



Control Number: 51545



Item Number: 11

Addendum StartPage: 0

DOCKET NO. 51545

**PETITION OF COMPASS
DATACENTERS DFW III, LLC TO
AMEND ROCKETT SPECIAL UTILITY
DISTRICT'S CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
ELLIS COUNTY BY EXPEDITED
RELEASE**

§
§
§
§
§
§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

RECEIVED
2021 MAR -9 AM 10:34
PUBLIC UTILITY COMMISSION
FILING CLERK

**ORDER NO. 4
DENYING COMMISSION STAFF'S MOTION TO ABATE, AND DENYING ROCKETT
SPECIAL UTILITY DISTRICT'S MOTION TO DISMISS**

This Order addresses pending motions in this matter.

I. The Motion to Abate

In this matter, Compass Datacenters DFW III, LLC seeks streamlined expedited release from Rockett Special Utility District's water certificate of convenience and necessity (CCN) number 10099 in Ellis County. The tract (or tracts)¹ for which Compass seeks release overlaps substantially with the tracts for which release had been requested by another entity in Docket No. 49871.² Because of this fact, Commission Staff filed, on December 17, 2020, a motion to abate this docket, pending resolution of Docket No. 49871. Because a final decision was issued in Docket No. 49871 on March 5, 2021, Commission Staff's motion to abate is denied.

II. The Motion to Dismiss

On December 2, 2020, Rockett filed a motion to intervene. In Order No. 2 filed on January 27, 2021 the administrative law judge (ALJ) granted the motion to intervene.

On December 29, 2020, Rockett filed a motion to dismiss. The motion identifies two grounds for dismissal.

A. Federal Preemption

Rockett argues that Compass' petition should be dismissed because Rockett is indebted on a loan guaranteed by the federal government and has provided or made service available to the

¹ It appears to the ALJ that the Compass seeks release of two non-contiguous tracts. The ALJ would benefit from additional explanation from the parties as to whether or not the two tracts purchased by Compass abut one another. If they do not, then each tract's eligibility for release would have to be evaluated separately.

² *Petition of the City of Red Oak Industrial Development Corporation to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release*, Docket No. 49871, Order (March 5, 2021).

land in question, thereby entitling Rockett to the protections provided under 7 U.S.C. § 1926(b). Rockett explains that, on December 10, 2020, it filed a complaint in federal court, styled *Rockett Special Utility District v. Walker*, No. 20-CV-1207 (W.D. Tex.), naming Compass, the individual members of the Commission, and others as defendants. In that proceeding, Rockett seeks injunctive relief to, among other things, preclude the granting of streamlined expedited release.

Compass responded to the motion to dismiss on January 7, 2021. Compass argues that, irrespective of Rockett's apparent federal loan, 7 U.S.C. § 1926(b) does not impair the Commission's mandate to process the streamlined expedited release application.

Commission Staff has not taken a position on the motion to dismiss.

The administrative law judge concludes that this portion of the motion to dismiss should be denied. The question of whether Rockett has a federal loan need not be, and cannot be, answered in this case. Under Texas Water Code (TWC) § 13.2541, the Commission "may not deny [a streamlined expedited release] petition based on the fact that the certificate holder is a borrower under a federal loan program." Thus, the question of whether Rockett possesses a federal loan is immaterial to the determination to be made in this case. Accordingly, Rockett's motion to dismiss on this ground is denied.

B. Receiving Water Service Under the Standards of the Texas Water Code

Rockett next argues that the petition must be dismissed because the property in question is receiving water service as defined by the TWC §§ 13.002(21) and 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h), as interpreted by Texas courts.

Compass opposes dismissal on this ground. Commission Staff has not taken a position on this ground.

Rockett's arguments on this point address the merits of the petition; they do not identify a ground for dismissal specified in the Commission's dismissal rule, 16 TAC § 22.181(d). Accordingly, the motion to dismiss on this ground is denied.³

The schedule adopted in Order No. 3 remains in effect.

³ By denying Rockett's motion on this ground, the ALJ is not precluding Rockett from asserting the same facts in opposition to the merits of the petition.

Signed at Austin, Texas the 9th day of March 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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

HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

q \cadm\doCKET management\water\ccn_expedited\51xxx\51545-4 denying motions to dismiss and abate docx