



Control Number: 51044



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PUC DOCKET NO. 51044

**PETITION OF FCS LANCASTER, LTD
TO AMEND ROCKETT SPECIAL
UTILITY DISTRICT'S CERTIFICATE
OF CONVENIENCE & NECESSITY IN
DALLAS COUNTY BY EXPEDITED
RELEASE**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**



**PETITIONER'S RESPONSE TO ROCKETT SPECIAL UTILITY DISTRICT'S
SUPPLEMENTAL MOTION TO DISMISS**

Now comes FCS Lancaster, Ltd (FCS Lancaster or Petitioner) and files this Response to Rockett Special Utility District's (Rockett) Supplemental Motion to Dismiss.¹ Order No. 4 required a response by FCS Lancaster by October 27, 2020; therefore, this Response is timely filed.

I. INTRODUCTION

After filing its petition in this docket, FCS Lancaster filed an application for water service from Rockett.² Rockett frames this fact as though the mere *request* for water service should be dispositive of the questions in this docket and require dismissal of the decertification petition. Rockett is incorrect.

In fact, Rockett does not know whether it can provide service and must hire an engineer to conduct a hydraulic analysis to determine whether service is possible. Contrary to Rockett's argument, the fact that FCS Lancaster even had to apply for water service from Rockett is conclusive proof that the property is not currently receiving service. The Commission should deny Rockett's supplemental motion to dismiss and proceed with the streamlined release sought in FCS Lancaster's Petition.

¹ Rockett Special Utility District's Supplemental Motion to Dismiss (October 7, 2020). (Rockett SUD's Supplemental Motion to Dismiss).

² Rockett SUD's Supplemental Motion to Dismiss at Attachment 1.

II. BACKGROUND FACTS

On July 13, 2020, FCS Lancaster filed a petition to amend Rockett's water certificate of convenience and necessity (CCN) in Dallas County by streamlined expedited release pursuant to Texas Water Code (TWC) § 13.2541 and 16 Tex. Admin. Code (TAC) § 24.254(h). Rockett timely intervened, and moved the Commission to dismiss the petition on the grounds that its service area is protected by 7 U.S.C. § 1926(b) and that the property is, in fact, receiving water service as the term is defined under the Texas Water Code.³

Because Rockett represented it could serve the property to the Commission, FCS Lancaster submitted a Non-Standard Application for Water Service with Rockett on September 30, 2020, along with a fee in the amount of \$3,000 to cover "costs associated with *an investigation of the District's ability to provide service* to the applicant's project," including the cost of a hydraulic analysis performed by Rockett's Engineer.⁴ The application itself says, "This is only an application for non-standard service. Rockett Special Utility District is not obligated to provide service until the application has been evaluated and a final Non-Standard Contract has been executed by all necessary parties."⁵

As of the date of this filing, Rockett has *not* provided FCS Lancaster with the results of its hydraulic analysis.⁶ On October 12, 2020, Rockett's engineer reported Rockett could not commit to serving the project based on the information before it.⁷ Of note, by Rockett's own admission in its Response, there are currently no direct water meters or pipes providing water service to FCS

³ Rockett Special Utility District's Response to the Petition and Motion to Dismiss at 10 (August 21, 2020). (Rockett SUD's Motion to Dismiss).

⁴ Rockett SUD's Supplemental Motion to Dismiss at 11 (emphasis added).

⁵ *Id.* at 9.

⁶ Exhibit A, Affidavit of Richard King Sheldon.

⁷ Exhibit B, October 12, 2020 Letter from Childress Engineers.

Lancaster's property.⁸ Any water service to the property would require the construction of new facilities.⁹ Rockett claims it can provide service to the property through construction of new water lines and improvements to its facilities, estimated to be completed in full by Fall 2021, approximately a year from now.¹⁰

III. ARGUMENT & AUTHORITIES

Rockett's supplemental argument in support of dismissal lacks factual and legal support and should be denied.

A. FCS Lancaster's request for service demonstrates that the property is not currently receiving service.

A customer does not submit an application for non-standard service to a water provider when it is already receiving water service. Accordingly, the fact that FCS Lancaster was required to submit such a request at all supports the finding that the property is not receiving service. Moreover, with the application, Rockett required payment of \$3,000 to cover the cost of a hydraulic study *to determine whether Rockett could provide water service to the property* (that determination itself being subject to change). This is conclusive evidence that the property is not receiving service; if it was receiving service, there would be no need for an application for service, nor for a hydraulic study.

B. There is no inconsistency between applying for service from Rockett and for decertification of the CCN simultaneously.

Rockett's reliance on the fact that an application for service was submitted as evidence that the property is receiving service is head-scratching. The application could be denied. The hydraulic study could determine that Rockett is unable to supply water to the property. Or, as Rockett's

⁸ Rockett SUD's Motion to Dismiss at Ex. D-E.

⁹ *Id.*

¹⁰ *Id.*

engineer notes, even if the application is initially approved, there could be a change in plans that results in Rockett revoking its approval of the application. There is no way to know the outcome of the study or the application for service now.

There is no “gotcha” provision in the statute or regulations that renders a decertification petition moot upon an application for service. Rockett has cited no authority supporting its claim that the petition should now be dismissed. There is none. On the contrary, the fact that Rockett required FCS Lancaster to apply for service—and pay a \$3,000 fee to do so—demonstrates that Rockett is not providing water service to the property.

C. The property is not receiving water service and should be decertified from the CCN.

There is no doubt that Rockett is not *actively* supplying water to the property. FCS Lancaster submitted the Affidavit of Richard King Sheldon with its Petition indicating that the property is not currently receiving service.¹¹ Further, although Rockett makes much of its future plans to build facilities that “could” be extended to the property, there is currently no actual water line or meter on the property.¹²

That Rockett has existing waterlines and facilities that *could* be committed to the property is not enough for a finding by the Commission that the property is receiving service. The relevant test is whether Rockett has “performed any act, furnished or supplied anything, or committed or used any facilities or lines *to the properties themselves*.”¹³ Rockett’s own evidence establishes that it has not.

¹¹ Petition of FCS Lancaster, Ltd to Amend Rockett Special Utility District’s Certificate of Convenience and Necessity in Dallas County by Expedited Release (July 13, 2020) at 9.

¹² Rockett SUD’s Motion to Dismiss at Ex. D–E.

¹³ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp*, 449 S.W.3d 130, 142 (Tex. App.—Austin 2014, pet. denied) (emphasis added).

IV. CONCLUSION

FCS Lancaster's application for water service from Rockett is not evidence that the properties at issue are receiving water service, nor is it a stand-alone reason to dismiss the petition for decertification. Accordingly, the Commission should deny Rockett's Supplemental Motion to Dismiss the Petition.

Respectfully submitted,

/s/ James F. Parker

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ATTORNEYS FOR PETITIONER

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 October 15, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ James F. Parker

James F. Parker

PUC DOCKET NO. 51044

PETITION OF FCS LANCASTER, LTD	§	PUBLIC UTILITY COMMISSION
TO AMEND ROCKETT SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	
OF CONVENIENCE & NECESSITY IN	§	OF TEXAS
DALLAS COUNTY BY EXPEDITED	§	
RELEASE	§	

AFFIDAVIT OF RICHARD KING SHELDON

STATE OF TEXAS §
 §
 COUNTY OF Bexar §

BEFORE ME, the undersigned authority, on this day personally appeared Richard King Sheldon, the affiant, who is known to me. After administering an oath, the affiant testified that:

1. My name is Richard King Sheldon. I am over the age of 18 years, of sound mind, and am competent to make this Affidavit. The facts stated herein are within my personal knowledge and are true and correct.


2. I am Manager of RKS Lancaster GP, LLC, General Partner to FCS Lancaster, Ltd., a Texas limited partnership, the Petitioner in the above-captioned matter.

3. On September 30, 2020, FCS Lancaster, Ltd. submitted a Non-Standard Application for Water Service to Rockett Special Utility District (Rockett), along with a fee in the amount of \$3,000.00 to cover costs associated with an investigation of the District's ability to provide service to the applicant's project, including the cost of a hydraulic analysis performed by the District's Engineer.

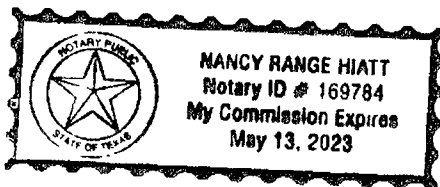
4. As of the date of this Affidavit, Rockett has not provided FCS Lancaster, Ltd. with the results of its hydraulic analysis, nor has it indicated whether it can or cannot provide service to FCS Lancaster Ltd.'s project.

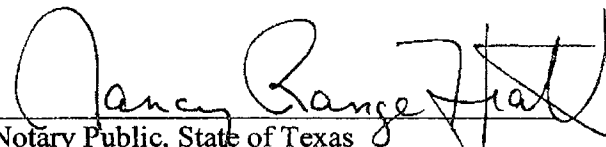
FURTHER AFFIANT SAYETH NOT.

SIGNED this 12th day of October, 2020.


Richard King Sheldon

SWORN TO AND SUBSCRIBED BEFORE ME by Richard King Sheldon on October 12, 2020.




Notary Public, State of Texas



TEXAS REGISTERED ENGINEERING FIRM F-702

ROBERT T. CHILDRESS, JR., P.E. • BENJAMIN S. SHANKLIN, P.E. • ROBERT T. CHILDRESS III, P.E.

October 12, 2020

Kay Phillips, Manager
Rockett Special Utility District
P.O. Box 40
Red Oak, Texas 75154

Re: Hydraulic Analysis and Evaluation
FCS Lancaster Limited
Near Node 703, Map Sheet 9

Dear Ms. Phillips:

In response to your request, we have reviewed the Nonstandard Service Application and exhibits submitted on the above referenced development and we are requesting additional information. Per Rockett's Nonstandard Service Application requirements, documents are to be furnished that were not included. We did not receive a complete Preliminary Plat prepared by a licensed surveyor or Registered Engineer. The application did not note whether there would be any phases proposed in the development or if it is intended to be constructed all at once; the phases should be noted on the plat and/or a Concept Plan.

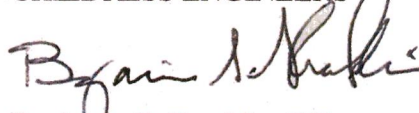
Regarding the three (3) 8" domestic meters and the three (3) 2" irrigation meters that were requested; are each of these meters to be centered on the three rectangular buildings denoted on the Water Service Plan or at some other locations? Also, the 111,200 GPD domestic flow breaks down to 77 GPM per day or 26 GPM per 8" meter per day while an 8" meter will pass more than 3,000 GPM. Furnish the projected flowrate breakdown per building or flowrate per unit.

The fireflow request is noted as 2000 gpm for a 2 hour duration and 58 fire hydrants are noted as proposed. Are the fire hydrants at a 300 foot spacing as normally required for most commercial areas or where are they to be located? Show the fire hydrants on the Water Service Plan.

Lastly, please note that if the plans change, then the analysis and approval for service may change. So, an accurate depiction of the project and demand is very important. If this information can be provided, we can complete our evaluation. Please let us know if you have any questions concerning this matter.

Very truly yours,

CHILDRESS ENGINEERS



Benjamin S. Shanklin, P.E.

Cc: Robert Woodall