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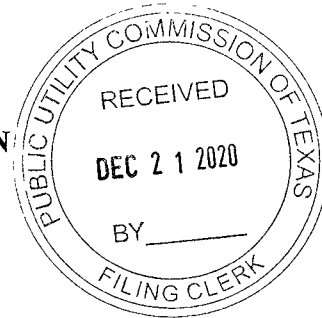


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DOCKET NO. 49871

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 §



**ROCKETT SPECIAL UTILITY DISTRICT'S OBJECTION TO PROPOSED FINAL
ORDER FILED BY RED OAK INDUSTRIAL DEVELOPMENT CORPORATION**

COMES NOW, ROCKETT SPECIAL UTILITY DISTRICT ("Rockett") and files this Objection to the Proposed Final Order filed by Petitioner Red Oak Industrial Development Corporation on December 14, 2020; thus, in accordance with 16 Texas Administrative Code (TAC) § 22.78, this Response is timely filed. In support thereof, Rockett respectfully shows as follows:

I. BACKGROUND

On August 19, 2019, the Petitioner City of Red Oak Industrial Development Corporation ("CROIDC" or "Petitioner") filed a Petition for Streamlined Expedited Release of certain property (the "Property") from Rockett's Certificate of Convenience and Necessity (CCN) in Dallas and Ellis Counties (the "Petition"). The Petition was filed pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 TAC § 24.245(1), and included a sworn affidavit by the President of Petitioner that, among other things, stated Petitioner owned the Property, attached Petitioner's incorporation documents and copies of filed deeds reflecting the Property was not owned by Petitioner¹ (to be discussed further below).

On October 2, 2019, Rockett filed its Response and Objection to the Petition, asserting entitlement to 7 U.S.C. § 1926(b) ("§ 1926(b)") protection, that decertification is improper because the Property is "receiving service" from Rockett, and that the Petition must be denied and dismissed in light of the order against the Commissioners in *Crystal Clear Special Utility District v. Walker, et al.*, No. 1:17-cv-254-LY, 2019 WL 245377 (W.D. Tex. Mar. 27, 2019).

¹ Petition by City of Red Oak Industrial Development Corporation, at Exhibits A-B, E-1-E-4 (Aug. 19, 2019).

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On October 11, 2019, Commission's Staff ("Staff") submitted its Recommendation on Final Disposition. Staff's recommendation also noted that the issues concerning determining how a USDA indebted association meets the requirements for § 1926(b) protection, and the issue of whether §1926(b) preempts TWC § 13.254(a-6) was before the Fifth Circuit in the case styled *Crystal Clear Special Util. Dist. v. Marquez*, 316 F.Supp.3d 965 (W.D. Tex., Mar. 29, 2018).² Staff also recommended as an alternative, that the Commission could abate this proceeding until the courts resolved these issues.³

On October 16, 2019, Rockett filed suit in federal court styled *Rockett Special Util. Dist. v. Shelly Botkin, et al.*, U.S. District Court W.D. Tex., Austin Division, Case No. 19-cv-1007, seeking to preclude the Commission from proceeding in this matter (the "Rockett Federal Case").

On November 15, 2019, Order No. 4 was issued and abated this proceeding, as "[a]n issue raised in this case pertaining to possible federal preemption under 7 U.S.C. § 1926(b) has recently become the subject of federal court litigation between the parties."⁴

On November 19, 2019, ROIDC conveyed Tracts 3 and Tracts 4A of the Property to Compass Datacenters DFW III, LLC ("Compass").⁵

On February 11, 2020, Rockett filed its Response and Objection to Petitioner's Second Motion to Lift Abatement and its Motion to Dismiss the Petition, pointing out that Petitioner was not the landowner and that the true landowner was Red Oak Industrial Development Corporation ("ROIDC" or "Red Oak"), a separate and distinct entity from Petitioner.⁶ Further, Rockett provided evidential records from the Office of the Texas Secretary of State (TXSOS) that landowner ROIDC was involuntarily terminated (dissolved) on October 12, 1994.⁷

More than seven months later, on September 21, 2020, ROIDC filed an Amendment of Petition and Request to Restyle Docket, arguing that the true landowner ROIDC could simply

² Commission Staff's Recommendation on Final Disposition, at 3 (Oct. 11, 2019)

³ *Id.*

⁴ Order No. 4, at 1 (Nov. 15, 2019).

⁵ ROIDC's Response to Order No. 10, at 1 (Nov. 20, 2020).

⁶ Rockett's Response and Objection to Petitioner's Second Motion to Lift Abatement, at 1 (Feb. 11, 2020).

⁷ *Id.*, at 1-2.

replace Petitioner due a misnomer, claiming the correct parties have been involved since the filing of the Petition.⁸

On September 28, 2020, Rockett responded, stating, among other things, that Petitioner did not own the land and the Commission lacked jurisdiction over the original Petition and that **Petitioner and ROIDC are two distinct and separate entities**; thus, the filing by Petitioner was **a misidentification** (not misnomer), which cannot be cured by amendment of the Petition.⁹ Rockett also provided TXSOS documents evidencing the involuntary dissolution of ROIDC on October 12, 1994, and pointing out that ROIDC was a dissolved corporation and had forfeited its right to conduct business, including at the time the Property was conveyed to ROIDC and when the Petition was filed by Petitioner.¹⁰

On November 3, 2020, ROIDC filed a pleading and provided a copy of the Order issued November 3, 2020 dismissing the Rockett Federal Case.¹¹

Among other pending federal litigation regarding Rockett's assertion of preemption and protections under 7 U.S.C. § 1926(b) that directly affect in this proceeding, Rockett provided that the Rockett Federal Case has been appealed to the Fifth Circuit.¹²

In its Response to Order No. 11, Red Oak asserts, among other things, that the Order issued on November 3, 2020 dismissing the Rockett Federal Case, in addition to Red Oak's arguments surrounding Rockett's federal preemption in this proceeding, is based on the non-existence of a federal loan guarantee¹³ (issuance of a Loan Note Guarantee) from the United States Department

⁸ Amendment of Petition and Request to Restyle Docket, at 2 (Sept. 21, 2020), where the attorney's signature block indicates this pleading was filed by the attorneys for ROIDC, not Petitioner.

⁹ Rockett's Response and Objection to Petitioner's Amendment of Petition and Request to Restyle Docket and Renewed Motion to Dismiss the Petition, at 1-4 (Sept. 28, 2020).

¹⁰ *Id.*, at 4-5.

¹¹ Red Oak Industrial Development Corporation's Supplement to Third Motion to Lift Abatement, at Attachment A (Nov. 3, 2020).

¹² Rockett's Response to Order No. 11, at 3 (Dec. 7, 2020).

¹³ Red Oak Industrial Development Corporation's Response to Order No. 11, at 2-4 (Dec. 8, 2020).

of Agriculture (USDA) to lender CoBank ACB (“CoBank”) related to Rockett’s loan funded September 26, 2019.¹⁴

On December 8, 2020, the USDA issued its Loan Note Guarantee to CoBank and Rockett refiled its federal suit, *Rockett Special Utility District v. Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. filed Dec. 10, 2020).¹⁵

II. OBJECTION TO THE PROPOSED FINAL ORDER

A. ROIDC drafted and submitted proposed findings of fact and conclusions of law without authorization or direction by the Commission

16 TAC § 22.261(c) provides that “[t]he presiding officer may direct or authorize the parties to draft and submit proposed findings of fact and conclusions of law. The commission is not required to rule on findings of fact and conclusions of law that are not required or authorized.” No administrative law judge in this proceeding has directed or authorized ROIDC to draft or submit proposed findings of fact or conclusions of law.

In its unauthorized Proposed Final Order, ROIDC attempts to include information and issues that have yet to be determined by a federal court as afforded to Rockett through its England Reservation, and at the same time ignores the imperative pending litigation in the Fifth Circuit and Western District against the Commissioners, CROIDC, ROIDC, and Compass directly related to this Petition and release of the Property from Rockett’s territory. In a “findings of fact,” ROIDC states, “[c]onsistent with the Commission’s other recent decisions . . .,” yet does not refer to which decisions in specific dockets. ROIDC further includes a sentence from Rockett’s website about a reason Rockett was formed in 1965, which has nothing to do with whether the Property at issue in this Petition is currently receiving water service.¹⁶ The Commission has not ruled on issues such as whether ROIDC has party status, lack of jurisdiction as CROIDC filed the Petition but is not the landowner, preemption, etc. (to be further discussed herein). ROIDC attempts to have the administrative law judges hastily approve a proposed order to grant a Petition and blatantly

¹⁴ See Rockett’s Response and Objection to the Petition, at 2-5, Exhibit B (Oct. 2, 2019) (providing a copy of the email receipt of the funding received by Rockett on September 26, 2019).

¹⁵ See Rockett’s Supplement to its Motion to Dismiss, at 3 (Dec. 15, 2020) (providing a copy of the Loan Note Guarantee issued by the USDA and the Complaint filed against the Commissioner, CROIDC, ROIDC, Compass, and others related to this proceeding and other streamlined expedited release petitions).

¹⁶ Proposed Final Order [filed by ROIDC], at 7 (Dec. 14, 2020).

ignoring Rockett's rights or the fact that the Commissioners are defendants in pending federal litigation regarding this Petition.

ROIDC's purposeful misinformation and unsupportive conclusions clearly were submitted to ignore all of Rockett's rights and is an attempt to circumvent the Commission's proceeding and requirements that would allow the Petition to be granted. Therefore, the Commission should ignore ROIDC's unsolicited Proposed Order.

B. The Petition was not filed by the landowner; Commission lacks jurisdiction to grant the Petition

The Petition was filed pursuant to TWC § 13.254(a-5) and 16 TAC § 24.245(l),¹⁷ in which these statutes provide that the *owner of a tract of land* may petition the Commission for streamlined expedited release and the *landowner* shall submit a petition. As confirmed by ROIDC, Compass now owns Tracts 3 and 4A of the Property,¹⁸ and Petitioner CROIDC was never and is not the current landowner of any tracts of the Property.¹⁹

Because the Petition must be filed by the landowner, Petitioner CROIDC lacked standing and the Petition cannot be amended to correct the jurisdictional error and confer subject matter jurisdiction on the Commission now.²⁰

C. ROIDC is not the Petitioner and cannot replace CROIDC as Petitioner

In the proposed Final Order submitted by ROIDC, ROIDC claims to be the Petitioner, using a footnote that the identification of CROIDC as the Petitioner was a misnomer.²¹ As Rockett has provided in this proceeding, the filing of the Petition by CROIDC is a misidentification, since CROIDC and ROIDC are two separate legal entities with similar names and CROIDC was mistaken as to being the correct petitioner, according to *Gonzalez v. Greyhound Lines, Inc.*, 181

¹⁷ The Petition was filed on August 19, 2019. TWC § 13.254(a-5), Redesignated as subsec. (b) of TWC § 13.2541 and amended by Acts 219, 86th Leg., ch. 688 (S.B. 2272), § 4, effective September 1, 2019. The current 16 TAC § 24.245 was adopted to be effective July 2, 2020, 45 TexReg 4321.

¹⁸ ROIDC's Response to Order No. 10, at 1 (Nov. 20, 2020).

¹⁹ Amendment of Petition and Request to Restyle Docket, at 1 (Sept. 21, 2020).

²⁰ Rockett's Response and Objection to Petitioner's Amendment of Petition and Request to Restyle Docket and Renewed Motion to Dismiss the Petition, at 3-4 (Sept. 28, 2020).

²¹ Proposed Final Order [filed by ROIDC], at 1, fn. 1 (Dec. 14, 2020).

S.W.3d 836, 396 (Tex. App. 2005).²² As provided above, Petitioner CROIDC was not the landowner, did not have standing, and cannot seek any relief under *Gonzalez*, including amending the Petition to replace ROIDC as the petitioner and, more importantly, the Petition cannot be granted according to TWC § 13.254(a-5) and 16 TAC § 24.245(l) since CROIDC is not the landowner.

D. Rockett is indebted on a loan qualifying it for protections under 7 U.S.C. § 1926(b); Petition cannot be granted

Contrary to ROIDC's statement in its Proposed Final Order,²³ Rockett enjoys protection under 7 U.S.C. § 1926(b) ("1926(b) protection"). Although the Rockett Federal Case was dismissed, the appeal is pending at the Fifth Circuit; more importantly, the USDA issued the Loan Note Guarantee on December 8, 2020, and Rockett refiled its federal suit on December 10, 2020.²⁴

Rockett does not contend that it did not enjoy 1926(b) protection prior to the issuance of the Loan Note Guarantee. However, now that the Loan Note Guarantee has been issued,²⁵ there is no question whether Rockett enjoys 1926(b) protection. The Petition cannot be granted to release any of Rockett's territory, and this case must be dismissed:

In addition to these principles defining the protection § 1926(b) affords rural water districts from competition, **state law cannot change the service area to which the protection applies, after that federal protection has attached.** See *Pittsburg County*, 358 F.3d at 715. For instance, **"where the federal § 1926 protections have attached, § 1926 preempts local or state law that can be used to justify a municipality's encroachment upon disputed area in which an indebted association is legally providing service under state law."** *Pittsburg County*, 358 F.3d at 715 (quotation, alternation omitted).²⁶

²² Rockett's Response and Objection to Petitioner's Amendment of Petition and Request to Restyle Docket and Renewed Motion to Dismiss the Petition, at 3 (Sept. 28, 2020).

²³ Proposed Final Order [filed by ROIDC], at 10, ¶18 (Dec. 14, 2020).

²⁴ Rockett's Supplement to its Motion to Dismiss, at 3 (Dec. 15, 2020).

²⁵ *Id.*, at Attachment 1.

²⁶ *Rural Water Sewer & Solid Waste Mgmt. v. City of Guthrie*, 344 F. App'x 462, 465 (10th Cir. 2009), *certified question answered sub nom. Rural Water Sewer & Solid Waste Mgmt., Dist. No. 1, Logan Cty., Oklahoma v. City of Guthrie*, 2010 OK 51, 253 P.3d 38 (emphasis added).

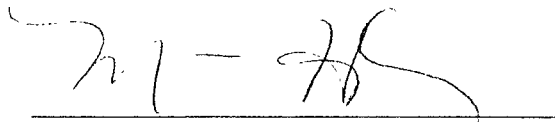
Not only does ROIDC's Proposed Final Order suggest the Petition be granted when it is not qualified under state law, but ROIDC also wants the Commission to violate federal laws and court decisions.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Rockett respectfully requests that Commission ignore the Proposed Final Order submitted by ROIDC, deny the Petition as Petitioner CROIDC is not the landowner and thus the Petition cannot be granted under TWC § 13.254(a-5) and 16 TAC § 24.245(l) and dismiss this proceeding, or, in the alternative, abate this proceeding consistent with previously issued Orders and until all federal issues surrounding the Petition and the parties' rights have been fully resolved by the federal courts.

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC

A handwritten signature in black ink, appearing to read 'Maria Huynh', is written over a horizontal line.

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ATTORNEYS FOR ROCKETT SPECIAL
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on December 15, 2020, via e-mail in accordance with the Commission's Order.²⁷

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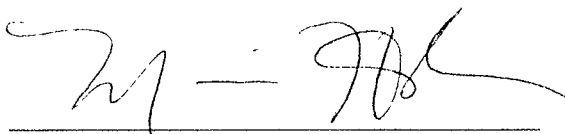
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A handwritten signature in black ink, appearing to read 'M - Huynh', written over a horizontal line.

Maria Huynh

²⁷ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).