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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 §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S MOTION TO ABATE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this motion. In support thereof, Staff would show the following:

I. BACKGROUND

On July 13, 2020, FCS Lancaster, LTD (FCS Lancaster) filed a petition to amend Rockett Special Utility District's (Rockett SUD) water certificate of convenience and necessity (CCN) in Dallas County by streamlined expedited release pursuant to Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 13.254(h). FCS Lancaster seeks the release of two tracts of land, the first approximately 35 acres and the second approximately 121 acres, within the boundaries of Rockett SUD's water CCN No. 10099.

On July 24, 2020, Rockett SUD filed a motion to intervene, which was granted in Order No. 2, issued August 3, 2020. On July 16, 2020, Order No. 1 was issued, requiring Staff to comment on the administrative completeness of the petition and notice by August 13, 2020. This pleading, therefore, is timely filed.

II. MOTION TO ABATE

Rockett SUD is an intervenor in two other similar matters before the Commission, which are presently abated. In Docket No. 49871, petitioner Red Oak Industrial Development Corporation seeks to decertify a portion of Rockett SUD's water CCN No. 10099 in Dallas and Ellis Counties.¹ Similarly, in Docket No. 49863, petitioner Alamo Mission LLC seeks to

¹ *Petition of the City of Red Oak Industrial Development Corp. to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release*, Docket No. 49871 (pending).

decertify a portion of Rockett SUD's water CCN No. 10099 in Ellis County.² Both cases have been abated due to unresolved questions about possible federal preemption under 7 U.S.C. § 1926(b) that have been the subject of ongoing federal court litigation.³ On August 7, 2020, an opinion was issued by the Court of Appeals for the 5th Circuit on the question of federal preemption in that matter.⁴

Additionally, the question of whether Rockett SUD qualifies for protection under 7 U.S.C. § 1926(b) is the subject of additional federal court litigation.⁵ That matter is ongoing and unresolved.

In the instant case, Rockett SUD has not yet raised the issue of Section 1926(b) protections. However, given that Rockett SUD's assertion of Section 1926(b) protection remains in question, Staff recommends that the present petition be abated until the litigation regarding that question is resolved.

III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing motion.

Dated: August 13, 2020

² *Petition of Alamo Mission LLC to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Docket No. 49863 (pending).

³ *Green Valley Special Util. Dist. v. City of Schertz*, No. 18-51092 (5th Cir. filed Dec. 31, 2018).

⁴ *See*, <http://www.ca5.uscourts.gov/opinions/pub/18/18-51092-CV0.pdf>

⁵ *Rockett Special Util. Dist. v. Shelly Botkin et al*, Cause No. 1:19-cv-1007-RP (W.D. Tex.—Austin filed Oct. 16, 2019).

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 August 13, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray