



Control Number: 51044



Item Number: 8

Addendum StartPage: 0



**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**

§  
§  
§  
§  
§  
§

**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

**ROCKETT SPECIAL UTILITY DISTRICT'S  
RESPONSE TO THE PETITION AND MOTION TO DISMISS**

COMES NOW, Rockett Special Utility District, a political subdivision of the State of Texas ("Rockett") and files its Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's Certificate of Convenience and Necessity (CCN) in Dallas County by Expedited Release and Motion to Dismiss. In support thereof, Rockett respectfully would show as follows:

**BACKGROUND**

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").

Order No. 1 issued on July 16, 2020 established the procedural schedule requiring Commission Staff's comments on the administrative completeness of the Petition and notice by August 13, 2020 and requiring Rockett to submit a response to the Petition by August 21, 2020.

Rockett was granted party status as its Motion to Intervene filed on July 24, 2020 was granted by Order No. 2 issued on August 3, 2020. Commission Staff filed its Motion to Abate on August 13, 2020; however, there was no comment on the administrative completeness of the

8

Petition and notice by Commission Staff. Pursuant to the procedural schedule established in Order No. 1, this Response is timely filed.

## ARGUMENTS

The Petition is premised on 16 TAC § 24.245(h) and TWC § 13.2541, and must be dismissed as Rockett has “provided or made service available and enjoys protection” under 7 U.S.C. § 1926(b). See *Green Valley Special Util. Dist. v. City of Schertz, Texas*, No. 18-51092, 2020 WL 4557844, at \*12 (5th Cir. Aug. 7, 2020).<sup>1</sup> See also *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777, at \*1 (W.D. Tex. Mar. 27, 2019) (“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.*” (Emphasis added.)

In light of the similarity of language between TWC § 13.2541 and TWC § 13.254(a-5), and their direction to disregard federal law (§ 1926(b)) it is a near certainty that TWC § 13.2541 will be preempted by § 1926(b).

### **I. The Petition Must Be Dismissed Under *Crystal Clear***

Rockett is indebted on a loan which qualifies Rockett for the protections of 7 U.S.C. § 1926(b). Texas Water Code § 13.2541(e) provides that the Commission may not deny the Petition based on the fact that Rockett is a borrower under a federal loan program. However, granting the Petition while ignoring Rockett’s indebtedness on a loan guaranteed by the United States Department of Agriculture (USDA) violates Rockett’s protection under 7 U.S.C. § 1926(b).

---

<sup>1</sup> “In North Alamo’s place, we adopt the “physical ability” test as articulated in *Le-Ax Water*, 346 F.3d at 705–07, albeit with one small alteration.<sup>34</sup> To make the test easy to apply to both water and sewer service, we hold that a utility must show that it has (1) adequate facilities to provide service to the area within a reasonable time after a request for service is made and (2) the legal right to provide service.” *Green Valley Special Util. Dist. v. City of Schertz, Texas*, No. 18-51092, 2020 WL 4557844, at \*12 (5th Cir. Aug. 7, 2020).

Further, virtually identical language found in TWC § 13.2541(e)<sup>2</sup> was held preempted and void in *Crystal Clear Special Util. Dist. v. Marquez*, 316 F. Supp. 3d 965, 971 (W.D. Tex. 2018).

**A. Rockett Received Funding Guaranteed By USDA Prior To The Petition**

7 U.S.C § 1926(b) provides:

**“(b) Curtailment or limitation of service prohibited**

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.”

(Emphasis added.)

The term “such loan” means any loan which is contemplated by 7 U.S.C. § 1926(a) which includes guaranteed and insured loans. On September 26, 2019, Rockett received funding contemplated under 7 U.S.C. § 1926, establishing Rockett’s indebtedness which qualifies it for the protections of § 1926(b).. The supporting affidavit of Kay Phillips, General Manager of Rockett Special Utility District, is attached hereto as Exhibit A, attesting to the funding which qualifies Rockett for § 1926(b) protection (See Ex. A at ¶ 3). The attached Exhibit B provides a true and correct copy of Rockett’s receipt and confirmation of the loan.

**B. Rockett Enjoys 7 U.S.C. § 1926(b) (Section 1926(b)) Protection**

A rural water association seeking the protections of Section 1926(b) must establish “(1) that it is an ‘association’ as defined in Section 1926; (2) that the association has an outstanding qualifying federal loan, and (3) that the utility provided or made water service available.” See *Crystal Clear Special Utility District v. Marquez, et. al.*, 316 F.Supp.3d 965, 969 (5th Cir. 2018)

---

<sup>2</sup> Texas Water Code § 13.254(a-5) has been redesignated as subsec. (b) of TWC § 13.2541, and TWC § 13.254(a-6) has been redesignated as subsec. (c)-(f) of TWC § 13.2541, amended by Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4.



(referring to *El Oso Water Supply Corp. v. City of Karnes City, Texas*, No. SA-10-CA-0819-OLG, 2011 WL 9155609, at \*5 (W.D. Tex. Aug. 30, 2011)). See also *Green Valley*, supra. Under the *Green Valley* standard, Rockett satisfies these requirements as provided by, but not limited to, the following:

1. **Rockett Special Utility District is a rural water association under Section 1926**, as Rockett is a political subdivision of the State of Texas and a retail public utility operating under Chapter 65 of the Texas Water Code, among others, furnishing water to rural areas in Dallas and Ellis Counties.

2. **Rockett has an outstanding qualifying “such loan” contemplated by Section 1926(b)**. In *Crystal Clear*, the court concluded that an affidavit of the general manager of the association along with ancillary documents that confirmed a qualifying loan remained outstanding were sufficient to establish the association’s indebtedness. *Id.* In addition to the affidavit of Rockett’s General Manager in Exhibit A and receipt of the loan in Exhibit B, the attached to this Response as Exhibit C includes true and correct copies of the following **ancillary documents that reflect the qualifying loan under Section 1926(b)** in connection therewith:

- (i) the Conditional Commitment for Guarantee of the USDA dated July 25, 2019, reflecting CoBank, ACB as the lender and Rockett as the borrower and executed by the authorized representative of the USDA (Ex. C, at 1);
- (ii) the Acceptance of Conditions executed by the authorized representatives of CoBank, ACB and Rockett (Ex. C, at 2); and
- (iii) the Request for Obligation of Funds Guaranteed Loans and the Certification Approval of the funds dated August 7, 2019, signed by the authorized representative of the USDA (Ex. C, at 3-4). Item 36(2) therein

states: “This Loan Guarantee is approved subject to the conditions on the Conditional Commitment.”

3. **Rockett has “provided or made service available”** as Rockett has adequate facilities to provide service to the Property within a reasonable time and Rockett has the legal right to provide service since the Property is within Rockett’s certificated (CCN) service area, under *Green Valley, supra* and as further expanded in this Response that Rockett has sufficient infrastructure “nearby” and the “physical capability” to serve the Property within a reasonable period of time.

Attached hereto as Exhibit D is the Affidavit of Benjamin S. Shanklin, P.E., Rockett’s consulting engineer of record. Attached hereto as Exhibit E is an accurate depiction identifying Rockett’s existing waterlines and facilities adjacent to and near the Property including Rockett’s Water Plant No. 4, prepared by Mr. Shanklin (See Ex. D at ¶3; see also Ex. A at ¶6).

In the immediate proximity of the Property, Rockett has existing 1½” and 2” waterlines north of the Property along Bear Creek Road and an existing 2” waterline near the southeast corner of the Property along Western Hills Road; also nearby are existing 2½”, 4”, and 6” waterlines east of the Property on Houston School Road, and existing 6” and 1½” waterlines south of the Property (Ex. A at ¶7; see Exs E and D at ¶3).

At and along proposed Loop 9, Rockett will install its proposed (new) 8” and 12” waterlines (indicated by blue and green lines, respectively, in Exhibit E) to be completed in the Fall of 2021, which will serve as distribution mains to service the area north and south of Loop 9—including the Property (Ex. D at ¶3, 5; Ex. A at ¶6, 8; see Ex. E). Rockett’s new 8” waterline will be constructed to a point immediately south of the Property and can be extended north to also serve the Property (Ex. D at ¶6; see Ex. E). Rockett is

currently making improvements to its Water Plant No. 4 to be completed in less than three months, which will provide additional pumping capacity to approximately 3.5 million gallons per day in the service area of Water Plant No. 4, including the Property (Ex. D at ¶4). With the existing and proposed waterlines and facilities, Rockett has “provided or made service available” to the Property as contemplated by *Green Valley* and Section 1926(b) (see Ex. D at ¶7).

***C. The Petition Is Premised On Preempted And Void State Statutes***

Rockett has existing facilities close in proximity to the Property able to provide water service within a reasonable amount of time, and even if the Commission finds that Rockett has not “provided or made service available” with such facts presented, the Petition must be dismissed—not abated—as the Petition is premised on a void statute.

“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.**”

*Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 245377, at \*2 (W.D. Tex. Mar. 27, 2019) (Emphasis added.)

Rockett enjoys 1926(b) protection by virtue of the undisputed fact that Rockett holds a CCN for the Property described in the Petition and is indebted on a loan guaranteed by the USDA, which qualifies Rockett for Section 1926(b) protection. Abatement would allow the Petition to be premised on a void statute, and in contravention of a final judgment entered in *Crystal Clear* to linger, in the hopes that at some future date, the law might change. The pendency of an appeal from the *Crystal Clear* judgment does not diminish the finality of that judgment, and the collateral estoppel effect of that judgment. Any delay in dismissal of the Petition suggests that the Commissioners are refusing to recognize Judge Yeakel’s findings and judgment.



“In any event, though, in the more pertinent context of determining the finality of a judgment for purposes of according it preclusive effect, courts, **including the Fifth Circuit, have uniformly held that the finality of a judgment is not affected by the pendency of an appeal.** See *Fid. Standard Life Ins. Co. v. First Nat'l Bank & Trust Co. of Vidalia, Ga.*, 510 F.2d 272 (5th Cir.1975) (per curiam) (“A case pending appeal is res judicata ... unless and until reversed on appeal.”), cert. denied, 423 U.S. 864, 96 S.Ct. 125, 46 L.Ed.2d 94 (1975); see also *Pharmacia & Upjohn Co. v. Mylan Pharmaceuticals, Inc.*, 170 F.3d 1373, 1380–81 (Fed.Cir.1999) (**“[t]he vast weight of case law” supports according a judgment collateral estoppel effect while pending on appeal;** *Williams v. Commissioner*, 1 F.3d 502, 504 (7th Cir.1993) (“[A] judgment final in the trial court may have collateral estoppel effect even though the loser has not exhausted his appellate remedies.”))”

*Welch v. All Am. Check Cashing, Inc.*, No. 3:13CV271TSL-JCG, 2015 WL 4066495, at \*5 (S.D. Miss. July 2, 2015) (Emphasis added.)

Further, Rockett has the right to use offensive collateral estoppel (offensive issue preclusion). “Offensive collateral estoppel occurs when ‘a litigant who was not a party to the prior judgment may nevertheless use that judgment “offensively” to prevent a defendant from relitigating issues resolved in the earlier proceeding.’ *Parklane Hoisery Co., Inc.* 439 U.S. at 326.” *OJSC Ukrnafta v. Carpatsky Petroleum Corp.*, No. CV H-09-891, 2018 WL 5921228, at \*3 (S.D. Tex. Nov. 13, 2018). Offensive collateral estoppel is applicable here, because the PUC Commissioners were parties to the *Crystal Clear* case.

Rockett enjoys Section 1926(b) Protection, thus a portion of Rockett’s service area cannot be removed nor Rockett’s CCN amended per streamlined expedited release. The Commissioners must recognize and obey federal law to the exclusion of conflicting state law under the Supremacy Clause.<sup>3</sup> “Thus, regardless of whether § 13.254(a-5) explicitly directs the PUC to consider the provisions of 7 U.S.C. § 1926(b), **the PUC has no choice in the matter, as the Constitution compels it to consider that applicable federal law.** The fact that the PUC suggests otherwise is troubling.” *Crystal Clear Special Util. Dist. v. Walker*, No. A-17-CV-00254-LY, 2018 WL 6242370, at \*4 (W.D. Tex. Nov. 29, 2018), *report and recommendation adopted as modified sub*

---

<sup>3</sup> U.S. Cons. Art. VI, § 2.

*nom. Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019) (Emphasis added.) Accordingly, the Commission must dismiss the Petition.

## **II. The Petition Must Be Dismissed Under *Green Valley***

7 U.S.C. § 1926(b) does not define “provided” or “made available” and the courts have afforded ordinary meanings to those terms, including various tests or requirements held by caselaw (as further provided in this Response) summarized in *Green Valley Special Utility District v. City of Schertz, Texas*, --- F.3d ---, 2020 WL 4557844, at \*12 (5th Cir. Aug. 7, 2020), where the court held that the “utility must show that it has (1) adequate facilities to provide service to the area within a reasonable time after a request for service is made and (2) the legal right to provide service.”

### **A. *Rockett Has Legal Right To Provide Service.***

Rockett, as a holder of its CCN, has the legal and exclusive right to provide water service to the Property, which is located in Rockett’s service area. *Id.* at \*1.

### **B. *Rockett Has “Pipes In The Ground” And Has The “Physical Ability” To Serve The Property.***

The *Green Valley* court has affirmed the “pipes in the ground” is “not a strict requirement” and the “physical capability” test while recognizing the reality of making water service available, including through nearby infrastructure, does not require Rockett to provide water service to the Property immediately. *Green Valley Special Util. Dist. v. City of Schertz*, --- F.3d ---, 2020 WL 4557844, at \*10-11 (5th Cir. Aug. 7, 2020). As provided in this Response and attached Exhibits, as related to the Petition and the Property, Rockett owns and operates Water Plant No. 4 and existing waterlines, specifically the existing 1½” and 2” waterlines immediately north of the Property, an existing 2” waterline near the southeast corner of the Property, existing 2½”, 4”, and 6” waterlines east of the Property, and existing 6” and 1½” waterlines south of the Property. The



existence of these waterlines satisfies the “pipes in the ground” test, according to *Green Valley* at footnote 32, providing that “the utility in *Glenpool* satisfied § 1926(b), at least in part, ‘by virtue of its line adjacent to the property,’ that is, by having pipes in the ground. *Glenpool*, 861 F.2d at 1214.”

Further, Rockett has the “physical ability to serve” the Property, since the Fifth Circuit “adopt[ed] the ‘physical ability’ test as articulated in *Le-Ax Water*, 346 F.3d at 705-07 ....” *Green Valley Special Util. Dist. v. City of Schertz*, --- F.3d ---, 2020 WL 4557844, at \*12 (5th Cir. Aug. 7, 2020). Water service does not need to be “immediately” available that someone “must be able to go over to the facet and turn on the water;” rather, Rockett only needs adequate facilities within or adjacent to the area to provide service within a reasonable time. See *Le-Ax Water Dis. V. City of Athens*, 346 F.3d 701, 707 (6th Cir. 2003) (referring to *Bell Arthur*, 173 F.3d at 526, where the water district only had a 6” waterline near the subject property when a 14” waterline was necessary to serve the area; and also *Glenpool Util. Servs. Auth. v. Creek Cty. Rural Water Dist.*, 861 F.2d 1221, 1213 where the water district had a waterline within 50 feet of the subject property). With its existing waterlines near and adjacent to the Property, Rockett satisfies the “physical ability” test in *Le-Ax*.

**C. Rockett Has The Capability Of Providing Service Within A Reasonable Time.**

Rockett has the “capability of providing service, or, at a minimum of providing service within a reasonable time.” *Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1203 (10th Cir. 1999). Rockett is not required to have facilities in place to which the customer could connect immediately but is allowed reasonable time to make any necessary improvements. See *Moongate Water Co., Inc. v. Butterfield Park Mut. Domestic Water Ass’n*, 291 F.3d 1262, 1268 (10th Cir. 2002) (affirming the Tenth Circuit’s “pipes in the ground” test in *Sequoyah* showed the water association “made service available”). Rockett is not required to take

risks and speculate to construct facilities in an area that may be developed someday and need water service, as Rockett is allowed to wait until a customer materialized and requests water before it expends funds to extend waterlines to that customer. *Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1203 (10th Cir. 1999); see also *Pittsburg Cty. Rural Water Dist. No. 7 v. City of McAlester*, 211 F.3d 1279 (Table) (10th Cir. 2000).

Rockett has shown that it has adequate facilities to provide service to the area within a reasonable time after a request for service has been made, since Rockett has nearby existing infrastructure. *Green Valley Special Util. Dist. v. City of Schertz*, --- F.3d ---, 2020 WL 4557844, at \*12 (5th Cir. Aug. 7, 2020). Rockett is currently making improvements on Water Plant No. 4 to be completed in *less than three months* and will construct new 8” and 12” waterlines south of the Property to be completed by Fall of 2021—which further supports Rockett’s capability to provide water service to the Property.

### **III. The Petition Must Be Dismissed As The Property Is Receiving “Service” Under TWC**

Petitioner filed its Petition pursuant to 16 Texas Administrative Code § 24.245(h) and Texas Water Code § 13.2541. The Petition must be dismissed as the Property is receiving water “service” and therefore does not qualify for expedited release.

16 TAC § 24.245(h)(1) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsec. (B): “the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN ....” (Emphasis added.) 16 TAC § 24.3(33) and TWC § 13.002(21) define “**service**” as follows:

**Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties** under TWC Chapter 13 to its patrons, employees, other retail public utilities and the public, as well as the interchange of facilities between two or more retail public utilities.

(Emphasis added.)



Rockett has **performed many acts** in the furtherance of its duties as a retail public utility to the Property, including but not limited to the installation, construction, maintenance, operation, and/or improvements of all Rockett waterlines and facilities that serve its certificated area, and specifically 1½” and 2” waterlines immediately north of the Property, 2” waterline near the southeast corner of the Property, 2½”, 4”, and 6” waterlines east of the Property, 6” and 1½” waterlines south of the Property, and other infrastructure that transmit water service to the Property and surrounding areas from Water Plant No. 4.

Rockett has **committed or used** its facilities and waterlines—including but not limited to the improvements of Water Plant No. 4 to be completed in less than three months and the new 8” and 12” waterlines south of the Property to be completed by Fall of 2021—in the performance of its duties as the retail public utility with the legal right to provide water service to the Property and by providing or making service available to the Property within a reasonable time, under *Green Valley* and others. These additional facilities are being provided “within a reasonable time.”

As Rockett has extensively shown herein that it is providing “service” to the Property, and has committed or used (and continues to commit and use) its facilities and waterlines to provide water service to the Property, under its duty as the retail public utility and CCN holder. Therefore, the Petition must be dismissed as the Property is receiving such “service.”

### **CONCLUSION**

The Property cannot be released from Rockett’s CCN, as Rockett has thoroughly demonstrated that it “has provided or made service available” to the Property. More importantly, Rockett enjoys protections under 7 U.S.C. § 1926(b) and the Western District of Texas has found TWC § 13.254(a-5) and (a-6) are preempted by Section 1926(b) and therefore void. The Petition must be denied and immediately dismissed in light of U.S. District Judge Yeakel’s decision in the *Crystal Clear* case on March 27, 2019.

Otherwise, Rockett will be compelled to bring a federal action to enjoin the Commission from acting on the Petition, seeking identical relief granted by U.S. District Judge Yeakel on March 27, 2019 against the Commission where the District Court held: “IT IS FURTHER ORDERED that the PUC, its officers, employees, and agents are permanently enjoined from enforcing in any manner the 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 (Final Order)).”<sup>4</sup>

Rockett hereby submits its “England Reservation” reserving all of its federal rights and remedies and its entitlement to have such rights and remedies resolved/adjudicated in a federal forum in accordance with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964).

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein, Rockett Special Utility District respectfully requests that the Petition be denied in its entirety, that Rockett’s Motion to Dismiss be granted, and all other such relief as Rockett may be entitled.

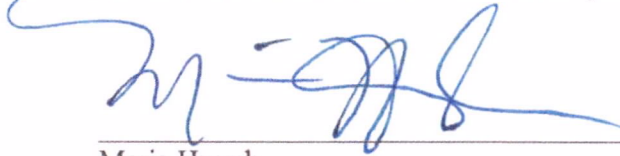
If the Commission shall require further evidence that Rockett has “provided or made service available” to the Property, Rockett respectfully requests an evidentiary hearing for such consideration.

---

<sup>4</sup> *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 245377, at \*2 (W.D. Tex. Mar. 27, 2019)

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC



Maria Huynh  
State Bar No. 24086968  
James W. Wilson  
State Bar No. 00791944  
103 W. Main Street  
Allen, Texas 75013  
Tel: (972) 727-9904  
Fax: (972) 755-0904  
Email: mhuyinh@jww-law.com

ATTORNEYS FOR ROCKETT SPECIAL  
UTILITY DISTRICT

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served on the following parties of record on August 21, 2020, by e-mail in accordance with the Commission's Order.<sup>5</sup>

via e-mail: creighton.mcmurray@puc.texas.gov

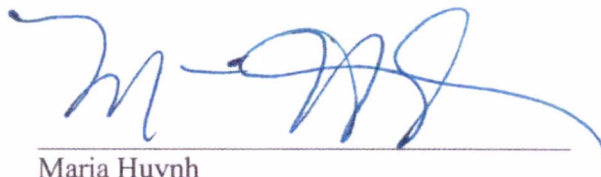
Creighton McMurray  
Attorney-Legal Division  
Public Utility Commission  
1701 N. Congress  
P.O. Box 13326  
Austin, Texas 78711-3326

*Attorney for the Commission*

via e-mail: hthompson@abhr.com

Harry H. Thompson  
Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

*Attorney for Petitioner*



Maria Huynh

<sup>5</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).



## **EXHIBIT A**

## **SUPPORTING AFFIDAVIT OF KAY PHILLIPS**

**STATE OF TEXAS**

§

§

**COUNTY OF ELLIS**

§

BEFORE ME, the undersigned authority, on said date personally appeared Kay Phillips, who being first duly sworn states as follows:

"1. My name is Kay Phillips. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. Since 2007, I have been the duly appointed general manager of Rockett Special Utility District ("Rockett") and I am custodian of the records of Rockett.

2. I have read Rockett's Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's CCN in Dallas County by Expedited Release in Docket No. 51044 and Motion to Dismiss (the "Response") and each and every factual statement contained therein is true and correct.

3. Rockett has an outstanding loan guaranteed by the United States Department of Agriculture (USDA) qualifying Rockett for 7 U.S.C. § 1926(b) protection. Exhibit B attached to the Response is a true and correct copy of a wire receipt reflecting funds received by Rockett on September 26, 2019, in the amount of \$1,640,765.23. The loan proceeds are part of a federal USDA guaranteed loan program.

4. Exhibit C attached to the Response is (i) a true and correct copy of the executed Conditional Commitment for Guarantee of the USDA dated July 25, 2019, reflecting CoBank, ACB as the Lender and Rockett Special Utility District as the Borrower; (ii) a true and correct copy of the Acceptance of Conditions executed by the authorized representatives of the Lender and Borrower; and (iii) a true and correct copy of the Request for Obligation of Funds Guaranteed Loans and Certification Approval executed by the authorized representative of the USDA dated August 7, 2019. Exhibit C at p. 2, item 36(2) states: "This Loan Guarantee is approved subject to the conditions on the Conditional Commitment."

5. Exhibit D attached to the Response is a true and correct copy of the supporting Affidavit of Benjamin S. Shanklin, P.E., the consulting engineer of record for Rockett Special Utility District.

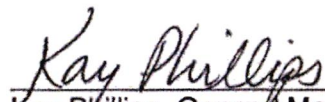
6. Exhibit E attached to the Response is a depiction identifying the Property in the Petition, Rockett's existing waterlines and facilities adjacent to and near the Property, Rockett's Water Plant No. 4, the location of the proposed Loop 9 to be constructed by the Texas Department of Transportation, and the location of Rockett's new 8" and 12" waterlines at and along the proposed Loop 9 (indicated by blue and green lines, respectively, in Exhibit E).

7. Rockett maintains and operates its facilities and waterlines, and Rockett has provided or made service available to the Property. Water is transmitted from Water Plant No. 4 through various Rockett waterlines to provide or make water service available to the Property. Rockett has existing 1½" and 2" waterlines north of the Property along Bear Creek Road and an existing 2" waterline near the southeast corner of the Property along Western Hills Road; also nearby are existing 2½", 4", and 6" waterlines east of the Property on Houston School Road, and existing 6" and 1½" waterlines south of the Property, in addition to various other existing waterlines indicated in Exhibit E.

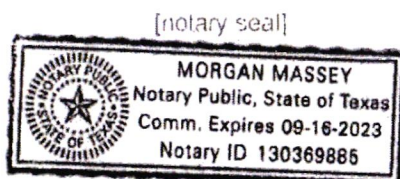
8. Rockett is currently making improvements to Water Plant No. 4 to be completed by November 2020. At and along the proposed Loop 9, Rockett's new 8" and 12" waterlines are projected to be installed and completed by Fall of 2021.

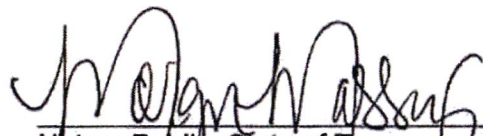
9. Rockett has performed many acts in furtherance of its duties as a retail public utility to the Property, including but not limited to the installation, construction, maintenance, operation, and/or improvements of all Rockett waterlines and facilities that serve its certificated area, and specifically 1½" and 2" waterlines immediately north of the Property, 2" waterline near the southeast corner of the Property, 2½", 4", and 6" waterlines east of the Property, 6" and 1½" waterlines south of the Property, and other water infrastructure that transmit water service to the Property and surrounding areas from Water Plant No. 4. Rockett has committed or used, and continues to commit or use, its facilities and waterlines, including but not limited to the improvements of Water Plant No. 4 to be completed November 2020 and the new 8" and 12" waterlines south of the Property to be completed by Fall of 2021, in the performance of its duties as the retail public utility with the legal right to provide water service to the Property and by providing or making service available to the Property within a reasonable time.

10. The documents indicated in Exhibits B-C to the Response are records that were made at or near the time of each act, event or condition set forth. These records were kept in the course of a regularly conducted business activity of the District. It is the regular practice of the District to make and/or retain such records."

  
\_\_\_\_\_  
Kay Phillips, General Manager  
Rockett Special Utility District

21st SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the  
day of August, 2020, by Kay Phillips, General Manager of Rockett Special  
Utility District, a political subdivision of the State of Texas.



  
\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT B**



**From:** Kay Phillips  
**To:** Maria Huynh  
**Subject:** FW: [Customer Incoming Wire Advice - eMail] Message ID:190926153338F100 Advice Code:INCSADEM  
**Date:** Friday, September 27, 2019 10:56:08 AM

---

Kay Phillips  
General Manager  
Rockett Special Utility District  
PO Box 40, Red Oak, Texas 75154  
126 Alton Adams Dr, Waxahachie, Tx 75165  
(972) 617-3524 X 112  
(469) 517-0989 Fax

-----Original Message-----

From: Teresa Hollingsworth <thollingsworth@fsbrice-tx.com>  
Sent: Friday, September 27, 2019 10:55 AM  
To: Angela Castillo <acastillo@rockettwater.com>  
Cc: Karen Graves <kgraves@rockettwater.com>; Kay Phillips <kphillips@rockettwater.com>  
Subject: FW: [Customer Incoming Wire Advice - eMail] Message ID:190926153338F100 Advice Code:INCSADEM

-----Original Message-----

From: Payplus3@mybankersbank.com <Payplus3@mybankersbank.com>  
Sent: Thursday, September 26, 2019 3:51 PM  
To: Wires <Wires@fsbrice-tx.com>  
Subject: [Customer Incoming Wire Advice - eMail] Message ID:190926153338F100 Advice Code:INCSADEM

This funds transfer was received on 2019-09-26, for \$1,640,765.23.  
The funds have been CREDITED to account 1006\*\*\*\*\*.

Sender:

Name : COBANK, ACB  
ABA : 307088754  
Reference : 2019092600000800  
Received from : COBANK  
By Order Of : COBANK ACB

OMAD Reference : 20190926K1QJ1N3C00098709261633FT03

Additional Funds Transfer Information:

Beneficiary: FIRST STATE BANK

Beneficiary Bank: FIRST STATE BANK

Bank to Bank Info:

Reference for Beneficiary :

\* \* \*



Originator Info: COBANK ACB

Originator Bank: COBANK

Originator Bank Info: REF: ROCKETT SPECIAL UTILITY DISTRICTDEP: 2019 BOND CONST ACCT DEPT  
SERVICE FUND ACCT

---

This message and any files transmitted with it are proprietary and confidential. They are intended solely for the use of the individual or entity to whom they are addressed. If the reader of this message is not the intended recipient, please notify the sender immediately and delete this message. Distribution or copying of this message is prohibited.

## **EXHIBIT C**

CONDITIONAL COMMITMENT FOR GUARANTEE

TO: Lender	Case No.
CoBank, ACB	49-070-752305375
Lender's Address	State
6340 S Fid Gr Cr Greenwood Vlg CO 80111	Texas
Borrower	County
Rockett Special Utility District	Ellis
Type of Loan	Principal Amount of Loan
Rural Utilities Guaranteed Loan	\$1,720,000.00

From an examination of information supplied by the Lender on the above proposed loan, and other relevant information deemed necessary, it appears that the transaction can be properly completed

Rural Utilities Service

Therefore, the United States of America acting through \_\_\_\_\_, or any successor agency, the United States Department of Agriculture (USDA) (herein referred to as "Government") hereby agrees that, in accordance with applicable provisions of Government regulations published in the Federal Register and related forms, it will execute the "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The fee payable by the Lender to the Government will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is \$ .2500 Fixed 1 If the rate is variable, it must be indexed with a rate which cannot change more often than annually 1 and published in a financial publication specifically agreed to between the Lender and its borrower.

A Loan Note Guarantee will not be issued until the Lender certifies that there has been no adverse change in the borrower's financial condition, nor any other adverse change in the borrower's condition during the period of time from issuance of the Conditional Commitment for Guarantee to the date of Lender's certification. The Lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "borrower" includes any parent, affiliate, or subsidiary of the borrower.

This Conditional commitment for Guarantee is null and void unless the conditions are accepted by the Lender and borrower within 60 days from the date of issuance by the Government. Any negotiations for revisions of these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used are set out on the Application for Loan and Loan Note Guarantee. Upon acceptance by Lender and Lender's borrower and return to the Government, no major changes of the conditions or approved loan purposes as listed on the forms will be considered. Additional conditions and requirements including the source and use of funds include See Attachment A 4

This Conditional Commitment will expire on 12-31-2020 1 unless the time is extended in writing by the Government. The Lender for Guarantee may terminate this Conditional Commitment for Guarantee at any time by written notification to the Government at the address shown below.

Date: JUL 25 2019

By: Edu H. Hays UNITED STATES OF AMERICA

State Director

mac

(Title)

on behalf of Rural Utilities Service

(USDA Agency)

According to the Paperwork Reduction Act of 1995, no person will be required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0315-0137. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ACCEPTANCE OF  
CONDITIONS

To: USDA Rural Development

(Insert name of USDA Agency from which a guarantee is requested).

101 South Main Suite 102  
Temple, Texas 76501

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within 521 days.

CoBank ACB

By: [Signature] (Name of Lender)  
(Signature for Lender)

8/19/19

Don Werner  
(Signature for Borrower)

- 1/ Insert name of agency executing Conditional Commitment for Guarantee.
- 2/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan rate.
- 3/ Insert the period prescribed in the applicable RD regulation. For CP loans "annually" will be inserted in this space.
- 4/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise insert "NONE".
- 5/ The Government will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT  
FARM SERVICE AGENCY  
**REQUEST FOR OBLIGATION OF FUNDS  
GUARANTEED LOANS**

INSTRUCTIONS: Complete Items 1 through 25 and applicable Items 26 through 35. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 49-070-*****5375		2. LOAN NUMBER 40	3. FISCAL YEAR 19
4. SOURCE OF FUNDS 1 (See FMI)			
5. BORROWER NAME Rockett Special Utility District		6. NUMBER NAME FIELDS (1, 2, or 3 from Item 5)	
7. STATE NAME Texas		8. COUNTY NAME Ellis	
9. RACE CODE 1 - WHITE 4 - HISPANIC 2 - BLACK 5 - A/P 3 - A/I/N 1	10. EMPLOYEE RELATIONSHIP CODE (See FMI)	11. SEX CODE 1 - MALE 4 - ORGANIZATION MALE OWNED 2 - FEMALE 5 - ORGANIZATION FEMALE OWNED 3 - FAMILY UNIT 6 - PUBLIC BODY 4	12. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED OR DIVORCED)
13. VETERAN CODE 1 - YES 2 - NO	14. TYPE OF PAYMENT 3 1 - MONTHLY 3 - SEMI-ANNUALLY 2 - ANNUALLY 4 - QUARTERLY	15. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH ONLY) 2 - OVER 10,000	
16. TYPE OF ASSISTANCE 061 (See FMI)	17. PURPOSE CODE	18. GUARANTEE PERCENT OF LOAN 1 %	
19. TERM OF INTEREST ASSISTANCE	20. SUBMISSION CODE 1 1 - INITIAL 2 - SUBSEQUENT	21. AMOUNT OF LOAN 1,720,000.0	
22. APPROVAL DATE MO DA YR AUG 07 2019	23. NOTE INTEREST RATE 5.2500 %	24. BORROWER EFFECTIVE INTEREST RATE %	
25. REPAYMENT PERIOD 30	26. INCOME CATEGORY 1 - VERY LOW 2 - LOW 3 - MODERATE	27. ADJUSTED FAMILY INCOME	
28. TYPE OF UNIT 1 - FARM TRACT 2 - NON-FARM TRACT	29. DWELLING TYPE USE OF FUNDS CODE (See FMI)	30. INTEREST ASSISTANCE CODE 1 - ELIGIBLE FOR INTEREST ASSIST PROGRAM 2 - INELIGIBLE FOR INTEREST ASSIST PROGRAM	
31. PERCENT OF INTEREST ASSISTANCE %	32. HIGH COST AREA Y = YES N = NO	33. BORROWER HISTORY CODE (See FMI)	
34. AMOUNT AGENCY DIRECT DEBT REFINANCE		35. OBLIGATION DATE (Finance Office use only) MO DA YR AUG 07 2019	
36. BEGINNING FARMER/RANCHER (See FMI)			



## CERTIFICATION APPROVAL

### APPROVAL CONDITIONS:

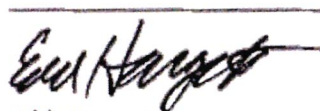
(1) (Farm Loan Programs Only) This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds.

(2) This loan guarantee is approved subject to the conditions on the Conditional Commitment.

### 37. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

38. I HEREBY CERTIFY that all determinations and certifications required by the respective United States Department of Agriculture (USDA) Agency regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, subject to the availability of funds, and subject to conditions prescribed by Agency regulations applicable to this type of assistance.

I further certify that USDA has complied with the applicable provisions of Title XI, Public Law 95-630, seeking financial information regarding the applicant.

 (Signature of Approval Official)

Typed or Printed Name: Edd Hargett

Date Approved AUG 07 2019

Title: State Director

39. TO THE APPLICANT/LENDER: As of this date AUG 07 2019, this is notice that your application for the above loan guarantee/Interest Assistance from USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the respective USDA Agency. If you have any questions contact the Approval Official.

## **EXHIBIT D**

**SUPPORTING AFFIDAVIT OF BENJAMIN S. SHANKLIN**

STATE OF TEXAS

§

§

COUNTY OF JOHNSON

§

BEFORE ME, the undersigned authority, on said date personally appeared Benjamin S. Shanklin, who being first duly sworn states as follows:

1. My name is Benjamin S. Shanklin. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

2. I am a registered professional engineer in the State of Texas.

Since 1996, I have been the consulting engineer of record for Rockett Special Utility District ("Rockett"), and I am familiar with the water delivery system that is owned and operated by Rockett. I have been personally involved, along with my staff, in maintaining a computer model of the hydraulic capability of Rockett's water delivery system for many years.

3. I have read Rockett's Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's CCN in Dallas County by Expedited Release in Docket No. 51044 and Motion to Dismiss (the "Response") and each and every factual statement contained therein is true and correct.

I prepared Exhibit E attached to the Response, which is an accurate depiction identifying Rockett's existing waterlines and facilities adjacent to and near the Property, including Rockett's Water Plant No. 4, the location of the proposed Loop 9 to be constructed by the Texas Department of Transportation, and the location of Rockett's proposed (new) 8" and 12" waterlines (indicated by blue and green lines, respectively, in Exhibit E) at and along the proposed Loop 9.

4. Rockett is currently making improvements to its Water Plant No. 4, which is to be completed by approximately November 14, 2020. The improvements to Water Plant No. 4 will provide additional pumping capacity to approximately 3.5 million gallons per day in the service area of Plant No. 4 which includes the Property.

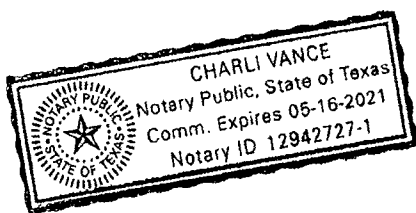
5. Rockett's new 8" and 12" waterlines along Loop 9 are projected to be installed and completed in the Fall of 2021. The 8" and 12" waterlines will serve as distribution mains to service existing and proposed customers in the area north and south of Loop 9 including the Property.

6. Rockett's new 8" waterline will be constructed to a point immediately south of the Property and can be extended north to also serve the Property.

7. In my professional opinion, Rockett has made water service available to the property that the Petitioner is seeking to decertify/release from Rockett's CCN (the "Property") or can do so within a reasonable period of time, from when a request for water service is made, using existing facilities which are nearby the Property."

Benjamin S. Shanklin  
Benjamin S. Shanklin

21st SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the \_\_\_\_\_ day of August, 2020, by Benjamin S. Shanklin.



Charli Vance  
Notary Public, State of Texas



## **EXHIBIT E**

