



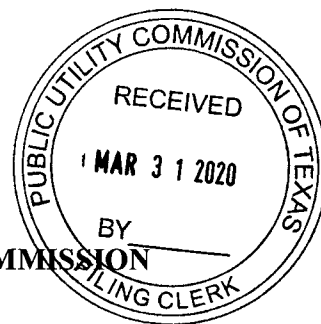
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DOCKET NO. 49871



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

ORDER NO. 6
DENYING REQUEST TO LIFT ABATEMENT

This Order addresses the City of Red Oak Industrial Development Corporation's motion to lift abatement filed on February 4, 2020. In Order No. 5 filed on December 10, 2019, the administrative law judge (ALJ) found that the processing of this case should remain abated due to the pendency of the federal litigation.¹ Rockett's federal complaint alleges that due to federal preemption under 7 U.S.C. § 1926(b) related to the existence of a federally guaranteed loan, the Commission is prohibited from granting the expedited release sought in this docket.²

In its February 4, 2020 motion, Red Oak alleges that the abatement should be lifted because the alleged loan was not federally guaranteed, and that no preemption is therefore possible. Rockett, both in its response to the motion to lift abatement and in federal court pleadings, contends that the loan was conditionally guaranteed and that preemption under 7 U.S.C. § 1926(b) applies. The ALJ notes that the arguments advanced by Red Oak in its motion to lift abatement mirror those raised in a motion to dismiss the federal lawsuit.³ The federal litigation remains pending.

Because the applicability of federal preemption to this case is a matter of federal law best resolved by the federal courts, the ALJ is of the opinion that consideration of this docket, including all pending motions to dismiss, should remain abated.

Therefore, the ALJ denies Red Oak's motion to lift abatement. The previously established deadline of May 15, 2020, for Commission Staff to file a status report concerning the status of the litigation remains.

¹ *Rockett Special Utility Dist. v. Botkin et al.*, 1:19-CV-1007-RP, U.S. Dist. Court W.D. TX Austin (pending).

² See Complaint, 1:19-CV-1007-RP.

³ See Defendant Alamo Mission LLC's Motion to Dismiss, 1:19-CV-1007-RP, PACER Document 25.

Signed at Austin, Texas the 31st day of March 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

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

STEVEN LEARY
ADMINISTRATIVE LAW JUDGE