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DOCKET NO. 49871

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BEFORE THE

PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION CITY OF RED OAK §
INDUSTRIAL DEVELOPMENT §
CORPORATION TO AMEND §
ROCKETT SPECIAL UTILITY §
DISTRICT'S WATER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN DALLAS AND ELLIS COUNTIES §
BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION

OF TEXAS

**RED OAK INDUSTRIAL DEVELOPMENT CORPORATION'S
REPLY TO ROCKETT SUD AND COMMISSION STAFF**

The City of Red Oak Industrial Development Corporation (Red Oak or ROIDC) files this Reply to the Response of Rockett Special Utility District (Rockett) filed on October 1, 2019, and to Commission Staff's Recommendation on Final Deposition filed on October 11, 2019. Pursuant to Order No. 3, this Reply is timely filed.¹

I. REPLY TO ROCKETT

Rockett alleges that it has received federal funding under 7 United States Code Annotated (U.S.C.A.) § 1926,² and argues that the Public Utility Commission (Commission) is without authority to grant Red Oak's petition filed in this docket. Rockett's position is that the mere existence of federal funding under 7 U.S.C.A. § 1926 means that the Commission is powerless to act on a petition for decertification under Tex. Water Code (TWC) § 13.254(a-5). However, Rockett is incorrect in this assertion. Further, Rockett is not entitled to protection under the federal debt statute because it has not provided or made service available to the entire disputed area.

Rockett's argument regarding the inability of the Commission to approve Red Oak's petition rests on an order from the federal district court—*Crystal Clear Special Utility District v.*

¹ Order No. 3, Granting Extension and Amending Procedural Schedule (Oct. 10, 2019).

² 7 U.S.C.A. § 1926 (West).

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Walker.³ As can be seen by the language in that order, the Commission was enjoined from enforcing the order it had issued in Docket No. 46148.⁴ The court did not, however, enjoin the Commission from acting on all petitions filed for streamlined expedited release.⁵

Not only is the *Crystal Clear v. Walker* order not nearly so broad as Rockett suggests, but the same court has also held that it is not impossible to comply with both U.S.C.A. § 1926 and TWC § 13.254(a-6) because the provisions do not directly conflict. “Section 13.254(a-6) creates a two-step process for reviewing decertification requests: certification questions are initially addressed by the PUC, while preemption issues and questions of federal law are addressed by the state district court upon appeal.”⁶

Rockett has failed to show that it is providing service to the entire property that is the subject of this Petition. Commission precedent, supported by case law, is that the mere existence of water lines or facilities on or near a tract does not necessarily mean that the tract is receiving service, as contemplated by TWC § 13.254(a-5).⁷ Rockett’s allegations that it has installed water lines on or near to Tract 4A and Tract 3 (of the five tracts subject to Red Oak’s Petition), that it has had discussions with the City of Red Oak about facilities to be installed in the future, that it determined to upsize its waterlines, and that it planned for future development do not mean that the property itself was receiving service.

³ *Crystal Clear Spec. Util. Dist. v. Walker*, 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. 2019).

⁴ *Petition of Las Colinas San Marcos Phase I LLC to Amend Crystal Clear Special Utility District’s Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 46148, Order (Sep. 28, 2016).

⁵ *Id.* at 2.

⁶ *Green Valley Spec. Util. Dist. v. Walker*, 351 F.Supp.3d 992, 1001 (W.D. Tex. 2018).

⁷ *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014).

As to Tract 4B, Red Oak was unaware of any connection existing on that property. As averred in the affidavit of Ben Goodwyn, President of the City of Red Oak Industrial Development Corporation, attached to Red Oak's Petition, Red Oak has not requested service from Rockett for any of the properties, nor has it paid any fees to Rockett to initiate or maintain service. Thus, any service previously provided by Rockett to the prior owners of Tract 4B is not currently being provided. The invoice provided by Rockett is for a service period of June 27 to July 10, 2019. The property was purchased by Red Oak by deed dated July 8, 2019. The two-day overlap of the service period with the acquisition by Red Oak is insufficient to indicate that the property continued to receive service after it had been purchased by Red Oak. The statements by Mr. Goodwyn in his affidavit to the effect that Red Oak never requested service, nor received service, on any of the portions of the total property at issue, remain uncontroverted.

II. REPLY TO COMMISSION STAFF

Red Oak substantially agrees with Commission Staff's recommendation on final disposition. The area of disagreement is with the alleged receipt of service on Tract 4B. As noted above, the service provided to the former owners of Tract 4B is not continuing; Red Oak has never made application for service at that location.

Red Oak has recently received communication from Rockett that it has filed a complaint in the federal court for the Western District of Texas against the Commission and Red Oak. Red Oak is unaware as to whether the Commission has been served with the complaint. In light of the federal litigation being commenced by Rockett, Staff's alternate suggestion that the Commission abate this proceeding until the courts have resolved the issue of federal preemption, has merit. Therefore, while Red Oak continues to request approval of its Petition, Red Oak supports Staff's recommendation on abatement by the Commission.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

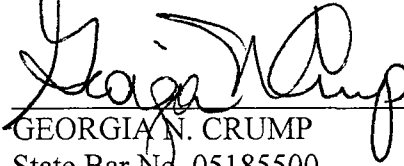
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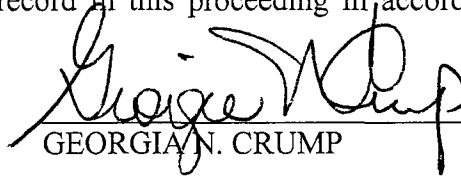
GEORGIA N. CRUMP

State Bar No. 05185500

ATTORNEYS FOR RED OAK INDUSTRIAL
DEVELOPMENT CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2019, a true and correct copy of the foregoing document was served on all parties of record in this proceeding in accordance with 16 Tex. Admin Code § 22.74.



GEORGIA N. CRUMP