



Control Number: 49871



Item Number: 68

Addendum StartPage: 0

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Governor

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Hunter Burkhalter *LB*
Chief Administrative Law Judge

RE: **Docket No. 49871** – *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*

DATE: February 1, 2021

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

If there are no corrections or exceptions, no response is necessary.

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LB

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	§	

PROPOSAL FOR DECISION

In this proceeding, the City of Red Oak Industrial Development Corporation (CROIDC) seeks streamlined expedited release of land in Dallas and Ellis Counties from the service area under water certificate of convenience and necessity (CCN) number 10099. Rockett Special Utility District is the holder of CCN number 10099. In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission dismiss the petition, under 16 TAC § 22.181(d)(1), for lack of jurisdiction. The ALJ recommends the dismissal be with prejudice.

I. Change in Law

The petition in this matter was filed on August 19, 2019. Subsequent to this filing, an amendment to chapter 13 of the Texas Water Code (TWC) related to streamlined expedited release became effective, on September 1, 2019.¹ However, the changes made by this amendment apply only to a streamlined expedited release proceeding that commenced on or after September 1, 2019, the effective date of the amendment.² A petition for streamlined expedited release that commenced before September 1, 2019 “is governed by the law in effect on the date the proceeding is commenced” and that law was continued in effect for that purpose.³

¹ Act of May 25, 2019, 86th Leg., R.S., ch. 688 (SB 2272), §§ 1-5 (codified at Tex. Water Code §§ 13.254, 13.2541).

² *Id.* § 6.

³ *Id.*

The Commission has previously determined that a proceeding for a petition for streamlined expedited release commences when the petition is first physically filed with the Commission.⁴ Thus, this proceeding commenced on August 19, 2019, and this petition is governed by the law in effect on that date. Accordingly, in this PFD, all references and citations are made to the statutes and rules in effect at the time the petition was filed.

II. Background

On February 11, 2020, Rockett filed what constituted its second motion to dismiss the petition, alleging CROIDC is not the owner of the land for which streamlined expedited release is sought and, therefore, lacks standing to prosecute the petition, thereby justifying dismissal under 16 Texas Administrative Code (TAC) § 22.181(d)(1).⁵ Rockett contends that the actual owner of the land in question is not CROIDC, but Red Oak Industrial Development Corporation (ROIDC). As detailed in the proposed findings of fact and conclusions of law, the ALJ concludes that the petition should be dismissed.

III. Findings of Fact

The ALJ makes the following findings of fact.

Petitioner

1. CROIDC is a nonprofit Texas corporation registered with the Texas secretary of state under filing number 130228701.
2. CROIDC's articles of incorporation were filed with the Texas secretary of state and approved on February 7, 1994, and it holds Charter No. 1302287-1.

Rockett

3. Rockett is a special utility district operating under chapter 65 of the TWC.
4. Rockett holds water CCN number 10099 that obligates it to provide retail water service in its certificated service area in Dallas and Ellis Counties.

⁴ *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 49904, Order on Certified Issue (Jan. 28, 2020).

⁵ Rockett's first motion to dismiss was denied in Order No. 12 filed on January 15, 2021.

ROIDC

5. ROIDC is a nonprofit Texas corporation registered with the Texas secretary of state under filing number 67984201.
6. ROIDC's articles of incorporation were filed with the Texas secretary of state and approved on November 15, 1983, and it holds, or at one time held, charter number 679842-01.

The Basis for Dismissal

7. On August 19, 2019, CROIDC filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10099.
8. The tract of land for which CROIDC seeks streamlined expedited release consists of approximately 384 acres.
9. CROIDC does not own the tract of land for which it seeks streamlined expedited release.
10. At the time CROIDC filed its petition, ROIDC owned the tract of land for which CROIDC seeks streamlined expedited release.
11. On November 1, 2019, ROIDC sold roughly half of the tract of land for which CROIDC seeks streamlined expedited release to a third party, Compass Datacenters.
12. On November 20, 2020, Compass Datacenters filed, in Docket No. 51545,⁶ its own petition for streamlined expedited release of the land it purchased from ROIDC.
13. CROIDC and ROIDC are two distinct and separate legal entities.
14. On February 11, 2020, Rockett filed what constitutes its second motion to dismiss, contending CROIDC lacks standing to pursue the petition because it is not the owner of the land for which streamlined expedited release is sought.
15. On September 21, 2020, CROIDC responded to the second motion to dismiss by conceding that CROIDC does not own the land for which streamlined expedited release is sought, and seeking permission to amend its petition to substitute ROIDC as the petitioner.
16. On September 28, 2020, Rockett supplemented its motion to dismiss.

⁶ *Petition of Compass Datacenters DFW III, LLC to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Docket No. 51545 (pending).

17. CROIDC filed an additional response to the second motion to dismiss on October 2, 2020.
18. On October 22, 2020, Commission Staff filed a response in which it recommended that Rockett's second motion to dismiss be denied.
19. In Order No. 13 filed on January 29, 2021, the administrative law judge (ALJ) denied CROIDC's September 21, 2020, motion to amend the petition to substitute ROIDC as the petitioner.
20. No hearing was held in this matter, and none is necessary, because the facts relevant to the jurisdictional issue are undisputed.

IV. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this petition under TWC § 13.254(a-5).
2. Under 16 TAC § 22.181(d)(1), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for lack of jurisdiction.
3. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than those specified in 16 TAC § 22.181(g)(1) or (2) requires preparation of a PFD.
4. To obtain release under TWC § 13.254(a-5), a petitioner must demonstrate, among other things, that it owns the tract of land for which streamlined expedited release is sought.
5. Because CROIDC does not own the land for which it seeks streamlined expedited release, it lacks standing to prosecute the petition, thereby justifying dismissal under 16 TAC § 22.181(d)(1).
6. Dismissal of this proceeding, with prejudice, is warranted under 16 TAC § 22.181(d)(1).


V. Ordering Paragraphs

In light of the above findings of fact and conclusions of law, the ALJ recommends the following ordering paragraphs.

1. The Commission dismisses, with prejudice, CROIDC's petition for lack of jurisdiction.
2. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 1st day of February 2021.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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