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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**

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PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S RESPONSE TO ORDER NO. 3

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response. 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) § 24.254(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 August 13, 2020, Staff filed a motion to abate until pending federal litigation that could impact this proceeding is resolved. On August 17, 2020, Order No. 3 was issued, requiring Staff to explain if and why abatement is still warranted in light of the recent decision in Docket No. 18-51092, *Green Valley Special Utility District v. City of Schertz, et. al.*¹ by August 28, 2020. This pleading, therefore, is timely filed.

II. RESPONSE

Staff continues to recommend that this proceeding be abated because *Green Valley Special Utility District v. City of Schertz, et al.* is not the only federal litigation relevant to this proceeding. However, another matter, *Rockett Special Utility District v. Shelly Botkin, et. al.*, Cause No. 1:19-cv-1007-RP, is presently before the United States District Court for the Western

¹ *Green Valley Special Util. Dist. v. City of Schertz, Tex*, No. 18-51092, 2020 WL 4557844 (5th Cir. Aug. 7, 2020).

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District of Texas in Austin.² The petitioners in Docket Nos. 49863 and 49871, Alamo Mission, LLC and City of Red Oak Industrial Development Corporation, are also parties to that litigation.

In the district court case, one of the primary questions that has arisen is whether Rockett's loan has been federally guaranteed. If the loan is not federally guaranteed, then Rockett is not entitled to protection under 7 U.S.C. § 1926(b) and analysis under the *Green Valley* decision would be unnecessary. In that matter, the magistrate judge's report was issued on July 29, 2020, recommending that "Rockett's section 1926 claim does not raise a federal question because Rockett does not yet have a loan entitled to section 1926 protections" and that the case should be dismissed without prejudice.³ It is Staff's understanding that, procedurally, the matter will be taken up by the district court judge for a final ruling.

Additionally, Staff has reviewed Rockett's response filed on August 21, 2020. Therein, Rockett asserts that it enjoys 7 U.S.C. § 1926(b) protection and provides three exhibits in support.⁴ Rockett's pleading does not mention *Rockett Special Utility District v. Shelly Botkin, et. al.* Regardless, this pending litigation could have a material impact on how best to proceed with this docket, and therefore, Staff continues to recommend that abatement is warranted in this matter.

III. CONCLUSION

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

² *Rockett Special Util. Dist. v. Shelly Botkin*, Cause No. 1:19-cv-1007-RP (W.D. Tex.—Austin filed Oct. 16, 2019).

³ *Id.* Report and Recommendation of the United States Magistrate Judge at 10-13 (Jul. 29, 2020).

⁴ *Rockett Special Utility District's Response to the Petition and Motion to Dismiss* at 3-5, Exhibit A-C (Aug. 21, 2020).

Dated: August 27, 2020

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 27, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray