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Item Number: 44

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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

REVISED PROPOSED ORDER & MEMORANDUM

MEETING DATE: JANUARY 29, 2021

DATE DELIVERED: JANUARY 26, 2021

AGENDA ITEM NO.: TBD

CAPTION: 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*

DESCRIPTION: Revised Proposed Order Memorandum

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Commissioner

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Commissioner

Thomas Gleeson
Executive Director




Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Hunter Burkhalter 
Chief Administrative Law Judge

RE: **Open Meeting of January 29, 2021**
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*

DATE: January 26, 2021

Enclosed is a copy of the Revised Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Friday, January 29, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas.

The Revised Proposed Order revises ordering paragraphs 4 and 5 and includes the map and certificate as attachments.

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DOCKET NO. 51044

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

REVISED PROPOSED ORDER

This Order addresses the petition of FCS Lancaster, Ltd. for streamlined expedited release of two tracts of land in Dallas County from the service area under water certificate of convenience and necessity (CCN) number 10099. Rockett Special Utility District is the holder of CCN number 10099. For the reasons stated in this Order, the Commission releases the tracts of land from Rockett's certificated service area. In addition, the Commission amends Rockett's CCN number 10099 to reflect the removal of the tracts of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Rockett, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. FCS Lancaster is a Texas limited partnership registered with the secretary of state under filing number 800590672.

CCN Holder

2. Rockett is a special utility district operating under chapter 65 of the Texas Water Code (TWC).
3. Rockett holds water CCN number 10099 that obligates it to provide retail water service in its certificated service area in Dallas County.

Petition

4. On July 13, 2020, the petitioner filed a petition for streamlined expedited release of two tracts of land from the CCN holder's service area under CCN number 10099.

5. The petition includes an affidavit, dated July 7, 2020, of Richard King Sheldon, manager of RKS Lancaster GP, LLC, general partner to the petitioner; a limited warranty deed with vendor's lien dated December 29, 2005, which includes metes and bounds descriptions of the tracts of land; a May 20, 2020, letter from the surveyor of the tracts; location maps for the tracts; a title insurance policy for the tracts; and a land title survey of the tracts.
6. On October 15, 2020, the petitioner filed a supplemental response to a motion to dismiss filed by the CCN holder.
7. The supplemental response includes an affidavit, dated October 12, 2020, of Mr. Sheldon; and an October 12, 2020, letter from the CCN holder's engineer to the CCN holder's general manager.
8. On November 12, 2020, the petitioner filed supplemental mapping information, including mapping data in a digital format, and a land title survey of the tracts.
9. In Order No. 6 filed on November 19, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

10. The petitioner sent a copy of the petition by certified mail to the CCN holder on July 10, 2020.
11. In Order No. 6 filed on November 19, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

12. In Order No. 2 filed on August 3, 2020, the ALJ granted the CCN holder's motion to intervene.
13. On August 21, 2020, the CCN holder filed a response to the petition.
14. The response includes an affidavit, dated August 21, 2020, of Kay Phillips, the CCN holder's general manager; email correspondence between Ms. Phillips and the CCN holder's legal counsel; a conditional commitment for guarantee document, dated July 25, 2019, between the CCN holder and the United States Department of Agriculture; an affidavit, dated August 21, 2020, of Benjamin Shanklin, consulting engineer for the CCN holder; and a map of the tracts of land.
15. On October 7, 2020, the CCN holder filed a supplemental motion to dismiss.

16. The supplemental motion to dismiss includes an application for non-standard water utility service, dated September 28, 2020, submitted on the petitioner's behalf to the CCN holder, including a copy of a \$3,000 check payable to the CCN holder for the application fee.
17. On October 22, 2020, the CCN holder filed a reply to the petitioner's response to the motion to dismiss.
18. The reply includes email correspondence of various dates between representatives of the CCN holder and the petitioner concerning the application for non-standard water utility service; and a letter, dated October 12, 2020, from Mr. Shanklin to the CCN holder.

The Motion to Abate and the Motions to Dismiss

19. On August 13, 2020, Commission Staff moved to have this proceeding abated, pending the outcome of certain federal litigation concerning the CCN holder and issues raised under 7 U.S.C. § 1926(b).
20. The petitioner opposed abatement.
21. On August 21, 2020, the CCN holder filed its first motion to dismiss, arguing that the petition should be dismissed because the CCN holder is indebted on a loan guaranteed by the federal government and has provided or made service available to the tracts of land, thereby entitling CCN holder to the protections provided under 7 U.S.C. § 1926(b).
22. On September 11, 2020, the CCN holder filed its second motion to dismiss, contending that the petition must be dismissed because the tracts of land receive water service.
23. On October 7, 2020, the CCN holder filed its third motion to dismiss, contending that, during the pendency of this case, the petitioner has requested water service from the CCN holder, thereby rendering the petition moot and appropriate for dismissal under 16 Texas Administrative Code (TAC) § 22.181(d)(2).
24. In Order No. 5 filed on November 5, 2020, the ALJ denied the motion to abate and the second and third motions to dismiss.
25. In Order No. 7 filed on December 30, 2020, the ALJ denied the first motion to dismiss.

The Tracts of Land

26. The tracts of land for which the petitioner seeks expedited release are approximately 35 acres and approximately 121 acres, and are in Dallas County.

27. The two tracts are near to one another, but not contiguous.
28. The 35-acre tract lies to the north of the 121-acre tract.
29. The petitioner's tracts of land are located within the CCN holder's certificated service area.

Ownership of the Tracts of Land

30. The petitioner acquired the tracts of land by a limited warranty deed with vendor's lien, dated December 29, 2005.

Qualifying County

31. Dallas County has a population greater than one million people.

Water Service

The 35-acre tract

32. The tract of land is not receiving actual water service from the CCN holder.
33. A 1 1/2-inch water line and a 2-inch water line owned by the CCN holder run parallel to, but outside of, the northern boundary of the tract.
34. The CCN holder has not committed or dedicated any facilities or lines to the tract of land.
35. The CCN holder has no facilities or lines that provide water service to the tract of land.
36. The CCN holder has not performed any acts for or supplied anything to the tract of land.

The 121-acre tract

37. The tract of land is not receiving actual water service from the CCN holder.
38. A 2-inch water line owned by the CCN holder terminates at a point a considerable distance to the southeast of the tract.
39. A 6-inch water line and several 1 1/2-inch water lines owned by the CCN holder run a considerable distance to the south of the tract.
40. The CCN holder has proposed to build an 8-inch water line and a 12-inch water line south of the tract.

41. On or about September 29, 2020, the petitioner submitted to the CCN holder an application for non-standard water utility service, to explore the feasibility of the CCN holder providing water service to the tract. The petitioner also paid to the CCN holder a \$3,000 fee for processing the application.
42. When it applied for non-standard water utility service, the petitioner used the CCN holder's application form, which states that the application does not obligate the CCN holder to provide service "until the application has been evaluated and a final Non-Standard Contract has been executed by all necessary parties."
43. A final Non-Standard Contract has not been executed by all necessary parties in relation to the petitioner's application.
44. The CCN holder has not completed its analysis of whether it can provide the non-standard water service requested by the petitioner.
45. The CCN holder has not committed or dedicated any facilities or lines to the tract of land.
46. The CCN holder has no facilities or lines that provide water service to the tract of land.

The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

47. On December 31, 2020, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified the tracts of land in relationship to the CCN holder's service area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over the petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 TAC § 24.245(h)(3)(F).

3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 and 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. Dallas County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
8. The petitioner owns the tracts of land, each of which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
9. The tracts are not receiving water service under the standards of TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The petitioner is entitled under TWC § 13.2541(b) to the release of its tracts of land from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to the petitioner's tracts of land.
12. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under TWC § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in

the real property records of Dallas County no later than the 31st day after the date the CCN holder receives this Order.

15. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tracts of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tracts of land identified in the petition from the CCN holder's service area under CCN number 10099.
2. The Commission does not decerticate any of the CCN holder's equipment or facilities that may lay on or under the petitioner's tracts of land.
3. The Commission amends CCN number 10099 in accordance with this Order.
4. The Commission approves the attached map.
5. The Commission approves the attached certificate.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 6. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order

Signed at Austin, Texas the _____ day of January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

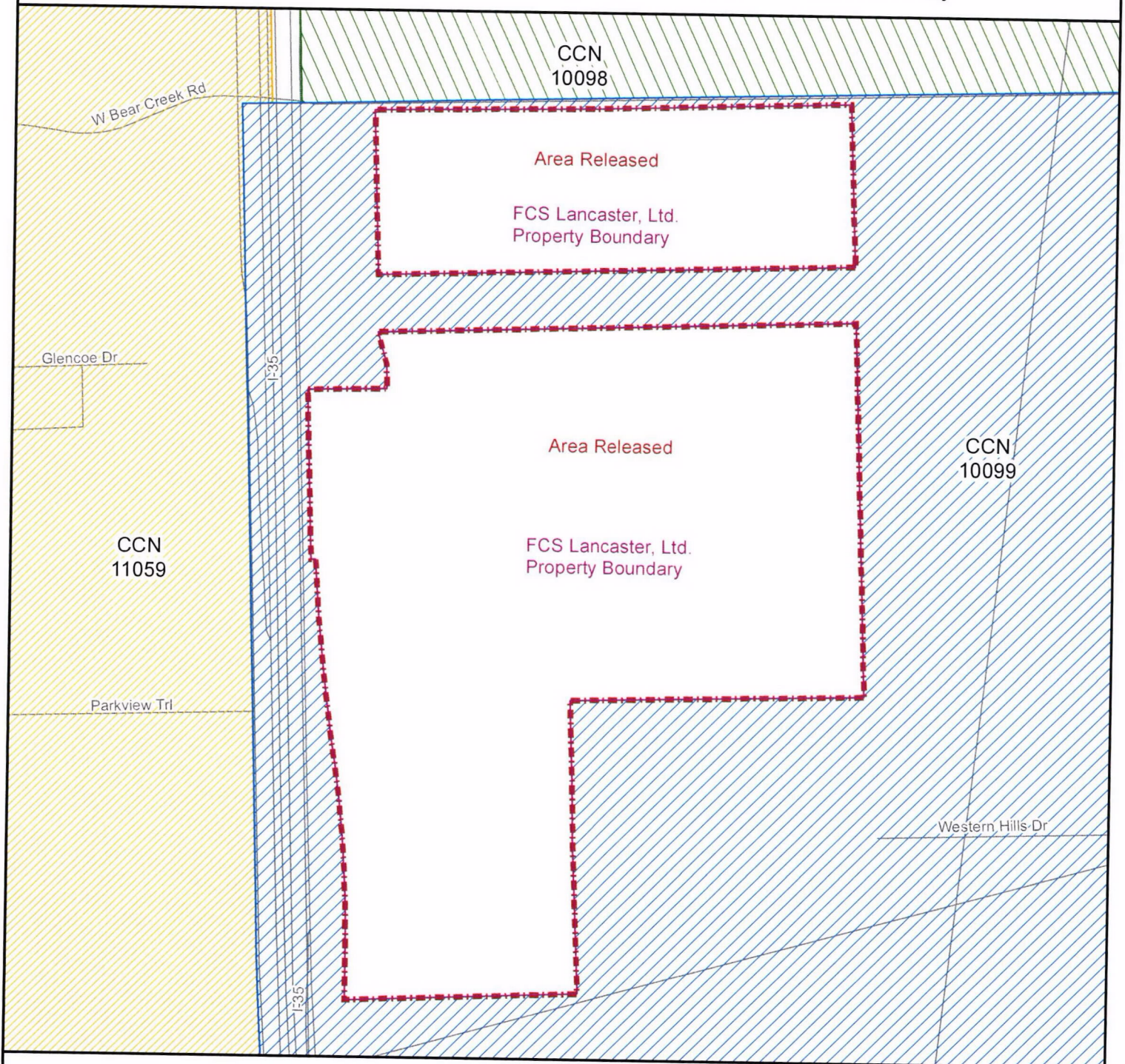
ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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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



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

Water CCN

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

-  Property Boundary
-  Area Released

0 300 600
Feet



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



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 January 2021.