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PUBLIC UTILITY COMMISSION  
BEFORE THE CLERK

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

**RED OAK INDUSTRIAL DEVELOPMENT CORPORATION'S  
RESPONSE TO ROCKETT SPECIAL UTILITY DISTRICT'S  
SUPPLEMENT TO ITS MOTION TO DISMISS**

Now comes Red Oak Industrial Development Corporation (Red Oak or Petitioner) and files this Response to Rockett Special Utility District's (Rockett) Supplement to its Motion to Dismiss.<sup>1</sup> Rockett filed its Supplement on December 15, 2020; therefore, this Response is timely filed.<sup>2</sup>

**I. INTRODUCTION**

After over a year of continuing to file and pursue legal action based on a conditional commitment to guarantee loan, Rockett was issued an executed loan note guarantee, and now has a guaranteed loan as defined by 7 U.S.C. § 1926. Rockett's dilatory tactics resulted in a change of status 14 months after it first (falsely) represented it had a qualifying guaranteed loan. However, while Rockett finally has a guaranteed loan, the obligation of the Commission to carry out its requirements pursuant to TWC § 13.254(a-5) has not changed. Rockett's Supplement to its Motion to Dismiss fails for lack of factual and legal support, and the Motion to Dismiss should be denied accordingly.

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<sup>1</sup> Rockett Special Utility District's Supplement to its Motion to Dismiss (Dec. 15, 2020).

<sup>2</sup> Rockett filed a Motion for Leave to file its Supplement, and Petitioner responded in opposition, requesting denial of the Motion for Leave. Red Oak Industrial Development Corporation's Response to Rockett Special Utility District's Motion for Leave to File a Supplement. (Dec. 22, 2020). This response is submitted to address the substance of Rockett's Supplement to its Motion to Dismiss in the event Leave is granted.

## II. ARGUMENT AND AUTHORITIES

### A. Irrespective of Rockett's USDA-guaranteed loan, Section 1926(b) does not impair the Commission's mandate to release the Property from Rockett's CCN.

Section 1926(b) does not expressly limit the action the Commission may take in regulating retail water service. In its entirety, Section 1926(b) provides:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.<sup>3</sup>

In its Brief to the United States Court of Appeals for the Fifth Circuit, the Commission argued that because Section 1926(b) only restricts local governments, it “cannot limit the State’s activities.”<sup>4</sup> Accordingly, nothing in Section 1926(b) limits the Commission’s authority to “examin[e] whether the loan recipient continues to deserve or has the ability to fulfill its legal duty to serve.”<sup>5</sup>

Presumably, the Commission still holds the position that it briefed to the Fifth Circuit—that Section 1926(b) does not apply to restrict its actions under the Texas Water Code. Red Oak agrees with the Commission’s decision. And because Section 1926(b) does not apply to restrict the Commission’s actions that it must take under the Texas Water Code, the Commission should deny Rockett’s Motion irrespective of Rockett’s loan guarantee.<sup>6</sup>

Further, there has been a change of status in the case law that previously determined that part of the statutory provisions for streamlined expedited release were preempted. In its

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<sup>3</sup> 7 U.S.C. § 1926(b)

<sup>4</sup> Br. for Appellants at 30, *Green Valley Spec. Util. Dist. v. City of Schertz*, 2019 WL 2250158 (5th Cir. May 17, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Rockett states that it has invoked its England Reservation and the Commission cannot decide its purported federal claims. Rockett Special Utility District’s Supplement to Motion to Dismiss (Dec. 15, 2020). Petitioner is not asking the Commission to address any federal claims, only to carry out its obligations under Texas law within the authority granted to it by the legislature.

Supplement to its Motion to Dismiss, Rockett contends that because the Loan Note Guarantee has been issued, the petition should be denied consistent with the ruling in *Crystal Clear* that TWC § 13.254(a-6) and a portion of § 13.254(a-5) were void.<sup>7</sup> Rockett incorrectly states that the opinion of the district court “remains undisturbed.”<sup>8</sup>

That inaccurate parsing of the decision misrepresents the law, as the district court’s decision in *Crystal Clear* has been vacated by the United States Court of Appeals for the Fifth Circuit.<sup>9</sup> The case has been remanded to the district court for further proceedings consistent with the Fifth Circuit’s en banc decision in *Green Valley Special Utility District v. City of Schertz*.<sup>10</sup> Rockett’s reliance on the district court’s now-vacated decision in *Crystal Clear* is thus misplaced.

**B. The property is not receiving water service and must be released from the CCN.**

The Commission is required to grant expedited release regardless of the status of Rockett’s indebtedness or the pending federal suit. State law is clear and the Commission’s responsibility here is not discretionary. Under TWC § 13.254(a-5), when a landowner petitions the Commission for expedited release from a CCN, “the utility commission *shall* grant the petition not later than the 60th day after the date the landowner files the petition.”<sup>11</sup> The *only* permissible reason for not granting expedited release of the property is if the landowner failed to satisfy statutory or regulatory requirements.<sup>12</sup>

A requisite finding the Commission must make in approving a petition for streamlined expedited release is that the property is not receiving water service from the CCN holder.<sup>13</sup> The

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<sup>7</sup> Rockett Special Utility District’s Supplemental to its Motion to Dismiss at 5 (Dec. 18, 2020).

<sup>8</sup> Rockett Special Utility District’s Supplemental to its Motion to Dismiss at 5 (Dec. 18, 2020).

<sup>9</sup> See Red Oak’s Response to Order no. 11, Attachment A, Order, *Crystal Clear Spec Util. Dist v Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam) (“IT IS ORDERED that Appellants Cross-Appellees’ opposed motion to vacate the district court judgment is GRANTED.”).

<sup>10</sup> See *id.*

<sup>11</sup> TWC § 13.254(a-5).

<sup>12</sup> 16 TAC § 24.245(h)(10).

<sup>13</sup> TWC § 13.254(a-5).

existence of the Loan Note Guarantee does not moot the fact-finding delegated to this body under Texas law to determine whether a property is receiving water service. As Commission Staff noted in its December 18, 2020 Response to Order No. 11, a determination was already made in October of 2019 that Red Oak satisfied all procedural requirements, including showing that the property is not receiving water.<sup>14</sup> Nothing in Rockett's supplement provides any new facts or law to change this analysis.

**C. Further request for abatement of this matter would only serve to reward Rockett's methodical efforts to circumvent the laws of this State.**

Rockett's proposed equitable remedy of abatement is made with unclean hands. For over a year, throughout the course of both this docket and in other judicial and administrative proceedings, Rockett repeatedly misrepresented its federal indebtedness, with the goal of delaying its way to those facts being true. It continues its course of dishonesty by not only failing to inform the Commission that *Crystal Clear* has been vacated by the Fifth Circuit, but instead affirmatively representing that there is no change to the status quo. But as explained above, the existence of the Loan Note Guarantee is not sufficient basis for denying Red Oak's Petition. The Commission should not abate this matter *again* so that Rockett can continue to buy time to misstate facts and law for long enough to possibly one day be able to demonstrate an ability to serve.

There is no § 1926(b) protection without qualifying federal indebtedness, and the Conditional Commitment was not evidence of such indebtedness. "To hold otherwise, would render the conditions in the Conditional Commitment for Guarantee a nullity. . . ."<sup>15</sup> However, receipt of the loan note guarantee—having a guaranteed loan—is not sufficient alone to bar release of this property from the certificated area. Previously, Petitioner pointed out that because Rockett did not have a guaranteed loan, it had yet to clear the first hurdle.

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<sup>14</sup> Commission Staff's Response to Order No. 11 (December 18, 2020); Commission Staff's Recommendation on Final Disposition (Oct. 11, 2019).

<sup>15</sup> Red Oak's Lancaster's Response to Order No. 11 at Attachment A at 10 (Dec. 8, 2020).

It has now cleared that hurdle. But having a guaranteed loan does not mean Rockett has now crossed the finish line. And the Commission would act in direct contravention of the law by abating this matter, effectively continuing to reward Rockett with the gift of time to find more reasons to delay its way into protection. The proper statutory and regulatory requirements have already been obstructed for too long in what should be an *expedited* process. The Commission should not allow, should not facilitate, and should not participate in such an injustice. Rockett's motion should be denied, and ultimately this property should be released from the certificated area.

### **III. CONCLUSION**

A petition for streamlined expedited release is a matter of Texas law, and the Commission is the administrative body charged with making that determination based on state-law standards. That is the position the Commission has taken in federal court and should take here. Under state law, Red Oak has satisfied the requirements for the release of the petitioned tracts from Rockett's CCN. Accordingly, the Commission should deny Rockett's Motion to Dismiss the Petition.

Respectfully submitted,



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**ATTORNEYS FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 22, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



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Jamie L. Mauldin