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PUBLIC UTILITY COMMISSION
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**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**

PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S RESPONSE TO SECOND 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) Second 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)¹ 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. Order No. 5, issued December 10, 2019, denied the motion. On February 4, 2020, Red Oak filed a Second 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 February 2, 2020, is February 11, 2020. Therefore, this pleading is timely filed.

¹ Staff notes SB 2272 passed during the 86th Regular Legislative Session amended TWC § 13.254(a-5) effective September 1, 2019. Red Oak's petition was filed in August 2019; therefore, the current version of TWC § 13.254 and the new TWC § 13.2541 do not apply to this proceeding.

II. RESPONSE TO MOTION TO LIFT ABATEMENT

Commission Staff is opposed to Red Oak's request to lift the abatement. Red Oak continues to assert that Rockett SUD is not protected by 7 U.S.C. § 1926(b) because it is not federally indebted.² However, Red Oak expressly acknowledges that there is a pending federal lawsuit, *City of Red Oak v. United States Department of Agriculture, Rural Utilities Service, Rockett Special Utility District, and CoBank*, challenging "the validity and the very existence of the federal guarantee claimed by Rockett..."³ Staff is not a party to this suit and has no knowledge of the facts of the case other than those presented in Red Oak's motion. Nevertheless, it is Staff's position that it would be premature for the Commission to conclude that Rockett is not federally indebted when the party making this claim has had to initiate legal proceedings to obtain a declaratory judgment affirming this very conclusion.⁴

In addition, Red Oak continues to rely on an argument regarding the timing of the United States Department of Agriculture's (USDA) issuance of a Loan Note Guarantee to Rockett SUD to support its position, while offering no precedent endorsing this approach. Specifically, Red Oak asserts that Rockett SUD has secured only a Conditional Commitment from the USDA to guarantee its loan, and therefore, Rockett SUD will not be federally indebted until all conditions precedent are fulfilled. Staff is not addressing the merits of this argument nor is Staff implying that the USDA's Conditional Commitment guarantees that Rockett SUD will eventually become federally indebted.⁵ However, Staff has reservations about relying on an unsupported legal argument as grounds for lifting a Commission-ordered abatement. 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: February 11, 2020

² Second Motion to Lift Abatement at 4 (Feb. 4, 2020)

³ *Id.* at 3.

⁴ *See id.* ("Red Oak also seeks a declaratory judgment that the loan note guarantee that has been conditionally approved by the USDA is invalid.").

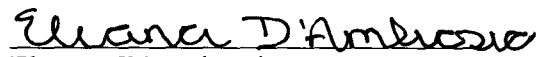
⁵ *Id.*

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Thomas S. Hunter
Division Director

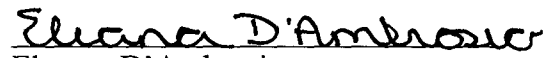
Heath D. Armstrong
Managing Attorney



Eleanor D' Ambrosio
State Bar No. 24097559
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7021
(512) 936-7268 (facsimile)
Eleanor.Dambrosio@puc.texas.gov

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CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 11, 2020, in accordance with 16 TAC § 22.74.



Eleanor D' Ambrosio