



Control Number: 51044



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DOCKET NO. 51044

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

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation. Staff recommends that the petition be approved. In support thereof, Staff would show the following:

I. BACKGROUND

On July 13, 2020, FCS Lancaster, LTD (FCS Lancaster) filed a petition to amend Rockett Special Utility District's (Rockett SUD) water certificate of convenience and necessity (CCN) in Dallas County by streamlined expedited release under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.254(h). FCS Lancaster seeks the release of two tracts of land, the first approximately 35 acres and the second approximately 121 acres, within the boundaries of Rockett SUD's water CCN No. 10099. Supplemental materials were filed by FCS Lancaster on November 12, 2020.

Order No. 6, filed on November 19, 2020 required Staff to file a recommendation on final disposition by January 4, 2021. This pleading, therefore, is timely filed.

II. RECOMMENDATION

After review, and as supported by the attached memorandum of Patricia Garcia of the Commission's Infrastructure Division, Staff recommends that the petition be approved. The requested areas are approximately 35 acres and 121 acres, respectively, are located within Dallas County, which is a qualifying county, and are located within Rockett SUD's certificated area. Further, FCS Lancaster has provided deeds confirming ownership of the property and provided the affidavit of Richard King Sheldon, attesting that the property is not receiving water service from Rockett SUD.

Rockett SUD asserts that the property is receiving service because FCS Lancaster has requested service and because Rockett SUD has facilities adjacent to and near the property. Staff recommends that neither argument is a correct interpretation of TWC § 13.2541 and 16 TAC § 24.245(h) and that, ultimately, the property is not receiving service.

Rockett SUD has provided a completed Application for Water Service as evidence that FCS Lancaster has requested service and, therefore, is receiving service.¹ However, that application states, “[t]his 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.” Further, the application required FCS Lancaster to pay a fee so a hydraulic study could be undertaken to determine whether Rockett SUD would be capable of providing water service to the property.² In combination, the language of the application and the description of the fee imply that not only is Lancaster FCS not receiving service, but that Rockett SUD is not even sure that it has the capacity to provide service to the requested area. Given these two implications, Staff cannot find a cogent line of reasoning to support the assertion that FCS Lancaster’s request for service means that the property is receiving service.

Further, Rockett SUD maintains that the property is receiving service due to numerous facilities near or adjacent to the property. Specifically, Rockett SUD identifies: “1½” and 2” waterlines immediately north of the Property, 2” waterline near the southeast corner of the Property, 2½”, 4”, and 6” waterlines east of the Property, 6” and 1½” waterlines south of the Property, and other infrastructure that transmit water service to the Property and surrounding areas from Water Plant No. 4.”³ However, the presence of facilities near or adjacent to the property does not constitute service. In *Texas General Land Office v. Crystal Clear Water Supply Corp.*, the CCN holder similarly demonstrated that water lines and facilities existed near the property in question.⁴ The court looked to whether those lines or facilities were constructed for the purpose of providing water to the property in question. Finding that the facilities were

¹ Rockett Special Utility District’s Supplemental Motion to Dismiss at 9 (Oct. 7, 2020).

² *Id.* at 11.

³ Rockett Special Utility District’s Response to the Petition and Motion to Dismiss at 11 (Aug. 21, 2020).

⁴ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied)

constructed to serve the greater area and not the particular property, the court determined that the facilities were not committed to the particular tract of land and therefore, the property in question was not receiving service.⁵ Similarly, Rockett SUD fails to demonstrate that the facilities and water lines were installed for the purpose of providing water to the FCS Lancaster property. As such, they cannot be considered to be committed to the particular property and the property is not, therefore, receiving water service from Rockett SUD.

III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

Dated: December 31, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
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/s/ Creighton R. McMurray
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⁵ *Id.*

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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 on December 31, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray

Public Utility Commission of Texas

Memorandum

TO: Creighton McMurray, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: December 31, 2020

RE: 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*

FCS Lancaster, Ltd. (FCS Lancaster) filed a petition for streamlined expedited release from Rockett Special Utility District's (Rockett SUD) water certificate of convenience and necessity (CCN) No. 10099 in Dallas County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). FCS Lancaster asserts that its two separate pieces of land are each at least 25 contiguous acres, are not receiving water service, and are located in Dallas County, which is a qualifying county.

FCS Lancaster submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). The map and digital data are sufficient for determining the locations of the requested release areas within Rockett SUD's certificated area. Gary Horton, Infrastructure Division, was able to confirm the acreage of the subject properties and determined that the requested areas are located within Rockett SUD's water CCN. Furthermore, FCS Lancaster provided a warranty deed confirming ownership of the tracts of land within Rockett SUD's certificated area. In addition, FCS Lancaster submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder. The areas being requested for expedited release are approximately 35 acres and approximately 121 acres, respectively, and are not receiving water service.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), FCS Lancaster has met the Commission's requirements to allow for the release of the requested area from Rockett SUD's CCN No. 10099. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.

Additionally, I recommend that the final map and certificate be provided to the CCN holder.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Rockett Special Utility District

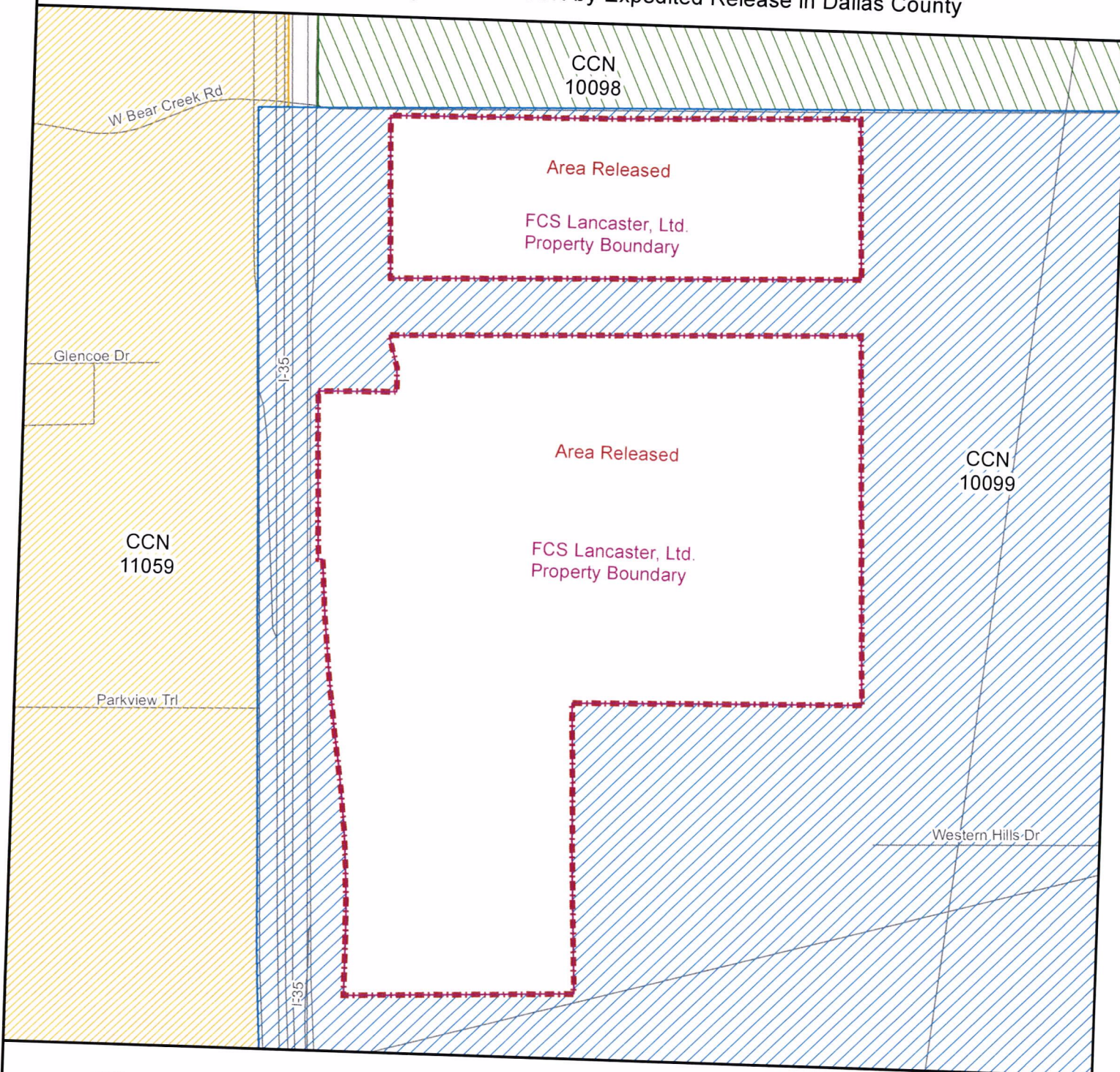
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Rockett Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10099



to provide continuous and adequate water utility service to that service area or those service areas in Dallas and Ellis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51044 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Rockett Special Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 20__.

Rockett Special Utility District
 Portion of Water CCN No. 10099
 PUC Docket No. 51044
 Petition by FCS Lancaster, Ltd. to Amend
 Rockett Special Utility District's CCN by Expedited Release in Dallas County



Water CCN

-  10099 - Rockett SUD
-  10098 - City of Lancaster
-  11059 - City of Glenn Heights

-  Property Boundary
-  Area Released

0 300 600
Feet



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Map by: Komal Patel
 Date created: November 20, 2020
 Project Path: n:\finalmapping\
 51044RockettSUD.mxd