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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

This Order addresses the petition by City of Red Oak Industrial Development Corporation (CROIDC) for streamlined expedited release of a tract 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.

The administrative law judge (ALJ) issued a proposal for decision that recommended dismissal of the petition, under 16 TAC § 22.181(d)(1), for lack of jurisdiction. The ALJ further recommended that the dismissal be with prejudice. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, with modifications as described in this Order. The Commission deletes finding of fact 10 because it is unnecessary to support this Order. The Commission modifies finding of fact 11 for clarity and completeness and adds new finding of fact 13A for clarity and completeness. The Commission makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

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

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.

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 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, all references and citations in this Order are made to the statutes and rules in effect at the time the petition was filed.

I. Findings of Fact

The Commission adopts 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 number 1302287-1.

Rockett

3. Rockett is a special utility district operating under chapter 65 of the Texas Water Code (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.

Red Oak Industrial Development Corporation (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.

³ *Id.*

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).

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. DELETED.
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, but CROIDC did not amend the petition to reflect the sale of the portion of the tract of land to Compass Datacenters.
12. On November 20, 2020, Compass Datacenters filed, in Docket No. 51545,⁵ 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.
- 13A. ROIDC is not a party to this proceeding.
14. On February 11, 2020, Rockett filed 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.
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.

⁵ *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).

19. In Order No. 13 filed on January 29, 2021, the 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.

II. Conclusions of Law

The Commission adopts 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 proposal for decision.
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).

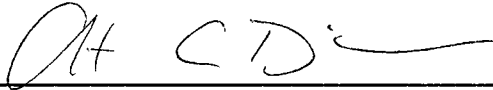
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

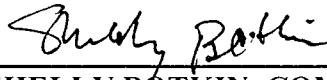
1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission dismisses, with prejudice, CROIDC's petition for lack of jurisdiction.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 5th day of March 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



ARTHUR C. D'ANDREA, CHAIRMAN



SHELLY BOTKIN, COMMISSIONER

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