

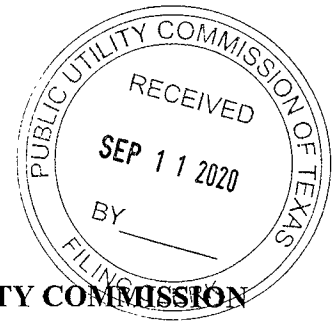


Control Number: 51044



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PUC DOCKET NO. 51044

**PETITION OF FCS LANCASTER, LTD.
TO AMEND ROCKETT SPECIAL
UTILITY DISTRICT'S CERTIFICATE
OF CONVENIENCE AND NECESSITY
IN DALLAS COUNTY BY EXPEDITED
RELEASE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ROCKETT SPECIAL UTILITY DISTRICT'S RESPONSE TO
COMMISSION STAFF'S RESPONSE TO ORDER NO. 3**

COMES NOW, Rockett Special Utility District, a political subdivision of the State of Texas ("Rockett") and files this Response to Commission Staff's Response to Order No. 3, Item 9 (August 27, 2020) and pursuant to Order No. 3 Requiring Responses.¹ Therefore, this Response is timely filed. In support thereof, Rockett respectfully presents the following:

I. The Petition must be dismissed under *Crystal Clear* and *Green Valley*.

FCS Lancaster, Ltd., a Texas limited partnership ("Petitioner") filed a petition for streamlined expedited release, pursuant to Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h), from Rockett's water CCN No. 10099, where the properties subject to the Petition are approximately 35 acres and approximately 121 acres located south of the City of Lancaster at the southwestern corner of the intersection of Bear Creek Road and Interstate 35 in Dallas County (collectively, the "Property") on July 13, 2020 (the "Petition").

In Rockett's Response to the Petition and Motion to Dismiss, Rockett provides that the Petition must be dismissed under *Crystal Clear* as Rockett received funding guaranteed by the United States Department of Agriculture (USDA) prior to the filing of the Petition, in which Rockett enjoys 7 U.S.C. § 1926(b) protections, and Rockett has provided or made service available

¹ See Order No. 3, Item 6, at 1 (Aug. 17, 2020).

to the Property.² Further, abatement of the Petition would allow the Petition to be premised on a void statute and violate Judge Yeakel's findings and judgment in *Crystal Clear*.³

Rockett has the legal right to provide water service to the Property and has "pipes in the ground" and the "physical ability" to serve the Property, including the capability of providing service to the Property within a reasonable amount of time.⁴ Most importantly, the *Green Valley* court affirmed that Rockett does not have to provide water service to the Property immediately.⁵

II. U.S. Magistrate Judge Lane's recommendation is not an order or conclusion that is binding and is under de novo review; the Commission cannot decide whether Rockett has federal rights under 7 U.S.C. § 1926(b).

The Magistrate Judge's recommendation is not a correct statement of the law applicable to 7 U.S.C. § 1926(b) ("Section 1926(b)") and cannot be relied on, and is under de novo review. The issue surrounding Rockett's enjoyment of protection under Section 1926(b) is pending in federal courts, and the Commission cannot decide this issue. Rockett incorporates herein Rockett's Reply to Petitioner's Response to Rockett's Motion to Dismiss, Item 12, filed on September 4, 2020.

III. Petitioner requests the Commission violate *Crystal Clear* and *Green Valley*.

In Petitioner's Response to Motion To Abate of Commission Staff, Petitioner continues to suggest that the Commission should violate *Crystal Clear*,⁶ which remains law binding on the Commission as the Commissioners were parties to the case. Until revised, the judgment in *Crystal Clear* remains binding on the Commissioners.

² Id., at 2-6.

³ Id., at 6-7.

⁴ Id. at 8-10.

⁵ Id.

⁶ Petitioner's Response to Motion to Abate of Commission Staff, Item 13, at 1-2 (Sept. 11, 2020).

The Fifth Circuit has not declined to address the Commission's argument whether Section 1926(b) restricts a state's activities, as claimed by Petitioner, since this issue is before the Fifth Circuit in *Crystal Clear*.

Petitioner further asserts that the Commission's decision to decertify Property from the service area of a CCN holder cannot be reversed.⁷ This is absurd, as it suggests the Commission, a state agency, can proceed to violate federal law where the federal violation cannot be remedied.

IV. The Petition must be dismissed as the Property is receiving "service" under the Texas Administrative and Water Codes.

Even if the Commission decides to ignore Rockett's three pending federal litigation relating to its enjoyment of federal protection under 7 U.S.C. § 1926(b) protection, as Petitioner suggests,⁸ the Commission must dismiss the Petition under state laws.

Petitioner cites that TWC § 13.2541(c) requires the Petition to be granted not later than the 60th day in which the Petition is filed;⁹ however, Petitioner ignores 16 TAC § 24.245(h)(7), providing that the Petition must be deemed administratively complete prior to the Commission issuing a decision on the Petition. The Petition has yet to be recommended or deemed administratively completely. 16 TAC § 24.245(h)(7) also provides that the Commission will base its decision on information filed by Petitioner, Rockett, and Commission Staff.

In Rockett's Response to the Petition and Motion to Dismiss, Rockett provides that the Petition must be dismissed because the Property receives water "service," as defined by 16 TAC § 24.3(33) and TWC § 13.002(21), from Rockett.¹⁰ Rockett also provided the affidavits of its

⁷ Petitioner's Response to Motion to Abate of Commission Staff, at 4.

⁸ Id.

⁹ Id.

¹⁰ Rockett's Response, Item 8, at 10-11 (Aug. 21, 2020).

General Manager and consulting engineer supporting Rockett's performance and acts, commitment and use of its facilities and waterlines to provide water service to the Property and providing the location of Rockett's facilities and waterlines that provide such water service to the Property.¹¹

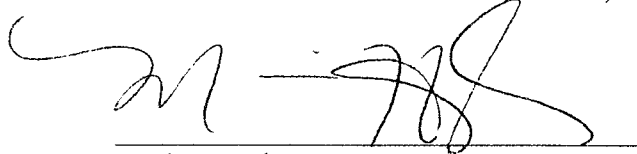
Because the Property is receiving water service from Rockett (the CCN holder), the condition required by 16 TAC § 24.245 (h)(1)(B) has not been met and streamlined expedited release of the Property from Rockett's CCN is not authorized. Therefore, the Petition must be denied and dismissed, not abated.

Conclusion

Rockett prays that the Commission dismiss the Petition (without prejudice), or in the alternative stay this proceeding, until such time as the federal courts have resolved Rockett's rights under § 1926(b).

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC

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

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¹¹ Id. at 10-11, Exs. A and D-E.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on September 11, 2020, by e-mail in accordance with the Commission's Order.¹²

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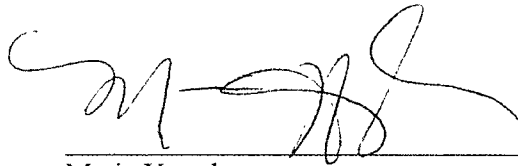
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A handwritten signature in black ink, appearing to read 'Maria Huynh', is written over a horizontal line.

Maria Huynh

¹² *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).