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 PUBLIC UTILITY COMMISSION
 OF TEXAS

PETITION OF THE 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 §

COMMISSION STAFF'S RESPONSE TO MOTION TO LIFT ABATEMENT

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to the City of Red Oak Industrial Development Corporation's (Red Oak) Motion to Lift Abatement and would show the following:

I. BACKGROUND

On August 19, 2019, Red Oak filed a petition for streamlined expedited release from Rockett Special Utility District's (Rockett SUD) water Certificate of Convenience and Necessity (CCN) No. 10099 in Dallas and Ellis Counties, under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l). Red Oak asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Dallas and Ellis Counties, which are both qualifying counties. On September 13, 2019, Rockett SUD filed a motion to intervene in this proceeding.

Order No. 4, issued November 15, 2019, abated this case "[c]onsistent with the discussion of the Commissioners at the November 14, 2019 open meeting concerning Docket No. 48801." On November 25, 2019, Red Oak filed a Motion to Lift Abatement. Under 16 TAC § 22.78(a), a responsive pleading is due within five working days after receipt of the pleading to which the response is made. Five working days from November 25, 2019 is December 5, 2019.¹ Therefore, this pleading is timely filed.

¹ The Commission was closed on November 27, 28, and 29, 2019.

II. RESPONSE TO MOTION TO LIFT ABATEMENT

Commission Staff is opposed to Red Oak's request to lift the abatement. Red Oak's initial motion asserted that Rockett SUD is not protected by 7 U.S.C. § 1926(b) because it is not federally indebted.² The motion was supported by an email from the Assistant United States Attorney (AUSA) representing the United States Department of Agriculture (USDA) in *Red Oak v. U.S. Dep't of Agriculture*, Cause No. 3:19-cv-2761.³ The email stated that "the USDA does not expect the Section 1926 loan referenced in your client's complaint in the *Red Oak v. USDA* case to be approved or close in the next sixty days."⁴

In its response to Red Oak's motion, Rockett SUD once again enumerated the facts supporting its assertion that it is the recipient of a federal loan, including the following: (1) Rockett SUD received \$1,640,765.23 in loan proceeds from CoBank ACB on September 26, 2019; and (2) the USDA has issued a "Conditional Commitment" to CoBank ACB for a Rural Utilities Guaranteed Loan.⁵ Red Oak filed a reply on December 2, 2019, admitting that CoBank ACB has secured a Conditional Commitment from the USDA, and arguing that the USDA will not actually issue a Loan Note Guarantee until the conditions listed in 7 C.F.R. §§ 1779.53 and 1779.63 are met.⁶ According to Red Oak, Rockett SUD does not have a federally-guaranteed loan triggering the protections of 7 U.S.C. § 1926(b) unless and until the USDA issues a Loan Note Guarantee.⁷

Staff is not a party to *Red Oak v. U.S. Dep't of Agriculture* and has no knowledge of the facts of the case. Additionally, the contents of the AUSA's email constitute hearsay under Texas Rule of Evidence 801(d) if offered into evidence because Red Oak is relying on the AUSA's statement to prove the truth of the matter asserted.⁸ Moreover, Red Oak's argument relies on a

² Motion to Lift Abatement at 1 (Nov. 25, 2019).

³ *Id.* at Attachment A.

⁴ *Id.*

⁵ Rockett Special Utility District's Response and Objection to Petitioner's Motion to Lift Abatement and Motion to Dismiss the Petition at 2-3, Ex. 1, Ex. C, and Ex. E (Dec. 2, 2019).

⁶ Reply to Rockett Special Utility District's Response and Objection to Petitioner's Motion to Lift Abatement and Motion to Dismiss the Petition at 1 (Dec. 2, 2019).

⁷ *Id.* at 2.

⁸ Tex. R. Evid. 801(d).

new standard regarding the timing of the issuance of the Loan Note Guarantee but offers no support for the standard.⁹

While Rockett SUD does not dispute that, to date, it has secured only a Conditional Commitment from the USDA, it is of note that Rockett SUD secured the Conditional Commitment on July 25, 2019,¹⁰ before Red Oak filed its petition for release. Further, Red Oak has not cited to any authority stating that this type of commitment is not sufficient to support a finding that Rockett SUD is federally indebted. Finally, keeping this docket abated will not interfere with Red Oak's ability to obtain approval of the requested release in the event that a Loan Note Guarantee is never issued. Thus, Staff supports leaving the abatement in place.

III. CONCLUSION

For the reasons discussed above Staff respectfully requests the entry of an Order denying Red Oak's request to lift the abatement in this proceeding.

Dated: December 5, 2019

⁹ Staff notes that Red Oak made this argument for the first time in its reply to Rockett SUD and not in its initial Motion to Lift Abatement.

¹⁰ Rockett Special Utility District's Response and Objection to Petitioner's Motion to Lift Abatement and Motion to Dismiss the Petition at Ex. 1 and Ex. C.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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**DOCKET NO. 49871
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on December 5, 2019, in accordance with 16 TAC § 22.74.


Eleanor D'Ambrosio