Control Number: 51044

Item Number: 28

Addendum StartPage: 0

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PUC DOCKET NO. 51044

PETITION OF FCS LANCASTER, LTD TO AMEND ROCKETT SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE & NECESSITY IN DALLAS COUNTY BY EXPEDITED RELEASE	§ § § § § § §	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

FCS LANCASTER'S RESPONSE TO ORDER NO. 5

Now comes FCS Lancaster, Ltd (FCS Lancaster or Petitioner) and files this Response to Order No. 5 requesting briefing regarding Rockett Special Utility District's (Rockett) Motion to Dismiss.[1] Order No. 5 directs Petitioner to respond on or before December 4, 2020; therefore, this Response is timely filed.

I. BACKGROUND

FCS Lancaster filed its petition for streamlined expedited release under Section 13.2541 of the Texas Water Code (TWC) on July 13, 2020. Rockett intervened and moved to dismiss, arguing that its CCN was protected because it was federally indebted under 7 U.S.C. § 1926.[2] Rockett previously filed suit in federal court (Rockett Suit) seeking to enjoin the Commission from decertifying any portion of its CCN as doing so would violate Section 1926(b).[3] Commission Staff moved to abate this matter, noting that similar petitions also seeking decertification from Rockett's certificated area were abated pending resolution of the Rockett Suit.[4] Rockett subsequently filed supplemental motions to dismiss.[5]

The federal district court referred the case to a magistrate judge to make a recommendation regarding pending motion practice. On July 29, 2020, the magistrate judge issued a Report and

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[1] Order No. 5 (Nov. 5, 2020).

[2] Rockett Special Utility District's Response to the Petition and Motion to Dismiss (Aug. 21, 2020).

[3] *Rockett Spec Util. Dist.v. Botkin, et al*, Civil Action No. 19-CV-1007, filed Oct. 16, 2019.

[4] Commission Staff's Motion to Abate (Aug. 13, 2020)

[5] Rockett Special Utility District's Response to Commission Staff's Response to Order No. 3 (Sept. 11, 2020), Rockett Special Utility District's Supplemental Motion to Dismiss (Oct. 7, 2020).

Recommendation recommending dismissal of Rockett's suit.[6] The Report and Recommendation concluded that Rockett's suit claiming to have federal protections based on a qualifying guaranteed loan was "devoid of merit."[7] The district court reviewed the Report and Recommendation, and on November 3, 2020, adopted the magistrate judge's Report and Recommendation "as its own order," dismissing the Rockett Suit.[8] The court entered its Final Judgment on November 6, 2020.[9]

On November 5, 2020, the administrative law judge (ALJ) entered Order No. 5, denying the Motion to Abate, requesting a recommendation as to administrative completeness, denying Rockett's Second and Third Motions to Dismiss, and requesting briefing from the parties as to the effect of the federal district court's ruling on Rockett's initial Motion to Dismiss.

II. ARGUMENT & AUTHORITIES

Rockett moved for dismissal claiming: (1) preemption under *Crystal Clear*; (2) provision of water service based on the federal standard set out in *Green Valley*; and (3) the property is receiving water service as defined by the TWC.

The first two arguments are premised on Rockett having federal protection under Section 1926(b). The federal court's confirmation that Rockett is not federally indebted resolves those arguments.

As to the third and final point, Rockett pays lip service to the TWC, but conflates the federal and state-law standards without providing support for either. This property is not receiving water as defined by Texas law. FCS Lancaster has met all of the remaining requirements of TWC § 13.2541 and 16 Tex. Admin. Code (TAC) § 24.245(h). Thus, Rockett's Motion to Dismiss should be denied, and this petition should be granted.

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[6] Attachment A, Report and Recommendation in Rockett Suit (Jul. 29, 2020).

[7] Attachment A at 11 (emphasis added).

[8] Attachment B, Order Adopting Report and Recommendation at 1 (Nov. 3, 2020).

[9] Attachment C, Final Judgment (Nov. 6, 2020).

A. Rockett is not federally indebted, and its CCN is not protected by Section 1926(b).

Rockett has argued in this and other related matters that its CCN is protected from decertification because it has a federally guaranteed loan as defined by 7 U.S.C. § 1926 and corresponding Title 7, Part 1779[10] of the federal regulations. Based on that representation, Rockett claims it is afforded federal protections that preempt the TWC provisions regarding streamlined expedited release. In support of this claim, Rockett points to the existence of the Rockett Suit and a conditional commitment to guarantee a loan issued in 2019. The recent federal court's ruling, however, has disposed of the Rockett Suit, and the applicable federal regulations make clear that a conditional commitment is insufficient evidence of a guaranteed loan.

1. The federal district court's order moots any preemption claim by ruling Rockett does not have qualifying federal indebtedness.

The federal district court's order and subsequent final judgment resolve the question of preemption. The magistrate judge's Report and Recommendation in the Rockett Suit explains:

> For all these reasons, Rockett's policy arguments that a determination that its CoBank loan is not protected by Section 1926(b) would frustrate the goals of Section 1926(b) are also unpersuasive. Rockett's position would far expand the protections of 1926(b) to loans that are not—and may never be—federally funded or guaranteed.
>
> Accordingly, *because Rockett does not have a loan entitled to Section 1926(b) protections, its claims based on Section 1926 are so "completely devoid of merit as not to involve a federal controversy."* *See Steel Co.*, 523 U.S. at 89.[11]

The federal district court adopted the Report and Recommendation as its own order and dismissed the case.[12]

Rockett contends there is still a federal question because it filed an appeal and continues to claim Section 1926(b) protection. Rockett's argument is contrary to its own arguments. Rockett

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[10] Title 7, Part 1779 of the federal regulations was moved and redesignated as part of the consolidated Part 5001 regarding the USDA's guaranteed loan program, effective October 1, 2020. The agency decision Rockett uses to support its claim for federal protection was initiated prior to that date Because the rules do not have retroactive effect, reference will generally be made to Part 1779.

[11] Attachment A at 11 (emphasis added)

[12] Attachment B; Attachment C.

argues that *Crystal Clear*, which is also pending appeal, should be treated as a settled matter barring the release of this property, while simultaneously (and inconsistently) arguing that its appeal of the federal district court's dismissal warrants, at a minimum, abatement of this proceeding.[13] The existence of a lawsuit is not evidence of a guaranteed loan—a loan note guarantee is.[14] Rockett has never, in this matter or any other matter before a judicial or administrative adjudicative body, provided a loan note guarantee in a single page in all of its filings. That is because the loan is not guaranteed. Without qualifying indebtedness, there is no federal protection.

2. The USDA also confirmed that Rockett currently does not have a guaranteed loan.

Rockett has misrepresented that its conditional commitment for a loan guarantee is evidence that it has a guaranteed loan as that term is used in Section 1926(b). In its response to Order No. 5, Rockett cites authority arguing that a conditional commitment is a final agency action.[15] However, that is not an issue before the Commission. Whether the conditional commitment is "final agency action" only determines whether it can be appealed under the federal Administrative Procedure Act.

Although a conditional commitment is a final agency action, it remains subject to completion of conditions precedent before a loan note guarantee will be issued. Therefore, the conditional commitment is not itself a loan note guarantee. Rockett, however, would have the Commission take this erroneous position, despite the fact that the proffered interpretation is directly counter to the plain text of the applicable federal regulations. The regulatory provisions

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[13] Rockett Special Utility District's Response to Order No 5 (Nov. 20, 2020). An important difference between the *Crystal Clear* appeal and the *Rockett Special Utility District* appeal is that the Fifth Circuit has already abrogated much of the district court's ruling in *Crystal Clear*. *See Green Valley Spec. Util. Dist. v. City of Schertz*, 969 F.3d 460, 472 (5th Cir. 2020) (en banc) (barring suit against the Commission seeking retrospective reversal of Commission order). In light of *Green Valley*, the Fifth Circuit's reversal of the district court's decision in *Crystal Clear* is almost certain.

Regardless, the present federal-court decision that decided that Rockett does not have federal Section 1926(b) protection is what the Commission should consider, rather than a future hypothetical (and unlikely) reversal. None of the language in TWC § 13.2541 that speaks to federal protection is at issue, regardless of *Crystal Clear's* future.

[14] *See* 7 C.F.R. § 1779.4.

[15] Rockett Special Utility District's Response to Order No. 5 at 1–2 (Nov. 20, 2020).

that govern guaranteed loans draw a clear distinction between an actual loan guarantee and a conditional commitment subject to conditions precedent:

- "A loan guarantee under this part will be evidenced by a Loan Note Guarantee Issued by the Agency."[16]
- "The Loan Note Guarantee will not be issued until...[t]he lender certifies that...[n]o changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing."[17]

Clearly, a conditional commitment is a prerequisite to, but is not itself, a loan note guarantee.

The City of Red Oak and the Red Oak Industrial Development Corporation (together, Red Oak), filed a suit seeking judicial review of the United States Department of Agriculture's (USDA) decision to issue Rockett a conditional commitment to guarantee a loan (the Red Oak Suit).[18] The USDA, which is the only federal agency charged with the enforcement, regulation, and administration of the loan program, represented in the Red Oak Suit that it has not executed a loan note guarantee.

- "USDA admits only that it has not closed on the Loan Note Guarantee with Rockett."[19]
- "USDA admits only that all conditions precedent have not occurred."[20]

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[16] 7 C F.R § 1779.4.

[17] 7 C.F.R. § 1779.63.

[18] *City of Red Oak v. United States Department of Agriculture, Rural Utilities Service*, Rockett Special Utility District, and CoBank, Civil Action No. 1:20-CV-00483-RP, filed Nov. 19, 2019. This case was originally filed in the Northern District of Texas (Civil Action No. 19-2761) and was subsequently transferred to the United States District Court for the Western District of Texas, Austin Division, and issued a new case number.

[19] Attachment D, USDA's Answer in Red Oak Suit at ¶ 42 (Oct. 5, 2020).

[20] Attachment D at ¶ 44

- "USDA admits only that a loan note guarantee has not been executed."[21]

Not only did the federal court rule that Rockett does *not* have a guaranteed loan, but the USDA, the very agency that is charged with issuing loan note guarantees, *disclaims issuance of a loan note guarantee to Rockett.* The answer to the question of whether Rocket is federally indebted is an unequivocal "no."

3. *Crystal Clear* did not rob the statutory provisions governing streamlined expedited release of all meaning and effect.

In both its Motion to Dismiss and in response to Order No. 5, Rockett cited *Crystal Clear Special Utility District v. Walker* to say that the Commission cannot grant decertification because the authorizing statute is void.[22] Contrary to Rockett's assertion, however, *Crystal Clear* in fact states:

> (1) PUC Officials' Final Order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm'n, Petition of Las Colinas San Marcos Phase I LLC, Docket No. 46148 was entered in violation of 7 U.S.C. § 1926(b) and is void.
>
> (2) *Tex. Water Code § 13.254(a-6) is preempted by 7 U.S.C. § 1926 and is void.*
>
> (3) *To the extent* that Tex. Water Code § 13.254(a-5) directs PUC Officials to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification *is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b),* the statute is preempted and is void.[23]

Crystal Clear did not find TWC § 13.254(a-5) (which was moved to § 13.2541 effective September 1, 2019) void in its entirety. Rather, the court held that § 13.254(a-5) was void only to the extent it would create a conflict with federal law. *Crystal Clear* stands for the proposition that

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[21] Attachment D at ¶ 45.

[22] Rockett Special Utility District's Response to the Petition and Motion to Dismiss at 6 (Aug. 21, 2020), Rockett Special Utility District's Response to Order No. 5 (Nov 20, 2020)

[23] *Crystal Clear Special Util. Dist. v. Walker*, 1:17-CV-254-LY, 2019 WL 2453777, at *1 (W D Tex. Mar. 27, 2019) (emphasis added).

the Commission is not allowed to disregard federal indebtedness *that meets the requirements of 7 U.S.C. § 1926*. Rockett, however, is not federally indebted. Thus, the issue of preemption as it relates to § 13.254(a-5) is not relevant to this matter. Rockett's arguments for dismissal based on federal protections and preemption are not at play here, and the Motion to Dismiss should be denied.

B. Rockett has not shown that the property has received water service as required by relevant authority under the laws of this state.

Rockett attempts to shift focus from the applicable standard for water service by claiming that it met service requirements under federal law as described in the Fifth Circuit's decision in *Green Valley*.[24] However, *Green Valley's* analysis involves the provision of water service as that term is used in Section 1926(b). And inasmuch as Rockett does not have a federal loan guarantee, that analysis is irrelevant in this case. The only law the Commission needs to look to and apply is Texas law.

Pursuant to the TWC and the Commission's Regulations, in approving a petition for streamlined expedited release, the Commission must make a finding as to whether a property that is the subject of a petition is *receiving* water service from the CCN holder.[25] The affidavit of Rick Sheldon submitted with FCS Lancaster's petition demonstrates that the property is not currently receiving service.[26]

Further, FCS Lancaster submitted an application for water service to Rockett.[27] The very fact that Petitioner applied for service indicates that *the property is not receiving water service*. A customer does not submit an application for non-standard service to a water provider when it is

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[24] Rockett Special Utility District's Response to Order No. 5 at 3 (Nov. 20, 2020).

[25] TWC § 13.2541; 16 TAC 24.245(h).

[26] *Petition of FCS Lancaster, Ltd to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Dallas County by Expedited Release* (July 13, 2020) at 9

[27] The argument that an application for service indicated service was being provided or received was not a part of Rockett's argument in its initial motion to dismiss, but is addressed here in response to Rockett's filing of November 20, 2020. This argument was raised in Rockett's Third Motion to Dismiss, which was fully briefed and responded to previously That motion to dismiss was denied in Order No. 5 on November 5, 2020

already receiving water service. Rockett contends that it provided water service by "processing the service application" and "evaluating a specific water service request submitted to Rockett by Petitioner."[28] However, Rockett's own application for service makes it clear that submitting an application for service does not mean water service is being provided or received (or ever will be provided). The application itself states: "This is only an application for non-standard service. Rockett Special Utility District is not obligated to provide service until the application has been evaluated and a final Non-Standard Contract has been executed by all necessary parties."[29]

The federal district court decision dispenses with all of the arguments in Rockett's initial Motion to Dismiss. Supplemental arguments raised by Rockett in subsequent submissions and motions were denied in Order No. 5. Thus, the ALJ should likewise deny Rockett's August 21, 2020 Motion to Dismiss.

III. CONCLUSION

Any concern regarding preemption is moot based on the decision of the federal court, which confirmed that Rockett is not federally indebted. Because there is no federal question, this is purely a state law matter. Under state law, a property that is not receiving water service and meets the other requirements set out in TWC § 13.2541, must be released from a certificated area. Rockett has not provided, and is not now providing, water service to this property. Accordingly, the Commission should deny Rockett's Motion to Dismiss the Petition. Further, and as evidenced herein, the Commission should grant the petition.

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[28] Rockett Special Utility District's Response to Order No. 5 at 2–3 (Nov. 20, 2020).

[29] Rockett Special's Supplemental Motion to Dismiss 9 (Oct. 7, 2020).

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 4, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ James F. Parker

James F. Parker

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROCKET SPECIAL UTILITY DISTRICT, a political subdivision of the State of Texas,	§	
Plaintiff,	§	
V.	§	
	§	**A-19-CV-1007-RP**
SHELLY BOTKIN, DEANN T. WALKER, and ARTHUR C. D'ANDREA, in their official capacities as Commissioners of the Public Utility Commission of Texas; and JOHN PAUL URBAN, in his official capacity of Executive Director of the Public Utility Commission of Texas; ALAMO MISSION LLC, a Delaware limited liability company; and CITY OF RED OAK INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit corporation,	§	
Defendants.	§	

REPORT AND RECCOMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE:

Before the court are Defendant Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling (Dkt. #21), Defendant Alamo Mission LLC's Motion to Dismiss (Dkt. #24), PUCT Defendants' Motion to Dismiss and Brief in Support (Dkt. #25), Defendant City of Red Oak Industrial Development Corporation's Expedited Request for Oral Argument on its Motion to Dismiss for Lack of Subject

Matter Jurisdiction [Dkt. #21] (Dkt. #35), and all related briefing.[1] Having considered the motions, pleadings, and applicable law, and finding a hearing is not necessary, the court **DENIES** Red Oak's request for a hearing (Dkt. #35) and will recommend that the remaining motions be **GRANTED**.

I. BACKGROUND[2]

Plaintiff Rockett Special Utility District brings this suit against Shelly Botkin, Deann T. Walker and Arthur C. D'Andrea, in their official capacities as Commissioners of the Public Utility Commission of Texas ("PUC") and John Paul Urban in his official capacity as PUC's Executive Director (collectively, "the PUC Defendants"); Alamo Mission LLC ("Alamo"); and City of Red Oak Industrial Development Corporation ("Red Oak"). Dkt. #1 (Compl.). Rockett is a retail public utility operating under Chapter 65 of the Texas Water Code furnishing water to areas in Ellis and Dallas Counties under a Certificate of Convenience and Necessity ("CCN"). *Id.* at ¶ 3. Rockett is indebted on a loan it claims is guaranteed by the United States Department of Agriculture ("USDA") under 7 U.S.C. § 1926 ("section 1926"). As such, Rockett contends it is federally protected from having its service areas encroached upon. *See* 7 U.S.C. § 1926(b). Alamo and Red Oak have both applied to the PUC to decertify some areas of Rockett's CCN. Compl. at ¶¶ 10-11. Rockett contends any decertification would violate section 1926.

Rockett brings suit against the PUC Defendants under 42 U.S.C. § 1983 alleging they are acting under the authority of state law to deprive Rockett of its rights under section 1926(b). *Id.*

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[1] The motions were referred by United States District Judge Robert Pitman to the undersigned for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

[2] This case is related to *City of Red Oak, Texas and Red Oak Industrial Development Corporation v. United States Department of Agriculture, Rural Utilities Service, Rockett Special Utility District, and CoBank, ACB*, 1:20-CV-483-RP, which was recently transferred to this District from the Northern District of Texas. In that suit, the City of Red Oak, Texas and the Red Oak Industrial Development Corporation seek to prevent the USDA from issuing a Loan Note Guarantee to Rockett for the CoBank loan.

at ¶¶ 22-27. Rockett only seeks prospective injunctive relief against the PUC Defendants to prevent them from decertifying Rockett's CCN. *Id.* at ¶¶ 4-5, 36-37, Prayer at ¶ 2. Rockett seeks a declaratory judgment against all Defendants of the rights and other legal relations of the parties under section 1926(b). *Id.* at ¶¶ 28-35. Rockett also seeks injunctive relief against all Defendants for their respective violations of sections 1983 and 1926(b). *Id.* at ¶ 36-37.

Red Oak has moved to dismiss Rockett's Complaint for lack of subject matter jurisdiction. Dkt. #21. Alamo has similarly moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim under Rule 12(b)(6). Dkt. #24. Finally, the PUC Defendants have moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Dkt. #25. As Red Oak's and Alamo's subject matter jurisdiction arguments overlap, the undersigned will address those first and then turn to the PUC Defendants' motion.

II. APPLICABLE LAW

A. Jurisdictional Motions

Federal Rule of Procedure 12(b)(1) governs motions to dismiss for lack of subject-matter jurisdiction. FED. R. CIV. P. 12(b)(1). When the court lacks the statutory or constitutional power to adjudicate a case, the case is properly dismissed for lack of subject-matter jurisdiction. *Hooks v. Landmark Indus., Inc.*, 797 F.3d 309, 312 (5th Cir. 2015). "The objection that a federal court lacks subject-matter jurisdiction, *see* FED. R. CIV. P. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. FED. R. CIV. P. 12(h)(3). "When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any

attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). While the burden of proof falls on the plaintiff to show that jurisdiction does exist, "[u]ltimately, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle [the] plaintiff to relief." *Ramming*, 281 F.3d at 161. A district court may base its determination on: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Spotts v. United States*, 613 F.3d 559, 565 (5th Cir. 2010) (citations and quotations omitted).

B. Federal Question Jurisdiction

Federal question jurisdiction exists if a case "arises under the Constitution, treaties or laws of the United States." 28 U.S.C. § 1331. Federal question jurisdiction is proper if the complaint establishes (1) federal law creates the cause of action, or (2) federal law is a necessary element of one of the well-pleaded claims. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808 (1988). "A district court's federal-question jurisdiction . . . extends over 'only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law,'" in that 'federal law is a necessary element of one of the well-pleaded . . . claims." *Id.* (quoting *Franchise Tax Bd. of California v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 13, 27–28 (1983)).

"[T]he absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). "Rather, the district court has jurisdiction if the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one

construction and will be defeated if they are given another, unless the claim clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Id.* (internal quotations and citations omitted). "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Id.*; *Fermin v. Priest of Saint Mary - Marfa, Texas*, 775 F. App'x 162, 163 (5th Cir.), cert. denied sub nom. *Fermin v. Priest of Saint Mary-Marfa, Texas*, 140 S. Ct. 674 (2019) ("[A First Amendment] claim arises under federal law, so it survives a challenge to subject matter jurisdiction unless it is so 'completely devoid of merit as not to involve a federal controversy.'") (quoting *Steel Co.*, 523 U.S. at 89).

C. Standing

To establish standing, a plaintiff must prove three elements: (1) "the plaintiff must have suffered an injury in fact … which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;" (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly trace[able] to the challenged action of the defendant, and not … th[e] result [of] the independent action of some third party not before the court;" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992) (internal quotation marks and citations omitted). The first standing element is often referred to as "ripeness." "A court should dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical." *Choice Inc. of Tex. v. Greenstein*, 691 F.3d 710, 715 (5th Cir. 2012) (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583, 586 (5th Cir. 1987)). "The . . . doctrine is necessary to prevent courts from becoming entangled in abstract disputes by

adjudicating an issue prematurely." *Am. Med. Ass'n v. Bowen*, 857 F.2d 267, 272 (5th Cir. 1988) (citing *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580 (1985)). Moreover, "[t]he doctrine discourages the litigation of contingent events that either may not occur at all or, at least, may not occur as anticipated." *Id.* To determine whether an issue is ripe for consideration, the court must balance "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration." *Planned Parenthood of Gulf Coast, Inc., v. Gee*, 862 F.3d 445, 456 (5th Cir. 2017) (quoting *Texas v. United States*, 497 F.3d 491, 498 (5th Cir. 2007)).

III. ANALYSIS

A. Red Oak's and Alamo's Subject Matter Jurisdiction Arguments

Red Oak and Alamo contend the loan Rockett relies on for section 1926(b) protection has not yet been guaranteed by the Government. Accordingly, with no federal protection under section 1926(b) they contend this case presents no federal question.[3] Their arguments could also be couched in terms of standing and ripeness—because Rockett has not yet been issued a guarantee under section 1926, its claim under that statute is not yet ripe.

Rockett argues it closed on a loan from CoBank and received the loan proceeds on September 26, 2019. Prior to that, on November 21, 2018, Rockett and CoBank submitted their "Application for Loan and Guarantee" to the United State Department of Agriculture ("USDA"). Dkt. #21-2 at 12-13, ¶ 6; Dkt. #21-2 at 143-50. The USDA issued a "Conditional Commitment for Guarantee" on July 25, 2019. Dkt. #21-1 at 71-72. On August 7, 2019, the state director for the USDA issued a "Certification Approval" stating the "loan guarantee is approved subject to the conditions on the Conditional Commitment." Dkt. #21-1 at 74, ¶ 38. Rockett contends the

[3] Alamo also moves to dismiss Rockett's section 1983 claim under Rule 12(b)(6), but Rockett only asserts its section 1983 claim against the PUC Defendants. Compl. at ¶¶ 22-27. Additionally, Rockett disclaims the assertion of its section 1983 claim against Alamo. Dkt. #26 at 4-5.

Conditional Commitment for Guarantee is binding on the USDA, and its loan from CoBank is a "such loan" protected by section 1726. Rockett argues section 1726 is to be liberally construed and Red Oak and Alamo impermissibly narrow the protections of section 1726.

Section 1926 is the statute governing the U.S. Department of Agriculture's water and sewer utility loan program. *Green Valley Special Util. Dist. v. City of Cibolo, Tex.*, 866 F.3d 339, 341 (5th Cir. 2017). It authorizes the USDA to make loan guarantees for rural water development. 7 U.S.C. § 1926(a)(24). Section 1926(b) prohibits municipalities from encroaching on services provided by utilities with outstanding loans:

> 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.

7 U.S.C. § 1926(b) (emphasis added). Section 1926(b) has two purposes: "(1) to encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and (2) to safeguard the viability and financial security of such associations . . . by protecting them from the expansion of nearby cities and towns." *Green Valley Special Util. Dist.*, 866 F.3d at 343 (quoting *N. Alamo Water Supply Corp. v. City of Suan Juan, Tex.*, 90 F.3d 910, 915 (5th Cir. 1996)); *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987).

Various regulations are in place to facilitate section 1926. "A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will also execute a Lender's Agreement." 7 C.F.R. § 1779.4. "If the Agency determines that the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment

ability, [and other conditions are met], the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee." 7 C.F.R. § 1779.53. The actual Loan Note Guarantee will not be issued until certain conditions precedent are met. 7 C.F.R. § 1779.63 (listing the conditions precedent). "Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. . . ." 7 C.F.R. § 1779.64(b). "If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued." 7 C.F.R. § 1779.64(d). The regulations also define the relevant terms:

> *Conditional Commitment for Guarantee.* The Agency's written statement to the lender that the material submitted is approved subject to the completion of all conditions and requirements contained in the commitment (available in any Agency office).
> *Guaranteed loan.* A loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a Loan Note Guarantee.
> *Lender's Agreement.* The signed agreement between the Agency and the lender containing the lender's responsibilities when the Loan Note Guarantee is issued (available in any Agency office).
> *Loan Note Guarantee.* The signed commitment issued by the Agency containing the terms and conditions of the guarantee of an identified loan (available in any Agency office).

7 C.F.R. § 1779.2.

"When interpreting statutes, we begin with the plain language used by the drafters." *Green Valley Special Util. Dist.*, 866 F.3d at 342. The plain language of section 1926(b) is dispositive. *Id.* "[E]ach part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole." *Id.* at 343. "Every federal court to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect FmHA-indebted

rural water associations from municipal encroachment." *N. Alamo Water Supply Corp.*, 90 F.3d at 915.

Rockett does not dispute that at the time it filed suit, or even now, it did not have an issued Loan Note Guarantee from the USDA. Instead, Rockett argues that it is entitled to section 1926(b) protections because Red Oak's and Alamo's attempts to decertify Rockett's service areas occurred during the term of its loan from CoBank and its loan from CoBank is a "such loan" under section 1926(b) because the USDA has issued a Conditional Commitment for Guarantee for the loan. Notably, Rockett has cited no case that directly holds a "Conditional Commitment for Guarantee" entitles the borrower to section 1926(b) protections.

Rockett is correct that neither the statute nor the regulations define "such loan" as used in section 1926(b). However, under a plain reading of the statute the term must refer to federally funded or guaranteed loans, as other courts have referred. *Green Valley Special Util. Dist.*, 866 F.3d at 341 ("we have held that § 1926(b) 'should be liberally interpreted to protect [federally] indebted rural water associations from municipal encroachment'") (bracketed text in original); *N. Alamo Water Supply Corp.*, 90 F.3d at 915 ("The service area of a federally indebted water association is sacrosanct."), 919 ("As discussed above, § 1926(b) grants broad protection to federally indebted utilities."). The regulations clearly contemplate the first issue of a Conditional Commitment for Guarantee and then, if all conditions are satisfied, a Loan Note Guarantee. 7 C.F.R. § 1779.2. A "guaranteed loan" is "a loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a *Loan Note Guarantee*." *Id.* (emphasis added). The statutory and regulatory scheme make clear that "such loan" is one for which a Loan Note Guarantee has been issued. Under Rockett's definition of "such loan" as a loan that will—or even might—be federally guaranteed, an entity

that earlier had its service areas limited during a loan term and later received a federal guarantee of the loan could absurdly argue that the earlier limitation violated section 1926(b) because it occurred "during the term of such loan" even though there was no federal guarantee in place when the service area was limited.

Rockett's reliance on *Wells Fargo Bank, N.A. v. U.S.*, 88 F.3d 1012, 1020 (Fed. Cir. 1996), is misplaced. That case held the United States breached a contract by issuing a commitment to guarantee a loan if certain conditions were met and then failing to issue the guarantee after the conditions were met. That case did not hold that the commitment to guarantee and the guarantee were interchangeable. Rather the case acknowledged the lender and the borrower had to satisfy certain conditions for the guarantee to issue, which they did. However, if they had not met those conditions, the United States would have been under no obligation to issue the guarantee. This case may stand for the proposition that the USDA is contractually obligated to issue a guarantee if Rockett satisfies the conditions included in the Conditional Commitment for Guarantee, but it does not go so far as to imply that section 1926(b) protections now apply to the loan from CoBank. To hold otherwise, would render the conditions in the Conditional Commitment for Guarantee a nullity—Rockett would be entitled to the guarantee and the ensuing section 1926(b) protections without actually satisfying the USDA's required conditions.

Rockett also cites *Melissa Indus. Dev. Corp. v. N. Collin Water Supply Corp.*, 256 F. Supp. 2d 557, 562 (E.D. Tex. 2003), and *City of Schertz v. United States Dep't of Agric. by & through Perdue,* No. 18-CV-1112-RP, 2019 WL 5579541 (W.D. Tex. Oct. 29, 2019), which also do not stretch as far as Rockett would have this court interpret them. Both cases held approving a loan was a final agency action that subjected the USDA to judicial review even though the loan had not yet closed and funded. Contrary to Rockett's position, the *Melissa* court stated that the loan would

not be subject to section 1926(b) protection until the loan was funded. *Melissa Indus. Dev. Corp.*, 256 F. Supp. 2d at 560 ("Once the loan/grant *is funded* and NCWSC goes forward with the contemplated improvements, a federal law *will be triggered* which will generally protect NCWSC's service area from encroachment by any competitors for up to 40 years.") (emphasis added), 565 ("*If* the USDA loan/grant is implemented, the statutory prohibition under 7 U.S.C. § 1926(b) becomes effective and the Facilities Agreement would be abrogated.") (emphasis added).

Finally, Rockett's reliance on *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1059 (5th Cir. 1987), to argue that entities should not be able to take advantage of statutory "loopholes" is unpersuasive. While "the service area of a federally indebted water association is sacrosanct," *see N. Alamo Water Supply Corp.*, 90 F.3d at 915, the service area must still be federally indebted. Requiring a service area to actually be federally indebted before affording it section 1926(b) protections is not applying a loophole but adhering to the statutory and regulatory structure of the protections.

For all these reasons, Rockett's policy arguments that a determination that its CoBank loan is not protected by section 1926(b) would frustrate the goals of section 1926(b) are also unpersuasive. Rockett's position would far expand the protections of 1926(b) to loans that are not—and may never be—federally funded or guaranteed.

Accordingly, because Rockett does not have a loan entitled to section 1926(b) protections, its claims based on section 1926 are so "completely devoid of merit as not to involve a federal controversy." *See Steel Co.*, 523 U.S. at 89. Alternatively, Rockett's section 1926(b) claim could also be construed as lacking "ripeness." Until Rockett actually receives a Loan Note Guarantee for the CoBank loan, it is premature to determine whether Red Oak or Alamo violate section 1926(b) by seeking to decertify some of Rockett's service areas. For these reasons, the

undersigned will recommend that Rockett's claims based on section 1926(b) be dismissed without prejudice. This disposes of all of Rockett's claims against Red Oak and Alamo, and the court does not need to reach Alamo's Rule 12(b)(6) arguments.

B. PUC Defendants' Subject Matter Jurisdiction Arguments

In addition to its claims for declaratory and injunctive relief based on section 1926(b), Rockett also asserts a section 1983 claim against the PUC Defendants. *See* Compl. at ¶¶ 22-27. Rockett's section 1983 claim is based on the PUC Defendants' "attempt to deprive Rockett of its 1926(b) federal rights." *Id.* at ¶ 25. For the reasons given above, this claim is not ripe and Rockett has failed to state a viable section 1983 claim against the PUC Defendants.

The PUC Defendants argue the claims against them should be dismissed because as a political subdivision Rockett cannot sue under section 1983. The PUC Defendants also argue Rockett's claims are not ripe because the PUC has abated the decertification proceedings involving Rockett's territory pending the Fifth Circuit's decisions in two cases involving section 1926(b) and decertification proceedings. *See Green Valley Special Util. Dist. v. Schertz, Tex.*, No. 18-51092 (5th Cir. filed Dec. 31, 2018); *Crystal Clear Special Util. Dist. v. Walker*, No. 19-50556 (5th Cir. filed June 17, 2019). The PUC Defendants contend the PUC has decided "to abate all water-utility service-area release dockets pending the federal courts' clarification of the relevant law" and the PUC "will make no decision whatsoever regarding the petitions now before it seeking the release of property in Rockett's service area until after the federal courts resolve the disputed and uncertain issues regarding the scope of § 1926(b)'s protection of the service areas of federally indebted rural utilities' service areas." Dkt. #30 at 6, 7.

Rockett disputes the PUC Defendants' assertion that it cannot bring a claim under section 1983. Rockett also disputes the reason the PUC abated the proceedings concerning the potential decertification of its service areas brought by Red Oak and Alamo.

The court does not need to wade into these issues. For the reasons described above, Rockett's section 1926 claim does not raise a federal question because Rocket does not yet have a loan entitled to section 1926 protections. Similarly, Rockett does not yet have a claim under 1983, as that claim was premised on a violation of section 1926. Until Rockett actually receives a Loan Note Guarantee for the CoBank loan, it is premature to determine whether the PUC Defendants violate section 1926(b) or section 1983 by decertifying some of Rockett's service areas. Accordingly, the undersigned will recommend this case be dismissed for lack of subject matter jurisdiction.

IV. ORDER AND RECOMMENDATIONS

Having determined that oral arguments are not necessary, the court **DENIES** Defendant City of Red Oak Industrial Development Corporation's Expedited Request for Oral Argument on its Motion to Dismiss for Lack of Subject Matter Jurisdiction [Dkt. #21] (Dkt. #35).

For the reasons stated above, the court **RECOMMENDS** Defendant Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling (Dkt. #21), Defendant Alamo Mission LLC's Motion to Dismiss (Dkt. #24), and the PUCT Defendants' Motion to Dismiss and Brief in Support (Dkt. #25) be **GRANTED** and this case be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

V. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

SIGNED July 29, 2020

MARK LANE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROCKETT SPECIAL UTILITY DISTRICT, a political subdivision of the State of Texas,	§	
Plaintiff,	§	
v.	§	
SHELLY BOTKIN, et al.,	§	1:19-CV-1007-RP
Defendants.	§	

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Defendants Red Oka Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling, (Dkt. 21), Defendant Alamo Mission LLC's Motion to Dismiss, (Dkt. 24), PUCT Defendants' Motion to Dismiss and Brief in Support, (Dkt. 25), Defendant City of Red Oak Industrial Development Corporation's Expedited Request for Oral Argument on its Motion to Dismiss for Lack of Subject Matter Jurisdiction, (Dkt. 35), and all related briefing. (R. & R., Dkt. 43). In his report and recommendation, Judge Lane denied Red Oak's request for a hearing, (Dkt. 25), and recommended granting the remaining motions. (*Id.* at 13). Rockett Special Utility District ("Rockett") timely filed objections to the report and recommendation. (Objs., Dkt. 45).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Rockett timely objected to each portion of the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Rockett's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 42), is **ADOPTED**.

Accordingly, the Court **ORDERS** that Defendant Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling, (Dkt. 21), Defendant Alamo Mission LLC's Motion to Dismiss, (Dkt. 24), and the PUCT Defendants' Motion to Dismiss and Brief in Support, (Dkt. 25), are **GRANTED**.

IT IS FURTHER ORDERED that this case be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

The Court will enter final judgment in a separate order.

SIGNED on November 3, 2020.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

 Attachment C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROCKETT SPECIAL UTILITY DISTRICT, a political subdivision of the State of Texas,	§	
Plaintiff,	§	
v.	§	
SHELLY BOTKIN, et al.,	§	1:19-CV-1007-RP
Defendants.	§	

FINAL JUDGMENT

On November 3, 2020, the Court adopted United States Magistrate Judge Mark Lane's report and recommendation concerning Defendants Red Oak Industrial Development Corporation's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Opposed Motion to Expedite Ruling, (Dkt. 21), Defendant Alamo Mission LLC's Motion to Dismiss, (Dkt. 24), PUCT Defendants' Motion to Dismiss and Brief in Support, (Dkt. 25), Defendant City of Red Oak Industrial Development Corporation's Expedited Request for Oral Argument on its Motion to Dismiss for Lack of Subject Matter Jurisdiction, (Dkt. 35). (R. & R., Dkt. 43). The Court's Order dismissed this case without prejudice (Order, Dkt. 61).

As nothing remains to resolve, the Court renders final judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that each party bear its own costs.

IT IS FURTHER ORDERED that the case is **CLOSED**.

SIGNED on November 6, 2020.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

United States District Court
Western District of Texas
Austin Division

City of Red Oak, Texas and the Red Oak Industrial Development Corporation, Plaintiff, v. **United States Department of Agriculture, acting by and through George Ervin "Sonny" Perdue, III, Secretary of Agriculture; Rural Utilities Service, acting by and through Edd Hargett, State Director; Rockett Special Utility District, and CoBank ACB,** Defendants.	No. 1:20-CV-00483-RP

United States Department of Agriculture and Rural Utilities Service's Answer

Defendants United States Department of Agriculture, acting by and through George Ervin "Sonny" Perdue, III, Secretary of Agriculture and Rural Utilities Service, acting by and through Edd Hargett, State Director,[1] jointly file this Answer to Plaintiffs' Complaint, and without waiving their affirmative defenses, Defendants admit, deny, and otherwise answer the numbered paragraphs of Plaintiffs' First Amended Complaint (Dkt. 25), as follows:

I. Parties

1. This paragraph consists of legal conclusions, to which no response is required.

[1] Defendant Rural Utilities Service (RUS) is a component division of Defendant United States Department of Agriculture (USDA), not a separate agency. Thus, RUS need not respond to or answer Plaintiffs' First Amended Complaint. To the extent a response is deemed required, RUS joins USDA's Answer.

2. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

3. The USDA admits it is an agency of the United States Government, that the Secretary of Agriculture is George Ervin "Sonny" Perdue, III, and that USDA may be served with process pursuant to Rule 4 of the Federal Rules of Civil Procedure. All other allegations in this paragraph are denied.

4. Defendant RUS is a component division of Defendant USDA, not a separate agency. Thus, RUS need not respond or answer to Plaintiffs' First Amended Complaint. To the extent a response is deemed required, RUS joins USDA's Answer. RUS admits that Edd Hargett is the Texas State Director of RUS and that RUS may be served with process pursuant to Rule 4 of the Federal Rules of Civil Procedure. All other allegations in this paragraph are denied.

5. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

6. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

II. Jurisdiction

7. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

8. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

9. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

III. Venue

10. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

11. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

IV. Summary of Allegations

12. The allegations in the first sentence of this paragraph are denied. The allegations in the second sentence of this paragraph are admitted.

13. The allegations in this paragraph are denied.

14. The allegations in this paragraph are denied.

15. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph. The allegations in the second sentence of this paragraph are denied.

V. Background of Disputes Between Rockett and Red Oak Involving Section 1926(b)

16. The first sentence of this paragraph consists of legal conclusions and Plaintiffs' characterization of the functions of the Texas Public Utility Commission, to which no response is required. To the extent a response is deemed required, the allegations are denied. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of this paragraph.

17. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

18. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

19. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

20. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

21. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

22. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

23. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

24. This paragraph consists of legal conclusions and Plaintiffs' characterization of 7 U.S.C. § 1926(b), to which no response is required. To the extent a response is deemed required, the allegations are denied.

25. The first and second sentences of this paragraph consist of Plaintiffs' characterization of their claims, to which no response is required. To the extent a response is

deemed required, the allegations are denied. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

26. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and its subparts (a) through (d).

27. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

28. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

29. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

30. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

31. USDA admits that it has made a conditional commitment to guarantee Rockett's loan, but has not executed the loan note guarantee. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

32. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

VI. Rockett's Section 1926 Loan Application to the USDA

33. The allegations in this paragraph are denied.

34. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

35. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

36. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

37. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

38. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

39. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

40. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

41. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

42. USDA admits only that it has not closed on the Loan Note Guarantee with Rockett. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

43. The allegations in this paragraph are admitted.

44. USDA admits only that all conditions precedent have not occurred. The remaining allegations in the paragraph consist of legal conclusions, to which no response is required.

45. USDA admits only that a loan note guarantee has not been executed. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

46. The allegations in this paragraph are denied.

47. The allegations in the first sentence of this paragraph are denied. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

VII. Causes of Action

48. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

49. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied

50. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

51. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

52. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

53. This paragraph consists of Plaintiffs' characterizations of the minutes of Rockett's August 20, 2019 Board of Directors meetings. Defendants deny any characterization of the minutes, which speak for themselves, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

54. Defendants admit only that the Sokoll Pump is located at the Sokoll Plant, which is located in the city limits of the City of Waxahachie. All other allegations are denied. Defendants further state that this plant serves the rural users of Rockett SUD.

55. Defendants admit that Plant #4 is located within the city limits of the City of Red Oak. Defendants further state that this plant serves the rural users of Rockett SUD.

56. The allegations in this paragraph are admitted.

57. The allegations in this paragraph are admitted.

58. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

59. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

60. This paragraph consists of Plaintiffs' characterizations of Rockett's Signature Identification and General Certificate prepared in connection with the issuance of the "Rockett Special Utility District Water System Revenue Bond, Taxable New Series 2019," (the "2019 Bonds"). Defendants deny any characterization of the General Certificate, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

61. The allegations in this paragraph are denied.

62. This paragraph consists of Plaintiffs' characterizations of Bond Transcript issued in connection with the issuance of the 2019 Bonds. Defendants deny any characterization of the Bond Transcript, which speaks for itself, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

63. The allegations in this paragraph are denied.

VIII. Request for Injunctive Relief

64. This paragraph incorporates and re-alleges preceding paragraphs 10-63. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs.

65. This paragraph (and its subparts) consist of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

66. Defendants lack sufficient knowledge or information regarding the City's provision of water service and plans for growth and development to form a belief as to the truth of the allegations in this paragraph. Moreover, this paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

67. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

68. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph. Moreover, this paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

69. This paragraph sets forth Plaintiffs' prayer for injunctive relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in the prayer for relief and further aver that Plaintiffs are not entitled to the requested relief or any relief from the Defendants.

70. This paragraph consists of legal conclusions, to which no response is required. To the extent a response is deemed required, the allegations are denied.

IX. Request for Declaratory Relief

71. This paragraph incorporates and re-alleges preceding paragraphs 10-70. To the extent a response is deemed required, Defendants incorporate by reference and refer the Court to their responses to the preceding paragraphs

72. This paragraph sets forth Plaintiffs' prayer for declaratory relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations

contained in the prayer for relief and further aver that Plaintiffs are not entitled to the requested relief or any relief from the Defendants.

X. Prayer

73. The remainder of Plaintiffs' Complaint sets forth Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in the prayer for relief and further aver that Plaintiffs are not entitled to the requested relief or any relief from the Defendants.

74. Defendants further deny any and all allegations in the complaint not expressly admitted herein to which a response is deemed required.

Conclusion

Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Defendants costs and such other relief as the Court may deem appropriate.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

By: */s/ Liane Noble*

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ATTORNEYS FOR DEFENDANTS UNITED STATES DEPARTMENT OF AGRICULTURE AND RURAL UTILITIES SERVICE

CERTIFICATE OF SERVICE

I certify that on September 14, 2020, the foregoing motion was filed and served electronically using the Court's CM/ECF system.

/s/ Liane Noble
Liane Noble
Assistant United States Attorney