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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
 PUBLIC UTILITY COMMISSION
 FILING CLERK
 OF TEXAS

ROCKETT SPECIAL UTILITY DISTRICT'S OBJECTION AND RESPONSE TO THE SUBMISSION OF AN APPRAISAL REPORT

COMES NOW, Rockett Special Utility District ("Rockett"), and files this Objection and Response to the Submission of an Appraisal Report.

I. Introduction

The Fifth Circuit has created a bright-line rule prohibiting the taking of any territory from a water district which has qualified for the protections of 7 U.S.C. § 1926(b) ("§ 1926(b)"). Rockett has previously informed the Commission that Rockett qualifies for the protections of § 1926(b) because Rockett is indebted on a loan guaranteed by the United States Department of Agriculture (USDA). Even if fair compensation would be paid to Rockett as part of the taking process, that entire process is preempted and forbidden by federal law.¹ There is no distinction between the type of taking threatened in *Bear Creek* and the taking that is being attempted here. There is a direct conflict for Rockett to participate in the compensation process, including by submission of an appraisal seeking compensation, in this proceeding, while objecting to and challenging this process in Rockett's related pending federal suit filed against the Petitioner.

¹ *"Even if fair value is paid for the lost facilities, such an action would inevitably have an adverse effect on the remaining customers of Bear Creek, in the form of lost economies of scale and resulting higher per-user costs. To allow expanding municipalities to "skim the cream" by annexing and condemning those parts of a water association with the highest population density (and thus the lowest per-user cost) would undermine Congress's purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their FmHA debts. See Public Utility District No. 1 of Franklin County v. Big Bend Electrical Cooperative, Inc., 618 F.2d 601 (9th Cir.1980) (similarly rejecting utility's attempt to condemn property owned by cooperative financed by the Rural Electrical Administration)." City of Madison, Miss. v. Bear Creek Water Ass'n, Inc., 816 F.2d 1057, 1060 (5th Cir. 1987) (emphasis added).*

II. Rockett's Obligation To Prosecute Violations Of Its Federal Rights Under 7 C.F.R. § 1782.14²

7 C.F.R. § 1782.14 obligates Rockett to “initiate action” to protect its territory and prosecute any violation of its federal rights under § 1926(b), including but not limited to the removal of Rockett’s service area under its Certificate of Convenience and Necessity (CCN) No. 10099 in this proceeding. The petition filed by FCS Lancaster, Ltd. (“Petitioner”) in this proceeding (the “Petition”) and the process to compensate Rockett for the taking of any part of Rockett’s territory is strictly prohibited by § 1926(b) and the law announced in *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987).

The Commissioners of the Public Utility Commission of Texas are named as defendants in the pending *Rockett Special Utility District v. Shelly Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. Dec. 10, 2020) (“Federal Lawsuit”), in which Rockett is seeking “prospective” injunctive relief to preclude the enforcement of any findings, rulings or orders issued in this proceeding. Thus, Rockett must—and has been and continues to—vigorously prosecute violations of § 1926(b) and, defend and prevent the removal of Rockett’s CCN as evident in its current administrative, state, and federal proceedings.

Here, the Commission has ordered the release of property owned by Petitioner,³ and Rockett appealed the Commission’s decision, which is currently pending in district court.⁴ Additionally, Rockett has requested, among other things, the Commission abate the remainder of this proceeding, related to determining whether compensation should be given to Rockett for the release of its territory. Any further conduct by the Petitioner or the Commission, perpetuates the

² “(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the “Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub.L. 99–591, 100 Stat. 3341 (1986),” from loss of users due to actions or activities of other entities in the service area of the Agency financed system. *Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower’s ability to repay its Agency debt.*”

(b) *Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.*”

7 C.F.R. § 1782.14 (emphasis added).

³ Order at 7 (Jan 29, 2021).

⁴ *Rockett Special Utility District v. FCS Lancaster, Ltd., et al.*, No. D-1-GN-21-000885 (345th Dist. Ct., Travis County, Tex. Feb. 26, 2021).

ongoing violations of Rockett's federal rights.⁵ The Commission has not denied Rockett's request to abate the remainder proceeding; rather, a Memorandum was filed that no commissioner voted to consider Rockett's Motion for Rehearing.⁶

Because the Commission will not abate this proceeding, Rockett is prohibited from engaging in any activity that violate its federal rights, including but not limited to submitting an appraisal regarding compensation for removal of its territory. If Rockett submits an appraisal report, Rockett would be essentially yielding to the idea that its territory can be taken away and would be directly contradicting the defense of Rockett's federal rights under § 1926(b). Rockett will not do so because of its federal statutory obligations.

III. Petitioner's Contention On Compensation In The Federal Lawsuit

In addition, Petitioner has filed in the Federal Lawsuit a motion to dismiss based in part Petitioner's contention that that the compensation provisions in Texas Water Code § 13.2541 eliminates any conflict between state and federal law.⁷ Rockett vehemently disagrees but reserves its right to adjudicate that disagreement in federal court, including in the Federal Lawsuit. But because Petitioner has made compensation an issue in federal court, Rockett must decline to join that issue in this proceeding, including through submitting an appraisal report.

IV. Rockett's England Reservation

In this proceeding, Rockett has informed the Commission of the federal issues in accordance with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964). Rockett is not asking the Commission to adjudicate any federal issues directly or indirectly, which includes ignoring the Fifth Circuit's ruling in *Bear Creek* that prohibits the release/decertification/taking of the Property from Rockett's CCN, even if fair compensation is paid.

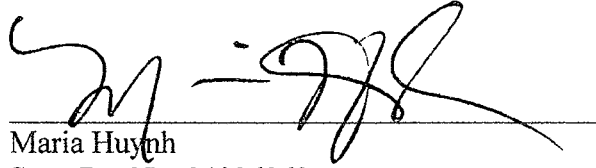
⁵ Rockett Special Utility District's Motion for Rehearing at 12 (Feb. 23, 2021).

⁶ Memorandum at 1 (Mar. 5, 2021).

⁷ Defendants City of Red Oak Industrial Development Corp., Red Oak Industrial Development Corp., FCS Lancaster, Ltd., & Compass Datacenters DFW III, LLC's Rule 12(b)(6) Motion to Dismiss, at 14-15, *Rockett Special Utility District v. FCS Lancaster, Ltd., et al.*, No. D-1-GN-21-000885 (Mar. 15, 2021).

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC

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

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on April 9, 2021, via e-mail in accordance with the Commission's Order.⁸

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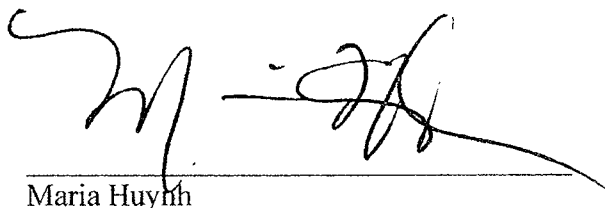
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⁸ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).