



Filing Receipt

Received - 2021-10-22 02:41:33 PM

Control Number - 51545

ItemNumber - 36

PUC DOCKET NO. 51545

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

**ROCKETT SPECIAL UTILITY DISTRICT'S NOTICE OF NON-AGREEMENT
ON APPRAISER, OBJECTION AND RESPONSE TO THE SUBMISSION OF AN
APPRAISAL REPORT, AND MOTION TO ABATE**

COMES NOW, Rockett Special Utility District, a political subdivision of the State of Texas ("Rockett" or "CCN holder") and files this Notice of Non-Agreement on Appraiser, Objection and Response to the Submission of an Appraisal Report, and Motion to Abate.

I. INTRODUCTION

On November 20, 2020, Compass Datacenters DFW III, LLC, a Delaware limited liability company ("Petitioner" or "Compass") 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 Certificate of Convenience and Necessity (CCN) No. 10099, where the properties subject to the Petition are Tract A being approximately 73 acres and Tract B being approximately 73 acres in Ellis County (collectively, the "Property").

On October 12, 2020, the Commission issued its Order releasing the Property from Rockett's service area under CCN No. 10099.¹

Order No. 6 provides the deadline for Petitioner and Rockett to make a filing to state whether the parties are unable to select and agreed-upon appraiser within ten (10) days after the Commission approves streamlined expedited release.² Thus, this Notice of Non-Agreement on Appraiser, Objection and Response to the Submission of an Appraisal Report, and Motion to Abate is timely filed.

II. NOTICE OF NON-AGREEMENT ON APPRAISER

¹ Order at 7, ¶ 1 (Oct. 12, 2021).

² Order No. 6 at 3 (Jun. 4, 2021).

Rockett hereby notifies the Commission and other parties that Petitioner and Rockett have not reached agreement on an appraiser. Further, Rockett plans to file a motion for rehearing and appeal the Commission's Order granting the release of the Property from Rockett's service area and amending Rockett's CCN No. 10099 in this proceeding.

As discussed below, Rockett also objects to the submission of an appraisal report in the "compensation phase" of this proceeding and moves that this proceeding be abated, as Rockett will not participate in the compensation phase.

III. OBJECTION TO THE SUBMISSION OF AN APPRAISAL REPORT (COMPENSATION PHASE) AND MOTION TO ABATE

Rockett objects to the submission of an appraisal report and the compensation phase, and requests that this proceeding be abated until a decision in *Rockett Special Utility District v. Shelly Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. Dec. 10, 2020) (the "Federal Lawsuit") is entered by the court.

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.³ 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 phase, including the submission of an appraisal seeking compensation in this proceeding, while objecting to and challenging this process in the Federal Lawsuit, which is Rockett's related pending federal suit filed against the Petitioner.

Although *Bear Creek* involved a municipality using condemnation as the mechanism to take part of a water association's water service area, the case applies equally to this case where a

³ *"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).*

developer seeks a release of part of a water supply corporation's water service area. There is a direct conflict for Rockett to participate in the compensation phase in any way, while objecting to and challenging this process in the Federal Lawsuit filed against the Commissioners, in their official capacities, seeking prospective injunctive relief only, and the Petitioner, among others.

A. Rockett's Obligation To Prosecute Violations Of Its Federal Rights Under 7 C.F.R. § 1782.14⁴

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 CCN No. 10099 in this proceeding. The Petition filed by Compass 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 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 service area as evident in its current administrative, state, and federal proceedings.

Here, the Commission has ordered the release of the Property owned by Petitioner,⁵ where Rockett will file a motion for rehearing and appeal the Commission's decision. Additionally, Rockett has requested, among other things, that the Commission abate the remainder of this proceeding related to determining whether compensation should be given to Rockett for the release

⁴ "(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).

⁵ Order at 7, ¶ 1 (Oct. 12, 2021).

of its territory. Any further conduct by the Petitioner or the Commission perpetuates the ongoing violations of Rockett's federal rights.

Rockett is prohibited from engaging in any activity that violate its federal rights, including but not limited to submitting an appraisal to determine compensation for removal of its territory. If Rockett submits an appraisal report, Rockett essentially would be 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.

B. 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 on Petitioner's contention that the compensation provisions in Texas Water Code § 13.2541 eliminates any conflict between state and federal law ("Petitioner's Motion to Dismiss").⁶ Rockett vehemently disagrees but reserves its right to adjudicate that disagreement in federal court, including in the Federal Lawsuit. Petitioner's Motion to Dismiss in the Federal Lawsuit was denied.⁷ 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. 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 the Commission disregarding the Fifth Circuit's ruling in *Bear Creek* that prohibits the release, decertification, or taking of the Property from Rockett's service area under CCN No. 10099, even if fair compensation is paid.

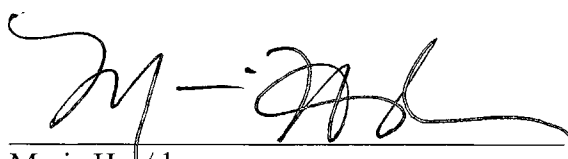
V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Rockett respectfully requests that the compensation phase of this docket be abated until the federal court has issued a decision in the federal lawsuit.

⁶ 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. Shelly Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. Mar. 15, 2021).

⁷ Order, at 2, *Rockett Special Utility District v. Shelly Botkin, et al.*, No. 1:20-cv-01207-RP (W.D. Tex. Sept. 28, 2021).

Respectfully submitted,



Maria Huynh
State Bar No. 24086968
James W. Wilson
State Bar No. 00791944
JAMES W. WILSON & ASSOCIATES, PLLC
103 W. Main Street
Allen, Texas 75013
Tel: (972) 727-9904
Fax: (972) 755-0904
Email: mhuynh@jww-law.com
jwilson@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 October 22, 2021, by e-mail in accordance with the Commission's Order.⁸

via e-mail: forrest.smith@puc.texas.gov

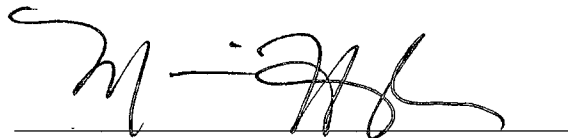
Forrest Smith
Attorney-Legal Division
Public Utility Commission
1701 N. Congress
P.O. Box 13326
Austin, Texas 78711-3326

via e-mail: (addresses as indicated below)

Lloyd Gosselink Rochelle & Townsend, PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Jamie L. Mauldin: jmauldin@lglawfirm.com
James F. Parker: jparker@lglawfirm.com
Taylor P. Denison: tdenison@lglawfirm.com

Attorney for the Commission

Attorneys for Petitioner



Maria Huynh

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