important, as explained further herein; if fact #35 in the Proposed Order is left as written, it is contrary to the undisputed fact that Rockett is providing water "service" to the Property, including but not limited to dropping a meter (like the 5/8" x 3/4" meter previously

⁸ Tex. Water Code § 13.254(a-5), *amended by* Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4, eff. Sept. 1, 2019.

⁹ Rockett's Surreply to Petitioner's Reply at 6-7, Exhibit A (Oct. 11, 2019).

¹⁰ *Id.* at 7-9, Exhibit A.

¹¹ *Id.* at 10-11, Exhibit D.

¹² *Id.* at 8.

providing water service to the Property) in the existing meter box and existing 12" waterline, both of which are on the Property and are capable of providing immediate water service.¹³

**D. Rockett Has Committed Or Dedicated Facilities Or Lines
To The Property For Water Service**

The Proposed Order incorrectly states that Rockett "has not committed or dedicated any facilities or lines to the [Property] for water service."¹⁴ As previously stated, Rockett installed a 12" waterline and water connection tap (meter box) directly on the Property, providing a depiction prepared by Rockett's consulting engineer of record showing the location of the 12" waterline and including the affidavit of Rockett's General Manager Kay Phillips stating the same.¹⁵ Rockett also provided that water service was requested for the Property in 2005 by Roy Lee Filgo, a copy of the receipt for the deposit of the meter installed in the meter box, the Account #24-0405-00 that was established to bill for water usage on the Property through the meter box and a 5/8" x 3/4" meter.¹⁶

Additionally, Rockett provided a copy of the water service agreement with Goodloe Farms and check for the deposit of a meter on or about January 3, 2012, for water service to the Property through the same meter box and a 5/8" x 3/4" meter.¹⁷ The service agreement states, "[a]ll water furnished by the District shall be metered by meters installed, maintained and owned by the District. The meter and connection is for the sole use of Customer and is to provide service"¹⁸

At minimum, Rockett provided service to the Property beginning in 2005. When water service was initiated and established for the Property in 2005, Rockett committed or dedicated the meter, meter box, and the 12" waterline on the Property, in addition to Rockett's other waterlines and facilities used to transmit water to the Property, to provide water service to the Property. The Commission cannot legitimately find that there are no facilities or waterlines committed or

¹³ Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019); Rockett's Surreply at 2-3 (Oct. 11, 2019).

¹⁴ Proposed Order at 5, ¶ 36 (Dec. 22, 2020).

¹⁵ Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

¹⁶ *Id.* at 2-3, Exhibit A (providing the location of the Property and Rockett's 12" waterline and meter box where the Property received water through a 5/8" x 3/4" meter) and Exhibit B (p. 10-12).

¹⁷ *Id.* at 2-3, Exhibit A and Exhibit B (p. 10, 13-18).

¹⁸ *Id.* at Exhibit B (p. 16).

dedicated to providing water service to the Property when Rockett provides water service to the Property and customers pay for such water service.

This fact #36 in the Proposed Order must be corrected, as it is imperative along with other findings to conclude that the Property was receiving water “service” as explained further herein.

E. Rockett Has Facilities Or Lines That Provide Service To The Property

The Proposed Order incorrectly states that Rockett “has no facilities or lines that provide water service to the [Property].”¹⁹ As previously stated, in addition to other Rockett waterlines and facilities that transmitted water to Rockett’s 12” waterline located on the Property, the Property received water service through a 5/8 x 3/4” meter in the water connection tap (meter box) installed on the Property.²⁰ If Rockett provided water service to the Property, as shown through the service request/agreements and deposits for the meter from Roy Lee Filgo and Goodloe Farms, it follows that Rockett has facilities and waterlines that provide water service to the Property.

This fact #37 in the Proposed Order must be corrected, as it is imperative along with other findings to conclude that the Property was receiving water “service” as explained further herein.

F. Rockett Has Performed Actions For Or Supplied Something To The Property

The Proposed Order incorrectly states that Rockett “has not performed any acts for or supplied anything to the [Property].”²¹ As provided above and in this proceeding, Rockett installed a 12” waterline on the Property, received requests for water service to the Property and thus installed a water connection tap (meter box) on the Property, and Rockett supplied water to the Property through a 5/8” x 3/4” meter in the meter box.

Further, the engineers for Rockett and the City of Red Oak, Texas (the “City”) analyzed Rockett’s facilities in 2017-2018 of proposed water usage for future development of the Property (owned by Walton Development at the time) and adjacent tracts owned by the City’s non-profit corporation, Red Oak Industrial Development Corporation (“ROIDC”), as communicated to Rockett by City staff and representatives. Based on such information, Rockett proposed infrastructure improvements, including the installation of a 16” waterline *on* the Property and upsizing approximately 2,600 linear feet (LF) of the proposed 16” waterline to 24” waterline to

¹⁹ Proposed Order at 5, ¶ 37 (Dec. 22, 2020).

²⁰ Rockett’s Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

²¹ Proposed Order at 5, ¶ 38 (Dec. 22, 2020).

serve the Property and adjacent ROIDC tracts.²² In this proceeding, Rockett provided the City's proposed plans in color, which clearly shows the location of the proposed 16" waterline along the western boundary of the Property running south, then running east across the southern boundary on the Property and connecting to Rockett's McKenna Pump Station.²³ Rockett's Board of Directors approved the installation approximately 6,500 LF of 16" waterline and upsizing approximately 2,600 LF to a 24" waterline, and expenditure of Rockett's funds in the amount of \$270,000 thereto, to provide the project water service to the proposed development for the Property and tracts owned by ROIDC.²⁴ Rockett also paid the invoice in the amount of \$5,325.00 for Westfall Engineering, the City's Engineers, for survey, waterline design, easement preparation, and construction bid.²⁵

By installing the 12" waterline, meter box, and 5/8" x 3/4" meter and providing water service to the Property, in addition to planning and approving the installation and construction of the 16" and 24" waterlines throughout the Property to serve the future development on the Property and surrounding tracts owned by ROIDC, the Commission cannot legitimately find that Rockett has not performed any acts for or supplied anything (water) to the Property. This fact #38 in the Proposed Order must be corrected, as it is imperative along with other findings to conclude that the Property was receiving water "service" as explained further herein.

III. RESPONSE, OBJECTION AND CORRECTIONS TO CONCLUSIONS OF LAW

The following conclusions of law are incorrect and should be changed as follows:

- **Conclusion of Law No. 3.** The Texas Administrative Procedures Act ("APA") applies, and it includes a right to contest the case hearing.
- **Conclusion of Law No. 4.** There is nothing in those provisions that purports it isn't a contested case, or that Rockett is unentitled to same.

²² Rockett's Response and Objection to the Petition at 3-4, Exhibit C (pp. 20-35) (providing the City's proposed development and plans for the Property and tracts owned by ROIDC).

See Petition at Exhibits C-1 and C-2 (providing the location of the Property).

²³ Rockett's Response and Objection to the Petition at 3-4, Exhibit C (p. 29).

²⁴ Rockett's Response and Objection to the Petition at 4, Exhibit D.

²⁵ Rockett's Response and Objection to the Petition at 4, Exhibit C (p. 36).

- **Conclusion of Law No. 9.** The tract of land is receiving water service as a matter of state law.
- **Conclusion of Law No. 10.** Petitioner is not entitled to decertify Rockett's CCN.
- **Conclusion of Law No. 11.** Rockett has provided evidence that property will be rendered useless and valueless without territory.
- **Conclusion of Law No. 12.** Compensation is owed under the Texas Water Code as set forth in this response.
- **Conclusion of Law No. 15.** The Commission is processing petition in violation of state and federal law, both of which the Commission is bound by, if the Commission decertifies Rockett's CCN.

The basis for Rockett objecting to the above-listed conclusions of law are explained in more detail below.

The Proposed Order incorrectly states that the “[Property] is not receiving water service under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l),²⁶ as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).”²⁷ The facts in this proceeding show the Property is receiving water service under these statutes and as interpreted by the court in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*

A. The Property Is Receiving Water “Service” Under TWC And TAC

16 TAC § 24.245(l) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsection “(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN (emphasis added).” 16 TAC § 24.3(33) and TWC § 13.002(21) define “**service**” as follows:

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 TWC Chapter 13 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 (emphasis added).

²⁶ Now 16 Tex. Admin. Code § 24.245(h), adopted to be effective July 2, 2020, 45 TexReg 4321.

²⁷ Proposed Order at 6, ¶ 9 (Dec. 22, 2020).

Further, the *Crystal Clear* court provides that “a tract of land would not necessarily be ‘receiving’ water service simply because the retail public utility has performed an act . . . , unless the act was performed in furtherance of providing water to the tract seeking decertification.”²⁸

Not only has Rockett actually provided water service to the Property (as evidenced by the water service requests/agreements, installing the meter box on the Property, setting up the account and receiving deposits for and installing the 5/8” x 3/4” meter, where water was supplied to the Property and transmitted from Rockett’s waterlines and facilities to the 12” waterline on the Property, and customers paid for such water usage), Rockett has also performed actions in furtherance of providing water service to the Property by planning and approving the installation and construction of the 16” and 24” waterlines throughout the Property to serve the future development on the Property and surrounding tracts owned by ROIDC. By these actions (and Petitioner’s refusal to provide adequate engineering support for anticipated future consumption), the Commission cannot conclude that Rockett has not performed any acts, furnished or supplied anything (water) to the Property, or committed or used any of its facilities and waterlines to provide “service” (including actual water service) to the Property, in furtherance of its duties as a retail water utility.

B. Actual Present Delivery Of Water To The Tract Is Not Required

In *Crystal Clear*, the court found that “in [the Commission and petitioner’s] view, a tract of land is not receiving water service ‘if the landowner is not receiving actual water on the property.’ We find *nothing* in the text of the statute, *however, that compels this interpretation*.”²⁹ Even though there is not currently a meter installed in the meter box located on the Property, Rockett previously provided water service to the Property through a 5/8” x 3/4” meter installed in the existing meter box and transmitting water through the 12” waterline located on the Property from other Rockett waterlines and facilities.

The court subsequently states, “it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.”³⁰ As provided, at minimum, Rockett committed and used the 5/8” x 3/4” meter, meter box, and 12”

²⁸ *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App. 2014).

²⁹ *Id.* at 140 (emphasis added).

³⁰ *Id.*

waterline installed on the Property, in addition to the various Rockett waterlines and facilities, to transmit water to the Property as evidenced by the submitted meter deposits and requests and agreement for water service with Roy Lee Filgo and Goodloe Farms. Rockett's records reflect that the Property received water service as used and paid for by Roy Lee Filgo and Goodloe Farms.

Further, unlike the facts in *Crystal Clear* where the Commission reasonably declined to attribute any evidentiary weight to a deficient exhibit not supported or proved up by an affidavit or bearing the stamp of a licensed engineer,³¹ Rockett has provided a depiction of the location of the water connection tap (meter box) and 12" waterline on the Property where water service was received, as prepared by Rockett's consulting engineer of record and supported and proved up by the affidavit of Rockett's general manager. Further, Rockett's general manager attested to providing water service to the Property, at minimum, by evidencing the service request and initiation of the account and meter deposit by Roy Lee Filgo in 2005 and the request and service agreement and meter deposit by Goodloe Farms in 2012.

C. Under *Crystal Clear*, Rockett Is Not Required To Have The Water Supply To Serve Petitioner's Requested Water Amount Within The Time Period Demanded By Petitioner

The Proposed Order misleads in the statement that Rockett informed Petitioner that it does not have sufficient water supply and any existing waterlines that can provide service to the Property as requested by Petitioner.³² This statement implies that there is a requirement authorizing expedited release if CCN holders are unable to immediately provide the exact water usage requested by petitioners by the timeline requested, instead of the actual statutory language in 16 TAC § 24.245(l) and TWC § 13.254(a-5).

There is no finding under *Crystal Clear* that Rockett must have the capacity to immediately serve the water usage requested by Petitioner in the time period "acceptable" or demanded by the Petitioner. Here, the Petitioner requested a large volume of water annually by 2021 and did not provide verifiable engineering data or what amount would be designated for fire protection or fire flow, or other documentation required by Rockett for its engineer to provide a complete analysis. 2021 has arrived and Petitioner has still not constructed anything that could be used to consume

³¹ *Id.* at 141.

³² Proposed Order at 4-5, ¶ 35 (Dec. 22, 2020).

any volume of water, let alone a large volume of water. Petitioner cannot use unsupported future speculative volumes of water demand, to contend that water service is not being provided.

Moreover, Rockett's enjoyment of protection under 7 U.S.C. § 1926(b), which the Commission is ignoring altogether and is a violation of the Supremacy Clause,³³ and case law related to "service" under 7 U.S.C. § 1926(b) among other issues, allows Rockett to provide water service within a reasonable amount of time and construction or installation of waterlines and/or facilities and other necessities, if required to determine if service was made available.³⁴ However, Rockett has already demonstrated by evidence filed in the record that the Property received actual water service and is receiving "service" as provided under *Crystal Clear*.

IV. CONCLUSION

Rockett has established that it is providing water service to the Property under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l), as interpreted by *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, providing ample evidence that the Property is receiving water "service" not only because Rockett provided *actual* water service to the Property through the 5/8" x 3/4" meter and water connection tap installed on the Property for usage by customers Roy Lee Filgo and Goodloe Farms, but also because of Rockett's 12" waterline and connecting waterlines and facilities providing such water service to the Property, and because Rockett has committed or dedicated its facilities and lines to provide water service to the Property when Rockett provided such service and continues to do so. Rockett has performed acts and supplied/dedicated substantial infrastructure, including actual water service to the Property, in furtherance of providing water service to the Property.

WHEREFORE, PREMISES CONSIDERED, because Rockett has provided the evidence to correct the findings of fact and conclusions of law in the Proposed Order, notwithstanding the protection under 7 U.S.C. § 1926(b) in which the Commission is choosing to ignore (a violation of the Supremacy Clause of the U.S. Constitution which the Commission is bound by), the Property does not qualify to be released from Rockett's CCN according to TWC § 13.254(a-5) and 16 TAC § 24.245(l), as interpreted by the court in *Crystal Clear*. Rockett respectfully requests that

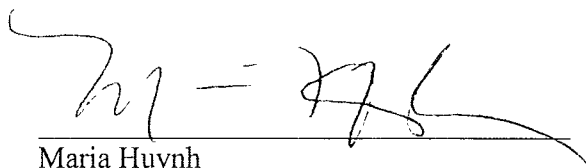
³³ Rockett's Reply to Commission Staff's Response to Order No. 12, at 2-4 (Dec. 28, 2020).

³⁴ See Rockett's Surreply at 5-11 (Oct. 11, 2019) (citing various caselaw).

Commission revise the Proposed Order as provided herein, that the Commission deny the Petition and dismiss this proceeding.

Respectfully submitted,

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ATTORNEYS FOR ROCKETT SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on January 4, 2021, via e-mail in accordance with the Commission's Order.³⁵

via e-mail: creighton.mcmurray@puc.texas.gov

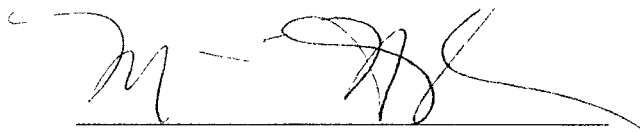
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³⁵ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020)