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DOCKET NO. 51545

PETITION OF COMPASS	§	BEFORE THE
DATACENTERS DFW III, LLC TO	§	
AMEND ROCKETT SPECIAL	§	PUBLIC UTILITY COMMISSION
UTILITY DISTRICT'S CERTIFICATE	§	
OF CONVENIENCE AND	§	
NECESSITY IN ELLIS COUNTY BY	§	OF TEXAS
EXPEDITED RELEASE	§	

**COMPASS DATACENTERS DFW III, LLC'S REPLY TO ROCKETT SPECIAL
UTILITY DISTRICT'S RESPONSE AND OBJECTION TO THE ADMINISTRATIVELY
COMPLETE PETITION AND MOTION TO DISMISS AND COMMISSION STAFF'S
RECOMMENDATION ON FINAL DISPOSITION**

NOW COMES Compass Datacenters DFW III, LLC (Compass) and timely files this Reply to Rockett Special Utility District's (Rockett SUD) Response and Objection to the Administratively Complete Petition and Motion to Dismiss filed on June 24, 2021¹ and Commission Staff's Recommendation on Final Disposition filed on July 8, 2021.² Order No. 6 directs Compass to file a reply to Rockett SUD's Response and Commission Staff's Recommendation on Final Disposition by July 15, 2021.³ Therefore, this Reply is timely filed. In support thereof, Compass would show as follows:

I. BACKGROUND

On November 20, 2020, Compass filed its Original Petition for Streamlined Expedited Release from Rockett SUD's water certificate of convenience and necessity (CCN) number 10099.⁴ On December 2, 2020, Rockett SUD filed a Motion to Intervene, which was granted by the Administrative Law Judge (ALJ) on January 27, 2021. On December 3, 2020, Compass filed its Supplement to its Petition with proof of the provision of notice to Rockett SUD.

On December 29, 2020, Rockett SUD filed a Response to the Petition and Motion to Dismiss (First Motion to Dismiss), identifying two grounds for dismissal—federal preemption on

¹ Rockett SUD's Response and Objection to the Administratively Complete Petition and Motion to Dismiss (Jun. 24, 2021) (Rockett SUD's Response to Order No. 6 and Third Motion to Dismiss).

² Commission Staff's Recommendation on Final Disposition (Jul. 8, 2021).

³ Order No. 6—Denying Second Motion to Dismiss; Finding Petition, as Supplemented, Administratively Complete and Notice Sufficient; and Establishing Procedural Schedule (Jun. 4, 2021) (Order No. 6).

⁴ 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 (Nov. 20, 2020) (Original Petition).

the grounds that its service area is protected by 7 U.S.C. § 1926(b), and that the property in question is receiving water service under the standards of the Texas Water Code (TWC). On March 9, 2021, the ALJ issued Order No. 4 denying Rockett SUD's Motion to Dismiss on both grounds.⁵

On May 6, 2021, Compass timely filed its Amended Petition curing mapping deficiencies in accordance with the conversations held between Compass and Commission Staff.⁶ On May 14, 2021, Rockett SUD filed its Response to the Amended Petition and Motion to Dismiss (Second Motion to Dismiss), which was not materially different in any way from its First Motion to Dismiss and which Compass replied to on May 21, 2021.⁷

On June 3, 2021, Commission Staff filed its Supplemental Recommendation on Administrative Completeness and Notice, recommending that Compass's petition be found administratively complete and its notice be found sufficient.⁸ On June 4, 2021, the ALJ filed Order No. 6, denying Rockett SUD's Second Motion to Dismiss, finding the petition, as supplemented, administratively complete and notice sufficient, and establishing a procedural schedule.⁹

On June 24, 2021 Rockett SUD filed its Response to Order No. 6 and Third Motion to Dismiss. On July 8, 2021, Commission Staff filed its Recommendation on Final Disposition, recommending that Compass's petition be approved and that the petition for release of the requested area from Rockett SUD's CCN number 10099 be granted.¹⁰ Commission Staff further recommended that Rockett SUD's Third Motion to Dismiss be denied.¹¹

II. ARGUMENT & AUTHORITIES

Rockett SUD fails to assert any new grounds for dismissal in its Third Motion to Dismiss as it did in its First and Second Motions to Dismiss. Rockett SUD's First and Second Motions to

⁵ Order No. 4—Denying Commission Staff's Motion to Abate, and Denying Rockett Special Utility District's Motion to Dismiss (Mar. 9, 2021) (Order Denying First Motion to Dismiss).

⁶ Amended Petition by Compass Datacenters DFW III, LLC for Streamlined Expedited Release from Rockett Special Utility District's CCN No. 10099 (May 6, 2021) (Amended Petition).

⁷ Compass's Reply to Rockett SUD's Response to the Amended Petition and Motion to Dismiss (May 21, 2021) (Compass's Reply to Rockett SUD's Second Motion to Dismiss).

⁸ Commission Staff's Supplemental Recommendation on Administrative Completeness and Notice (June 3, 2021).

⁹ Order No. 6 (Jun. 4, 2021).

¹⁰ Commission Staff's Recommendation on Final Disposition at 2 (Jul. 8, 2021).

¹¹ *Id.*

Dismiss were denied by the ALJ,¹² and therefore should again be denied for the same reasons here. The ALJ found that “[t]here is no substantive difference between the arguments made in the first and second motions to dismiss” and that “Rockett [SUD] lacked a reasonable basis for filing the second motion to dismiss.”¹³ The ALJ denied Rockett SUD’s Second Motion to Dismiss “for the same reasons that the first motion was denied.”¹⁴ Similarly, Rockett SUD fails to assert any new grounds for dismissal in its Response to Order No. 6 and Third Motion to Dismiss (with the exception of one incorrect and easily dismissible jurisdictional argument which Compass addresses below). Compass will briefly address Rockett SUD’s arguments, but otherwise will refer to its Reply to Rockett SUD’s Second Motion to Dismiss to avoid repetitive reassertions of the facts and claims already presented, on which the ALJ has already ruled.

As stated in Compass’s January 7, 2021 Response to Rockett SUD’s First Motion to Dismiss¹⁵ and in its May 21, 2021 Reply to Rockett SUD’s Second Motion to Dismiss,¹⁶ each of Rockett SUD’s grounds for dismissal fail and should be rejected. First, the ALJs in both this docket and in a related docket have already determined that whether or not Rockett SUD has a qualifying federal loan is “immaterial” to approving a petition for streamlined expedited release pursuant to TWC § 13.2541.¹⁷ Second, and as determined by Commission Staff, the portion of Compass’s property that Rockett SUD has identified as receiving service is not included in the area for which Compass is requesting release.¹⁸ Lastly, Rockett SUD’s one new argument regarding the Commission’s lack of jurisdiction fails because Compass’s petition was not considered filed until it was found to be administratively complete on June 4, 2021.¹⁹ Therefore,

¹² Order Denying First Motion to Dismiss (Mar. 9, 2021); Order No. 6 (Jun. 4, 2021).

¹³ Order No. 6 (Jun. 4, 2021).

¹⁴ *Id.*

¹⁵ Compass’s Response to Rockett SUD’s First Motion to Dismiss (Jan. 7, 2021).

¹⁶ Compass’s Reply to Rockett SUD’s Second Motion to Dismiss at 2 (May 21, 2021).

¹⁷ Order Denying First Motion to Dismiss at 2 (Mar. 9, 2021); *Petition of FCS Lancaster, Ltd, to Amend Rockett SUD’s Certificate of Convenience and Necessity in Dallas County by Expedited Release*, Docket No. 51044, Order No. 7–Denying Rockett SUD’s First Motion to Dismiss (Dec. 30, 2020).

¹⁸ Commission Staff’s Recommendation on Final Disposition at 2 (Jul. 8, 2021).

¹⁹ Order No. 6 (Jun. 4, 2021). The Commission’s sixty-day deadline for administrative approval of expedited release is August 3, 2021.

as before, none of Rockett SUD's arguments rightly assert a claim for dismissal and its Third Motion to Dismiss should be denied.

A. 7 U.S.C. § 1926(b) is immaterial to the Commission's mandate to release the property from Rockett SUD's CCN.

Rockett SUD, for the third time, contends that the Commission cannot amend the certificated area because it has a qualifying federally guaranteed loan under Section 1926.²⁰ Compass has responded to this assertion and refers to its previous arguments again here.²¹ Commission Staff recommended that "Rockett SUD's claim of protection under 7 U.S.C. § 1926(b) is moot. The TWC explicitly states that '[t]he utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program.'" ²²

Rockett SUD also again argues, for the third time, in verbatim, that relying on the TWC violates the Supremacy Clause.²³ Compass has responded to this assertion and refers to its previous arguments again here.²⁴ Further, Commission Staff recommended that "[w]hile a federal district court had previously held that 7 U.S.C. § 1926(b) preempted TWC § 13.2541 (formerly, TWC § 13,254(a-5) and (a-6)), that decision has been vacated by the Fifth Circuit."²⁵

²⁰ Rockett SUD's Response to Order No. 6 and Third Motion to Dismiss at 2-4 (Jun. 24, 2021).

²¹ "[U]nder 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.' The ALJ in both this docket and in a related docket have already determined that, therefore, whether or not Rockett SUD has a qualifying federal loan is 'immaterial' to approving a petition for streamlined expedited release pursuant to TWC § 13.2541." Compass's Reply to Rockett SUD's Second Motion to Dismiss at 3 (May 21, 2021).

²² TWC § 13.2541(d); Commission Staff's Recommendation on Final Disposition (Jul. 8, 2021).

²³ Rockett SUD's Response to Order No. 6 and Third Motion to Dismiss at 6-8 (Jun. 24, 2021).

²⁴ "[T]he Supremacy Clause and the concept of preemption are only an issue when there is a conflict between federal and state law—there is no such conflict here. Rockett SUD's argument ignores the presumption against preemption and the lack of 'clear and manifest purpose of Congress' in the text of Section 1926(b) to preempt state regulatory authority over its water service scheme. The Commission argued before the Fifth Circuit in *Green Valley Special Utility District v. City of Schertz* that Section 1926 does not apply to the CCN process and decertification. The Commission's argument is correct. As the Commission rightly explained in its briefing, Section 1926(b) prevents encroachment by local governments—to hold that § 1926(b) also prevents alteration by the State of a utility's legal duty to serve confuses what is necessary to trigger § 1926(b)'s protection with what is covered by that protection.' Section 1926(b) does not apply to Texas's decertification process under Chapter 13 of the TWC, which is regulated by the Commission under the laws of this State. Further, Rockett SUD's reliance on the decision in *Crystal Clear Special Utility District v. Marquez* to support the contention that a portion of TWC § 13.2541 is void, is misplaced. The Fifth Circuit vacated the district court's judgment in *Crystal Clear*, and thus, that ruling as to preemption is no longer good law." Compass's Reply to Rockett SUD's Second Motion to Dismiss at 3-4 (May 21, 2021).

²⁵ Commission Staff's Recommendation on Final Disposition at 2 (Jul. 8, 2021), citing *Crystal Clear Special Util. Dist. v Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

As stated before, the Commission's authority under TWC § 13.2541 is not preempted by 7 U.S.C. § 1926(b).²⁶ The ALJ has already denied Rockett SUD's arguments.²⁷ Rockett SUD asserts no new information nor does it present any new arguments in its Third Motion to Dismiss. Therefore, as with its First and Second Motions to Dismiss, its Third Motion to Dismiss on this ground should again be denied.

B. The property Compass requests be released is not receiving water service and must be released from the CCN.

Rockett SUD again argues that Compass's 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 TAC § 24.245(h), as interpreted by Texas courts.²⁸ Rockett SUD's arguments on this point again largely mirror identical arguments it asserted in its First and Second Motions to Dismiss,²⁹ which were both denied by the ALJ. To the extent Rockett SUD copies its arguments verbatim from these previous motions and Compass has already responded to these claims, Compass refers to its previous arguments again here in response.³⁰

As before, Rockett SUD again argues that it has water facilities or lines committed to serving the property or used to provide water to the property. However, all of the infrastructure

²⁶ Compass's Response to Rockett SUD's First Motion to Dismiss at 4 (Jan. 7, 2021); Compass's Reply to Rockett SUD's Second Motion to Dismiss at 4 (May 21, 2021).

²⁷ Order Denying First Motion to Dismiss at 2 (Mar. 9, 2021); Order No. 6 (Jun. 4, 2021).

²⁸ Rockett SUD's Response to Order No. 6 and Third Motion to Dismiss at 4-6, 8-13 (Jun. 24, 2021).

²⁹ Rockett SUD's Response to the Petition and First Motion to Dismiss (Dec. 29, 2020); Rockett SUD's Response to the Amended Petition and Second Motion to Dismiss (May 14, 2021).

³⁰ "A requisite finding the Commission must make in approving a petition for streamlined expedited release is that the property is not receiving water service from the CCN holder. TWC § 13.2541. Consistent with Commission precedent, statutory authority, and Texas case law, the mere existence of water lines or facilities on or near a tract does not necessarily mean that the tract is receiving service, as contemplated by TWC § 13.2541. *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.- Austin 2014). As previously argued, Rockett SUD is not supplying water to the property Compass requests for decertification. All of the alleged proof of water service that Rockett SUD cites to refers to property that is neither the subject of Compass's Original nor Amended Petition . . . The property at issue to be released from Rockett SUD's CCN is the same in the Amended Petition as it was in the Original Petition, and the property is not receiving water service from Rockett SUD. Rockett SUD again argues that it has water facilities or lines committed to serving the property or used to provide water to that tract. However, all of the infrastructure Rockett SUD references is designed and used to serve property that is not the subject of this petition. That Rockett SUD has existing waterlines and facilities that could be committed to the property at some point in the indeterminate future is not enough for a finding by the Commission that the property is receiving service. The relevant test is whether Rockett SUD has 'performed any act, furnished or supplied anything, or committed or used any facilities or lines to the properties themselves.' Rockett SUD's own evidence establishes that it has not met this test." Compass's Reply to Rockett SUD's Second Motion to Dismiss at 5-6 (May 21, 2021).

Rockett SUD references is designed and used to serve property (Phase 1) that is not the subject of this petition. Rockett SUD's own evidence establishes that it is providing water service to Phase 1, and as established, Compass is not seeking the release of Phase 1 from Rockett SUD's CCN in this petition. Therefore, that Compass is taking and paying for water from Rockett SUD through the construction/fire hydrant meter located on Phase 1,³¹ and that Rockett SUD's 12" waterline and 8" domestic water meter provide water to Compass's internal 12" waterlines in Phase 1,³² are immaterial. These facts establish what all parties agree—That Rockett SUD is providing water service to Phase 1 of Compass's property. However, Phase 1 is not part of the relevant property which Compass requests be released from Rockett SUD's CCN. Rockett SUD asserted that Compass's internal 12" waterlines in Phase 1 connect to the internal 12" waterlines to Phases 2-4.³³ However, Rockett SUD is incorrect. Rockett SUD's infrastructure is not connected to any permanent water infrastructure outside of Phase 1 (i.e., Rockett SUD infrastructure does not connect to or provide service in way to the waterlines installed in Phases 2-4). Compass has installed its own internal water lines in Phases 2-4, but has taps to connect to other, non-Rockett SUD water infrastructure. Compass's water lines in Phases 2-4 are not connected to Rockett SUD water infrastructure. Rockett SUD also asserted that Compass moved its temporary office building from a location on Phase 1 to another phase of the project,³⁴ which is irrelevant.

Compass reasserts facts in its Third Motion to Dismiss, like that it can provide water bills from Rockett SUD to Compass for service, and that Compass previously requested water service from Rockett SUD for Phases 1-4 of the project, and Compass later revised its request for water service for only Phase 1 of the project.³⁵ As established before, these facts may help prove that Rockett SUD is serving a portion of Compass's property—a portion cut out of the service area to be decertified in this petition—but they do not move the needle in proving that Rockett SUD is providing service to the relevant portions of Compass's property that are the subject of this petition. Rockett SUD itself admits that "whether or not the Property is receiving water 'service' is not dependent on that Service Contract or Petitioner's request—or lack of request—for water service

³¹ Rockett SUD's Response to Order No. 6 and Third Motion to Dismiss at 5 and 12 (Jun. 24, 2021).

³² *Id.* at 13.

³³ *Id.*

³⁴ *Id.* at 5.

³⁵ *Id.*

from Rockett for the Property (the remaining Phases 2-4 of the project.”³⁶ Compass agrees, and is unsure why Rockett SUD continually references the requests for service and Non-Standard Service Contract executed by Rockett SUD and Compass for service to Phase 1. Neither is an indicator that service is already being provided. Similarly, it is immaterial that Compass provided the projected water usage to Rockett SUD for Phases 2-4, or that information about Phases 2-4 was “part of the Service Contract.”³⁷ Receiving this information from Compass does not constitute Rockett SUD performing an act, furnishing or supplying anything, or committing or using any facilities or lines to the property Compass requests be released.

As before, Rockett SUD has provided no evidence that the property Compass requests be released from Rockett SUD’s CCN is receiving water service under Texas law. Commission Staff found that “[b]ased on the information provided by the parties, Staff has concluded that the portion of Compass’s property that Rockett SUD has identified as receiving service is not included in the area for which release is requested.”³⁸ Therefore, Rockett SUD’s Third Motion to Dismiss on this ground fails for lack of factual and legal support, and its motion should again be denied accordingly.

C. The Commission has jurisdiction over the petition.

Rockett SUD incorrectly asserts that the Commission’s 60-day statutory jurisdiction over the petition has ended because TWC § 13.2541(c) requires the petition to be granted “not later than the 60th day after the date the landowner files the petition.”³⁹ Compass filed its petition on November 20, 2020, so Rockett SUD asserts that any decision by the Commission to grant the petition was due on January 19, 2021, and because that date has passed, the petition must therefore be dismissed.⁴⁰ Rockett SUD is incorrect in its assertion. Although TWC § 13.2541(c) does state that the Commission “shall grant the petition not later than the 60th day after the date the landowner files the petition,” the Commission’s substantive rules provide additional, important guidance. 16 TAC § 24.8(d) states that “[a]pplications under subchapter H of chapter 24 are not considered filed until the [C]ommission makes a determination that the application is

³⁶ *Id.* at 13.

³⁷ *Id.*

³⁸ Commission Staff’s Recommendation on Final Disposition at 2 (Jul. 8, 2021).

³⁹ Rockett SUD’s Response to Order No. 6 and Third Motion to Dismiss at 13.

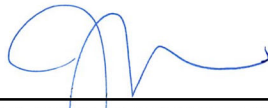
⁴⁰ *Id.* at 13-14.

administratively complete.”⁴¹ Further, 16 TAC § 24.245(h)(7), which governs this proceeding, provides that “[t]he [C]ommission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete.” The ALJ found Compass’s petition to be administratively complete in Order No. 6 issued on June 4, 2021.⁴² Sixty days from June 4, 2021 is August 3, 2021. Therefore, the Commission is still well within its statutory jurisdiction, and has until August 3, 2021 to issue an order in this proceeding. As such, Rockett SUD’s arguments should be dismissed and its motion should be denied.

III. CONCLUSION

Compass respectfully requests that the Commission deny Rockett SUD’s Response to Order No. 6 and Third Motion to Dismiss.

Respectfully submitted,



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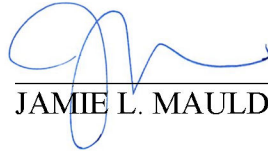
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⁴¹ Compass’s petition that is the subject of this proceeding was filed under 16 TAC § 24.245, which is in subchapter H of chapter 24.

⁴² Order No. 6 (Jun. 4, 2021).

CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on July 15, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN