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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 §**

PUBLIC UTILITY COMMISSION

OF TEXAS

2020 NOV -5 AM 11:26

FILED
FILING CLERK

ORDER NO. 5

**REQUIRING A RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS AND
ADEQUACY OF NOTICE, ADDRESSING PENDING MOTIONS, AND REQUIRING
BRIEFING FROM THE PARTIES**

In this proceeding, FCS Lancaster, Ltd. seeks streamlined expedited release of land it owns in Dallas County from water certificate of convenience and necessity (CCN) number 10099 held by Rockett Special Utility District. Rockett has been admitted as an intervenor.

I. Commission Staff's Motion to Abate

On August 13, 2020, Commission Staff moved to have this case abated, on the grounds that the question of the interplay between the statutes and rules governing streamlined expedited release, on the one hand, and possible preemption under 7 U.S.C. § 1926, on the other hand, was the subject of ongoing litigation in federal court. In light of the Commission's general discussion of the abatement issue at its open meeting on November 5, 2020, and in light of the status of the underlying federal litigation, Staff's motion to abate is denied.

II. Administrative Completeness and Sufficiency of Notice

Commission Staff must, by November 20, 2020, file a recommendation on the administrative completeness of FCS Lancaster's petition and the sufficiency of notice.

III. Rockett's First Motion to Dismiss

On August 21, 2020, Rockett filed its first motion to dismiss, arguing that FCS Lancaster's petition should be dismissed because Rockett is indebted on a loan guaranteed by the United States Department of Agriculture (USDA) and has provided or made service available to the land owned by FCS Lancaster, thereby entitling Rockett to the protections provided under 7 U.S.C. § 1926.

In light of the Order issued on November 3, 2020, in *Rockett Special Utility District v. Botkin*, Cause No. 1:19-CV-1007-RP (W. Dist. Tex), Rockett must, by November 20, 2020, file briefing as to the effect of that order on its first motion to dismiss in this case. FCS Lancaster must

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file similar briefing by December 4, 2020, and Commission Staff must do the same by December 18, 2020.

IV. Rockett's Second Motion to Dismiss

On September 11, 2020, Rockett raised a second argument as to why FCS Lancaster's petition should be dismissed. Specifically, Rockett argues that "the Petition must be dismissed because the Property receives water 'service,' as defined by 16 TAC § 24.3(33) and TWC § 13.002(21), from Rockett." The arguments made by Rockett in the second motion to dismiss address the merits of the petition; they do not identify a ground for dismissal specified in the Commission's dismissal rule, 16 Texas Administrative Code (TAC) § 22.181(d). Accordingly, the second motion to dismiss is denied.

V. Rockett's Third Motion to Dismiss

On October 7, 2020, Rockett filed a supplemental motion to dismiss.¹ In it, Rockett asserts that, during the pendency of this case, FCS Lancaster has requested water service from Rockett, thereby rendering the petition moot and appropriate for dismissal under 16 TAC § 22.181(d)(2).

FCS Lancaster concedes that, after filing the petition in this case, it filed with Rockett an application for water service. Specifically, on September 30, 2020, FCS Lancaster submitted a "non-standard application for water service," along with a \$3,000 check to cover "costs associated with an investigation of the District's ability to provide service to the applicant's project." The application includes the following provision: "This is only an application for non-standard service. Rockett . . . 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." FCS Lancaster argues that, rather than proving that property receives water service from Rockett, its request for service proves that the property is not receiving service from Rockett. FCS Lancaster also points out that it can seek streamlined expedited release for its tract while simultaneously exploring the possibility of obtaining service from Rockett.

The existence of a request for service is not dispositive of the issue of whether a tract is receiving service under the standards of TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130

¹ The ALJ refers to this as Rockett's third motion to dismiss.

(Tex. App.—Austin 2014, pet. denied), nor does it render a petition for streamlined expedited release moot. Accordingly, Rockett’s third motion to dismiss is denied.²

Signed at Austin, Texas on the 5th day of November 2020.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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² By denying Rockett’s second and third motions to dismiss, the ALJ is not precluding Rockett from asserting the same facts in opposition to the merits of FCS Lancaster’s petition.