



Control Number: 51044



Item Number: 43

Addendum StartPage: 0

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

**FCS LANCASTER, LTD'S REPLY TO ROCKETT SPECIAL UTILITY DISTRICT'S
RESPONSE, OBJECTIONS AND CORRECTIONS TO PROPOSED ORDER**

FCS Lancaster, Ltd (FCS Lancaster or Petitioner) replies to Rockett Special Utility District's (Rockett) Response, Objections, and Corrections to Proposed Order filed herein on January 19, 2021.

I. INTRODUCTION AND BACKGROUND

FCS Lancaster filed a petition seeking streamlined expedited release of property from Rockett Special Utility District's (Rockett) certificate of convenience and necessity (CCN) number 10099.¹ On January 8, 2021, the Chief Administrative Law Judge (ALJ) issued a Proposed Order, including findings of fact and conclusions of law in support of approving the petition for release of the property from Rockett's CCN.² In response to the proposed order, Petitioner noted one correction regarding the date the petition was mailed.³ The Staff of the Public Utility Commission of Texas (Commission Staff) likewise only noted a correction to the date the petition was mailed.⁴

Rockett also responded to the Proposed Order, alleging that there were a number of corrections and changes needed.⁵ Rockett contends that its proposed changes are necessary because the property was receiving water based on (1) plans for future infrastructure; and (2) the

¹ Petition of FCS Lancaster, Ltd. to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Dallas County by Expedited Release (Jul. 13, 2020).

² Proposed Order and Memo (Jan. 8, 2021).

³ FCS Lancaster, Ltd.'s Corrections to Proposed Order (Jan. 19, 2021).

⁴ Commission Staff's Correction to Proposed Order (Jan. 19, 2021).

⁵ Rockett Special Utility District's Response, Objection and Correction to Proposed Order (Rockett SUD's Response) (Jan. 19, 2021).

fact that FCS Lancaster submitted an application for service.⁶ In its response, Rockett cites to evidence and arguments submitted in its previous motions to dismiss that were denied by the ALJ.

On January 20, 2021, after review and consideration of each response submitted, the Chief Administrative Law Judge issued a memo advising adoption of the date correction and rejecting all of Rockett's proposed corrections.⁷ The *only* permissible reason for not granting expedited release of the property is if the landowner failed to satisfy statutory or regulatory requirements.⁸ As set out in the Proposed Order, FCS Lancaster has demonstrated that each of the elements required for streamlined expedited release under Texas Water Code (TWC) § 13.2541, has been satisfied. Thus, the Proposed Order as amended must be approved and the property released from Rockett's CCN.

II. ARGUMENT & AUTHORITIES

A. Mere existence of nearby waterlines and plans for future infrastructure do not require a finding that a property is receiving water service.

Rockett contends that the Proposed Order neglected to recognize its purported basis for dismissal under state law.⁹ However, the Proposed Order does in fact acknowledge that Rockett moved to dismiss based on claims that the property was receiving water service from Rockett.¹⁰ As Rockett notes in its Response to the Proposed Order, all of these arguments were included in previous motions to dismiss.¹¹ Each of the arguments that Rockett proffers to support its request for corrections to the proposed order were fully briefed before and considered by the ALJ, and were ultimately denied.¹²

⁶ Rockett SUD's Response.

⁷ Corrections Proposed Order Memorandum (Jan. 20, 2021).

⁸ 16 TAC § 24.245(h)(10).

⁹ Rockett Special Utility District's Response, Objection, and Corrections to Proposed Order at 3 (Jan. 20, 2021).

¹⁰ Proposed Order and Memo at 3 (Jan. 8, 2021).

¹¹ Rockett SUD's Response.

¹² See Order No. 5 Requiring a Recommendation on Administrative Completeness and Adequacy of Notice, Addressing Pending Motions, and Requiring Briefing from the Parties (Nov. 5, 2020); see also Order No. 7 Denying Rockett's First Motion to Dismiss (Dec. 30, 2020).

The property has not received and is not receiving water service. The affidavit of Rick Sheldon submitted with FCS Lancaster’s petition demonstrates that the property is not currently receiving service.¹³ Rockett makes much of its future plans to build facilities that “could” be extended to the property, but there is currently no actual water line or meter on the property.¹⁴ Infrastructure that *could* be committed to the property in the future is not sufficient to establishing that the property is receiving water 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*.”¹⁵ Rockett has presented no evidence that the existing lines and infrastructure in question are committed to service of the property.

Rockett points to conclusory statements from its general manager and engineer that they met the standard of providing water service.¹⁶ Neither the general manager nor the engineer for Rockett are charged with making the conclusions required under TWC § 13.2541—Texas law charges the Commission with promulgating and enforcing procedures to make this determination.¹⁷

B. Receipt of an application for service is not an indication that a property is receiving water service from the CCN holder.

Rockett rather confusingly argues that FCS Lancaster’s submission of an application for water service is an indication that the property at issue is receiving service. A customer does not submit an application for non-standard service to a water provider when it is already receiving water service. As Commission Staff noted in its recommendation prior to the issuance of the

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

¹⁴ See Rockett SUD’s Response at 3–4; see also Rockett SUD’s Motion to Dismiss at Ex. D-E (Sept. 11, 2020).

¹⁵ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 142 (Tex. App.—Austin 2014, pet. denied) (emphasis added).

¹⁶ Rockett SUD’s Response at 2–3.

¹⁷ TWC § 13.2541; 16 TAC § 24.145(h).

Proposed Order, “Staff cannot find a cogent line of reasoning” to support Rockett’s contention that a service request indicates that a property is receiving water service.¹⁸

Rockett contends that it provided water service by “processing the application” and “evaluating the request.”¹⁹ Rockett represented in the course of these proceedings that it could serve the property, so FCS Lancaster accordingly submitted a Non-Standard Application for Water Service with Rockett along with a fee of \$3,000 to cover “costs associated with *an investigation of the District’s ability to provide service* to the applicant’s project.”²⁰ On October 12, 2020, Rockett’s engineer reported Rockett could not commit to serving the project based on the information before it.²¹ Rockett’s reliance on the fact that an application for service was submitted as evidence that the property is receiving service fails. The application could be denied. The hydraulic study could determine that Rockett is unable to supply water to the property. Or, as Rockett’s engineer notes, even if the application is initially approved, there could be a change in plans that results in Rockett revoking its approval for service.²² There is no way to know the outcome of the study or the application for service now. Rockett’s response that there is an incomplete hydraulic analysis further shows that no determination has been made that Rockett can provide service, and certainly there is nothing to show the property is actually receiving water service from Rockett.

The application explicitly 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.”²³

¹⁸ Commission Staff’s Recommendation on Final Disposition (Dec. 31, 2020).

¹⁹ Rockett SUD’s Response at 6.

²⁰ See Rockett SUD’s Supplemental Motion to Dismiss at 11 (Oct. 7, 2020) (emphasis added) (being provided as Attachment A); see also Petitioner’s Response to Rockett Special Utility District’s Supplemental Motion to Dismiss at 7–9 (Oct. 15, 2020) (being provided as Attachment B).

²¹ Attachment B at 9.

²² *Id.*

²³ Attachment A at 9 (emphasis added).

Rockett argues that the application form not meant to evaluate whether or not service can be provided, but instead whether or not service can be provided in a certain amount.²⁴ Rockett states that the excerpts taken from its application for service was incomplete and thus misconstrued, but tellingly does not quote the form.²⁵ Absent from each and every response Rockett has submitted in this docket is any evidence that supports what amount of water service the property could receive or is receiving. That is because the property is not receiving water service from Rockett and is eligible for release under TWC § 13.2541.

III. CONCLUSION

FCS Lancaster agrees with the Chief Administrative Law Judge that none of Rockett's proposed corrections should be adopted. Accordingly, FCS Lancaster respectfully requests that the Commission consider and approve the Proposed Order as amended on January 20, 2021 at its January 29, 2021 open meeting.

Respectfully submitted,



Jamie L. Mauldin
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jmauldin@lglawfirm.com

James F. Parker
Texas State Bar No. 24027591
jparker@lglawfirm.com

LLOYD GOSSELINK ROCHELLE & TOWNSEND, PC
816 Congress Ave., Suite 1900
Austin, Texas 78701
Telephone: 512-322-5800
Telecopier: 512-472-0532

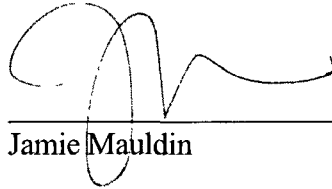
ATTORNEYS FOR PETITIONER

²⁴ Rockett SUD's Response at 5.

²⁵ Rockett SUD's Response at 5-6.

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 January 22, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Jamie Mauldin



PUC 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**

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PUBLIC UTILITY COMMISSION

OF TEXAS

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

COMES NOW, Rockett Special Utility District, a political subdivision of the State of Texas ("Rockett") and files this Supplemental Motion to Dismiss the Petition of FCS Lancaster, Ltd. to amend Rockett's Certificate of Convenience and Necessity (CCN) in Dallas County by Expedited Release. In support thereof, Rockett respectfully would show as follows:

BACKGROUND

FCS Lancaster, Ltd., a Texas limited partnership ("Petitioner") 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 CCN No. 10099, where the properties subject to the Petition are approximately 35 acres and approximately 121 acres located south of the City of Lancaster at the southwestern corner of the intersection of Bear Creek Road and Interstate 35 in Dallas County (collectively, the "Property") on July 13, 2020 (the "Petition").

During the pendency of this case, Petitioner requested water service from Rockett by submitting an Application for Non-Standard Water Utility Service to Rockett on or about September 29, 2020 (attached hereto as Attachment 1) ("Application for Water Service"). The Application for Water Service was signed by the general partner of Petitioner. The property for which Petitioner seeks Water Service is identical to the Property that is the subject of the Petition. Petitioner has paid the \$3,000 fee to Rockett for processing its Application for Water Service.

ARGUMENTS

I. **Petitioner Has Requested Water Service From Rockett To The Property, Further Evidencing That Rockett Is Currently Providing Water Service To The Property.**

Petitioner filed its Petition pursuant to 16 Texas Administrative Code § 24.245(h) and Texas Water Code § 13.2541. The Petition must be dismissed as the Property is receiving water “service” and therefore does not qualify for expedited release. Rockett has shown that it is providing water “service” to the Property through performing acts and having committed and used (and continuing to commit and use) its various existing waterlines and facilities, including future waterlines and facilities, for such service. *See* Rockett’s Response to the Petition and Motion to Dismiss, Item 8 (Aug. 21, 2020) (detailing the location and size of Rockett’s existing waterlines and facilities serving the Property, including future waterlines and facilities to be completed before or about Fall of 2021).

This is evident from Petitioner’s request to receive water service from Rockett, through submission of its Application for Water Service, that Rockett is currently providing water service to the Property through Rockett’s existing waterlines and facilities and Petitioner is requesting such current water service. Petitioner cannot contend the Property is not receiving water “service”—which includes service through Rockett’s existing and future waterlines and facilities and related performance, actions, and commitment and use thereof—by filing its Petition to release the Property from Rockett’s CCN, while at the same time apply for water service to the Property from Rockett.

II. **The Petition Is Now Moot, As Petitioner Has Requested Water Service From Rockett**

Submission of the Application for Water Service admits Petitioner’s request for water service *specifically from Rockett*. Therefore, the release of the Property from Rockett’s CCN is no longer needed, as Petitioner has requested water service to the Property from Rockett (the

current CCN holder) and the Petition is now deemed moot. If the Petitioner does not withdraw its Petition, the Petition must be dismissed.

CONCLUSION

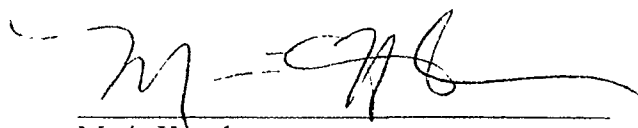
The Property cannot be released from Rockett's CCN, as Rockett has thoroughly demonstrated that it "has provided or made service available" to the Property and especially as Petitioner now has requested water service to the Property from Rockett, the current CCN holder. Rockett also incorporates by reference and re-urges all of its arguments and legal authority, including its England Reservation, as stated in Rockett's original Response to the Petition and Motion to Dismiss, Item 8 (Aug. 21, 2020).

PRAYER

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein, Rockett Special Utility District respectfully requests that the Petition be dismissed and denied in its entirety, and all other such relief as Rockett may be entitled.

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC



Maria Huynh
 State Bar No. 24086968
 James W. Wilson
 State Bar No. 00791944
 103 W. Main Street
 Allen, Texas 75013
 Tel: (972) 727-9904
 Fax: (972) 755-0904
 Email: mhuynh@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 6, 2020, by e-mail in accordance with the Commission's Order.¹

via e-mail: creighton.mcmurray@puc.texas.gov

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

Attorney for the Commission

via e-mail: hthompson@abhr.com

Harry H. Thompson
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

Lloyd Gosselink Rochelle & Townsend, PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701

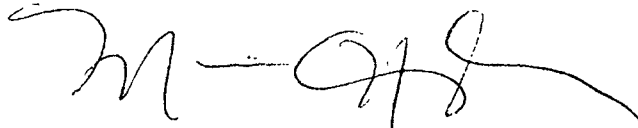
Georgia N. Crump: gcrump@lglawfirm.com

James F. Parker: jparker@lglawfirm.com

Sarah T. Glaser: sglaser@lglawfirm.com

Gabrielle C. Smith: gsmith@lglawfirm.com

Attorneys for Petitioner



Maria Huynh

¹ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).

ATTACHMENT 1

From: [Morgan Massey](#)
To: [Mana Huynh](#)
Subject: FW: Rockett SUD Water Service Application Submitted - Bear Creek Industrial
Date: Tuesday, October 06, 2020 2:48:06 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

From: Austin McDaniel, EIT <amcdaniel@landevengineers.com>
Sent: Wednesday, September 30, 2020 8:07 AM
To: Morgan Massey <mmassey@rockettwater.com>
Cc: Lawrence A. Cates, PE, RPLS <lcates@landevengineers.com>
Subject: Rockett SUD Water Service Application Submitted - Bear Creek Industrial

Morgan,

I submitted the 'Application for Non-Standard Water Utility Service' as well as the required documents and review fee of \$3,000 yesterday in person to your office in Waxahachie. Do you mind telling me what the next steps are including how long the review of the documents you estimate? We would like to be able to go back and tell our client a time line and need your help to do that. I look forward to hearing from you and if you have any questions regarding our submittal documents please let me know and I would be happy to assist you with that. Have a great day!

Note: The developer has requested a copy of the receipt for the \$3,000 review fee. When the check is processed on your side do you mind sending me a copy of the receipt that I can forward to them?

Thanks,



Austin McDaniel, EIT

Design Engineer

A 1801 Gateway Boulevard, Suite 101, Richardson, Texas 75254

P 972.385.2272 x 1456 C 972.672.4262

TxEng F-4387 | LandevEngineers.com | [f](#) [in](#) [@](#) [v](#)

HOUSTON | DALLAS

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Transmittal

VIA: Courier

DATE: September 28, 2020

TO: Rockett Special Utility District
Water Department
126 Alton Adams Drive
Waxahachie, Texas 75165
972-617-3524

COPIES TO:

ATTN: Recipient's Name Here
Recipient's Title

RE: Bear Creek Water Service

WE TRANSMIT: ☐ herewith ☐ under separate cover via _____
☒ in accordance with your request Required Documents Per Application

FOR YOUR: ☒ approval ☐ distribution ☐ information ☒ review and comment
☐ records ☐ use ☐ payment ☐ signature and return
☐ _____

THE FOLLOWING: ☒ plans ☐ specifications ☐ prints ☐ change order
☐ proposal ☐ copy of letter ☐ reports ☐ samples
☐ _____

Item No.	No. of Copies	Description
1	1	Bear Creek Industrial_Application for Non-Standard Water Utility Service Application Completed_09-28-2020
2	1	ALTA TRACTS ONE and TWO BEAR CREEK -0023245AT-06-14-19
3	1	200503648176 - Vesting Deed
4	1	Bear Creek Industrial_Water Service Plan_09-28-2020
5	1	Bear Creek Industrial_Detail Sheet_09-28-2020
6	1	Bear Creek Industrial_General Location Map_09-28-2020
7	1	Bear Creek Industrial_Service Area Map_09-28-2020
8	1	Rockett Provided Ex. Water Distribution Map_09-23-2020
9	1	Bear Creek Industrial_Statement of Current Needs_09-28-2020
10	1	CD Copy of all files

If enclosures are not as noted, please inform us immediately.

REMARKS: Feel free to contact me should you have any questions.

SIGNED:

Your Name Here

Project Engineer

amcdaniel@landevengineers.com



RICK SHELDON
R·E·A·L E·S·T·A·T·E, L.L.C.

September 23, 2020

VIA FEDEX OVERNIGHT

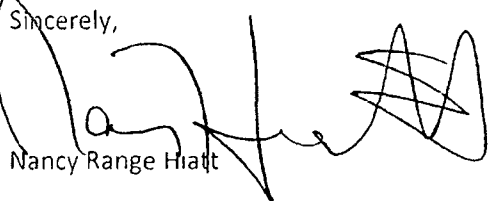
Mr. Austin McDaniel
Landev Engineers
1801 Gateway Blvd., #101
Richardson, TX 75254

Re: FCS Lancaster, Ltd.

Dear Austin:

Enclosed is our check for \$3,000 payable to Rockett along with the signed application.

Sincerely,


Nancy Range Hiett

:nrh

Enclosures

126 Alton Adams Drive,
Waxahachie, Texas 75165
972-617-3524 Office 972-617-0030 Fax
www.rocketwater.com



APPLICATION FOR NON-STANDARD WATER UTILITY SERVICE

FCS Lancaster, LTD ("Applicant") requests non-standard water utility service from Rockett Special Utility District ("District") to property located inside the District's state-certificated service area ("CCN"). Applicant understands and agrees that retail water utility service will only be available under the terms and conditions of District's rate order, the regulations of the Texas Commission on Environmental Quality ("TCEQ"), the Texas Water Code and the Texas Health & Safety Code, and applicable state and federal laws and regulations.

By signing and submitting this application for non-standard retail water utility service, Applicant declares that Applicant is the owner of the property requesting service or a developer with legal contractual rights to develop the property. If Applicant is not the landowner or developer, Applicant must have written legal authority to make this application and to bind the landowner/developer to the terms of any resulting service contract. [Attach copy of sworn power of attorney]

The information solicited below shall be the minimum information required for Applicant to initiate non-standard service to the property. Applicant shall also be required to timely provide any additional information required by the District and/or its designated consulting engineers to evaluate the service request, its effects on the District's existing water system and customers and any additional service capacities that might need to be developed to fulfill this request.

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.

Applicant/Developer

Legal name & Title: FCS Lancaster, LTD
Physical address: 601 Sonterra Blvd. San Antonio, TX 78253 Mailing address: 601 Sonterra Blvd. San Antonio, TX 78253
Telephone: 210-490-2500 Fax: _____ Email: Nhiatt@ricksheldonrealestate.com

Landowner

Legal name & Title: FCS Lancaster, LTD
Physical address: 601 Sonterra Blvd. San Antonio, TX 78253 Mailing address: 601 Sonterra Blvd. San Antonio, TX 78253
Telephone: 210-490-2500 Fax: _____ Email: Nhiatt@ricksheldonrealestate.com

Responsible Engineer

Legal name & Title: Lawrence A. Cates, PE
Firm: Landev Engineers Mailing address: 1801 Gateway Blvd. Suite 101, Richardson, TX
Telephone: 972-385-2272 Fax: 972-385-4387 Email: LCates@landevengineers.com

Property

Legal Name of Development or Business: FCS Lancaster LTD
Location: Southeast quadrant of the intersection at Interstate Highway 35E and Bear Creek Road
Number of acres: 120.76 Acres

Describe all intended land uses in the Development: (Attach additional sheets if necessary)

☐ Residential Subdivision ☐ Apartments ☐ Manufactured Home Park ☐ RV Park
☐ Commercial ☒ Other Industrial

Is the property located in the corporate limits or ETJ of a municipality? Yes ☒ No ☐

If yes, provide the name of the municipality: Lancaster

If there will be internal streets/roads will they be Public or Private? (Please circle one)

Is application being made for entire property? Yes ☒ No ☐

Is this a phased development? Yes ☒ No ☐ Number of Phases 3

Phases for which service is being requested in *this* application: 3

Flow in gallons per day: Domestic: 111,200 GPD Gallons annually: 40MGPY
 Fire Flow: 240,000 GPD

Service needs (may attach a separate sheet)

Quantity of domestic meters: 3 Meter size: 8"

Irrigation System: Yes ☒ No ☐

Quantity of irrigation meters: 3 Meter size: 2

Fire Protection

Type of fire protection: Auto Sprinkler # of Fire Hydrants: 58

Water volume and pressure requirements: Need 240,000 GPD or 2,000GPM for 2 hours at min. 20psi residual for fire flow

Timetable

Date water service is needed on the property?: 2021

Please attach the following documents:

- ☐ One (1) paper and one (1) electronic PDF copy of a detail water service plan tied to a plat of the property delineating all phases, number of service locations in each phase, all large water users, and types of water uses to be located on the property.
- ☐ One (1) paper and one (1) electronic PDF copy of the preliminary plat signed and sealed by a licensed surveyor or registered professional engineer.
- ☐ Map and description of the area to be served using map criteria in 30TAC §291.105(a)(2)(A–G)
- ☐ Water demand/special service needs detail sheet
- ☐ Ownership documents (Deed)
- ☐ A letter from the City/County stating fire protection requirements
- ☐ Copy of irrigation plans
- ☐ Applicant must provide a statement of current needs, and a projection (including dates) of future needs.

This application must be completed by the Applicant only. The District will take no action related to the above-described development until this application is complete. A signed application will be considered complete only after the District has received all required documents. Once a completed application has been submitted, a Non-Standard Application Fee in the amount of \$3,000.00 plus \$10.00 for each in excess of 20 lots will be required.

This fee covers administrative, legal and engineering costs associated with an investigation of the District's ability to provide service to the applicant's project. Additional costs may be deemed necessary by the District appropriate to the size and scope of the project.

Applicant will pay all reasonable and necessary costs incurred by Utility in evaluating and responding to this non-standard service application. If Applicant changes the original signed Non-Standard Service Application, Applicant may be required to submit a new Non-Standard Service Application and submit the required fee for such Application. The fees stated above are only estimates required to start work.

Please be advised the hydraulic analysis performed by the District's Engineer will expire six (6) months from the date of the Engineer's approval letter.

All information provided to the District under an application for non-standard service shall be considered public information and will be made available for inspection and copying. Any person who submits information under such an application consents to the inspection and copying of that information.

I CERTIFY, AS THE APPLICANT OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF THE APPLICANT THAT THE FOREGOING REPRESENTATIONS CONTAINED IN THIS APPLICATION ARE TRUE AND CORRECT.

APPLICANT: FCS Lancaster, Ltd., a Texas limited partnership
By: RKS Lancaster GP, LLC, Its General Partner
 Signature: [Signature]
Rick Sheldon
 Title: Manager

Application Received by Utility:

By: _____ *Date of receipt: _____
 *Application expires one year from this date.

FOR DISTRICT USE

SERVICE INVESTIGATION FEE: \$ _____ for _____ requested meters

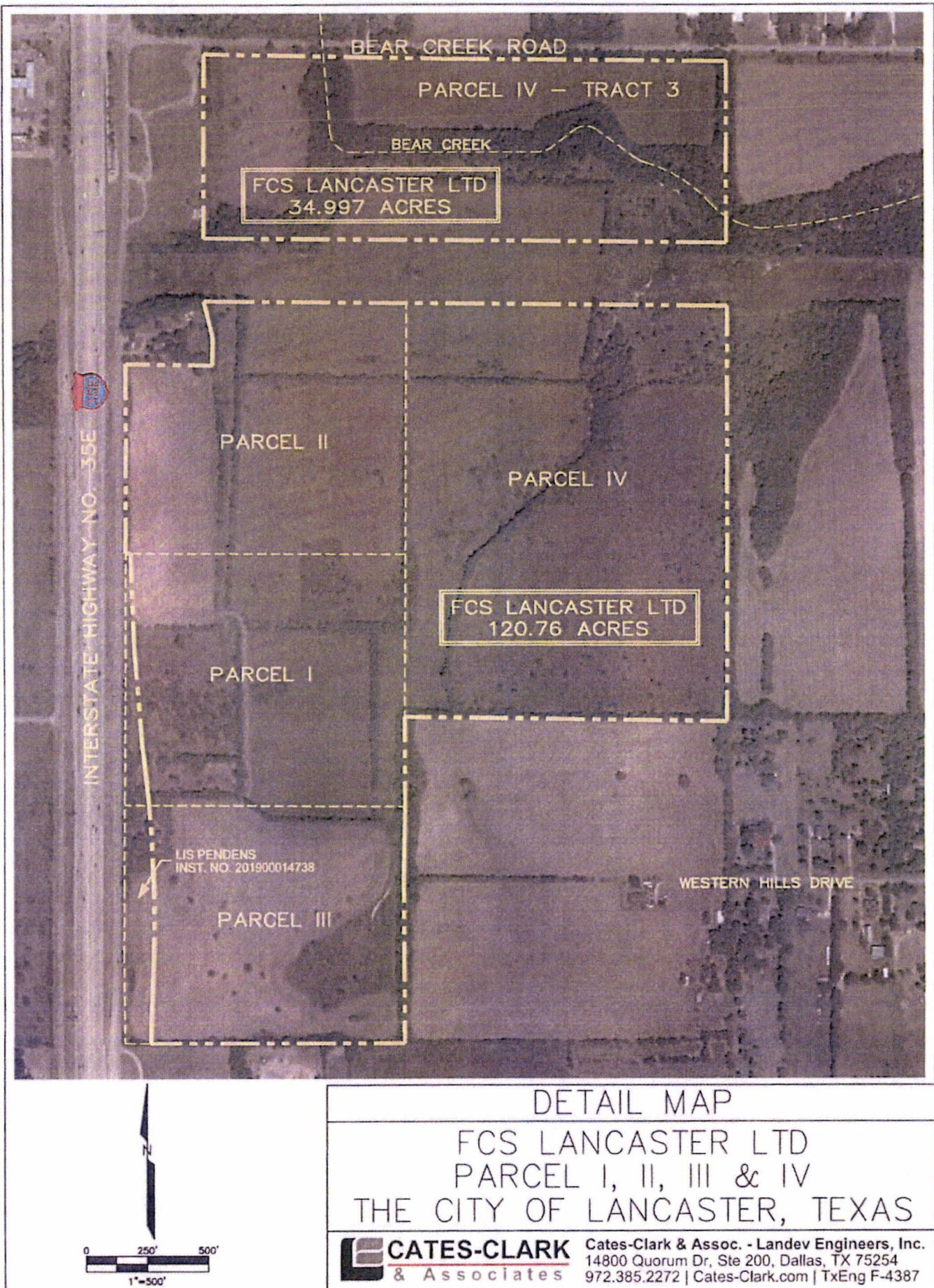
Check#: _____ Date Paid: _____ Received By: _____

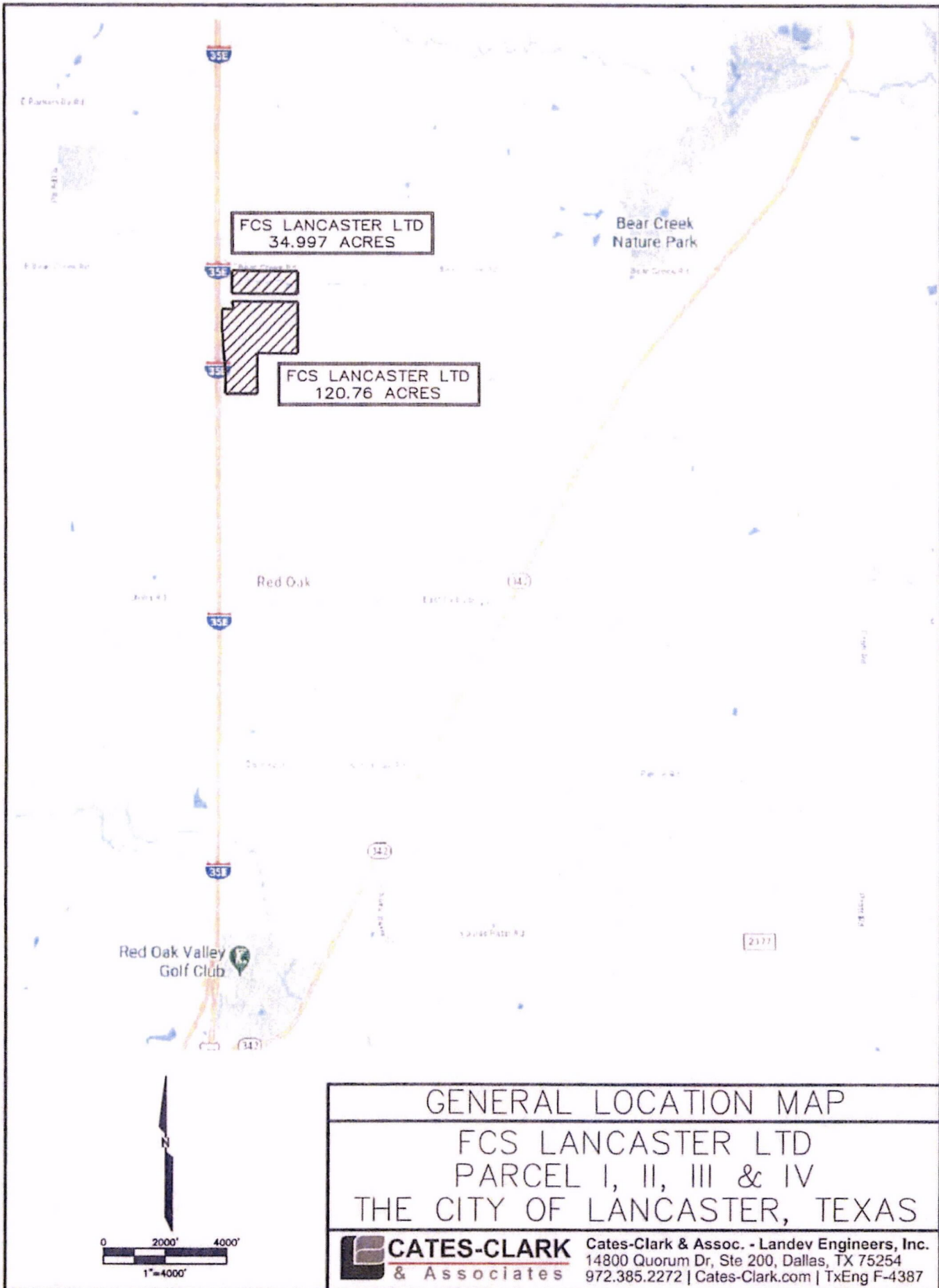
Map Sheet #: _____ Between Nodes: _____

LIST MISSING ATTACHMENTS:

_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____

COMMENTS: _____







Founded on **Quality**
Built on **Trust**

September 28, 2020

Via. Courier

Rockett Special Utility District
Water Department
126 Alton Adams Drive
Waxahachie, Texas 75165

Re: Statement of Current Needs
Bear Creek Industrial
FCS Lancaster
Landeve Project No 20-173 003 3



Dear Rockett:

FCS Lancaster is on the preliminary stages of development planning and is requesting a 12" water service line to the project site located on the Southeast quadrant of the Bear Creek Road and Interstate 35 intersection. The project site is approximately 120 acres and has an estimated demand of 111,200 GPD domestic demand and 240,000 GPD fire flow demand fully developed. The project is estimated to be completed in three phases starting with the first phase on July 2021 with each consecutive phase spaced 6 months each thereafter (Phase 2: Jan. 2022; Phase 3: July 2022) At this time we do not have an irrigation plan nor letter from the City regarding fire protection requirements, however, all buildings are assumed to be installed with automatic fire sprinklers at this time

Regards,

Landeve Engineers, Inc.
A Binkley & Barfield Company

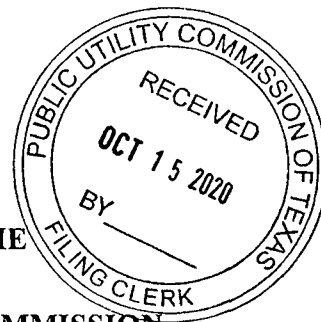
Austin McDaniel, E.I.T.
Project Engineer
amcdaniel@landevenueers.com

RKS TEXAS INVESTMENTS LP		 San Antonio, TX IBC Voice - (210) 518-2525 30-1328/1140		
				9/23/2020
PAY TO THE ORDER OF	Rockett Special Utility District			\$ **3,000.00
Three Thousand and 00/100*****				DOLLARS
Rockett Special Utility District 126 Alton Adams Drive Waxahachie, TX 75165				
MEMO	5570/1040-52 Applic fee for Non-Standard Water Util  AUTHORIZED SIGNATURE			

RKS TEXAS INVESTMENTS LP

Rockett Special Utility District	9/23/2020	
5500 · Office Related Expenses:5570 FI 5570/1040-52 Applic fee for Non-Standard Water Util		3,000.00

RKS TX Investments	5570/1040-52 Applic fee for Non-Standard Wate	3,000.00
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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

Exhibit A

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.

Exhibit A

FURTHER AFFIANT SAYETH NOT.

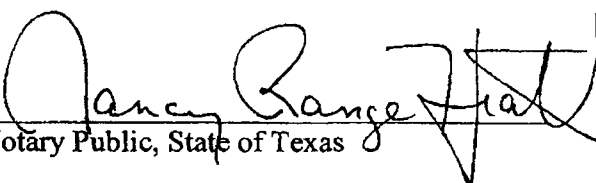
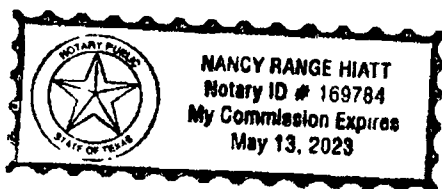
SIGNED this 12th day of October, 2020.
Richard King SheldonSWORN TO AND SUBSCRIBED BEFORE ME by Richard King Sheldon on October 12,
2020.
Notary Public, State of Texas

Exhibit B



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

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