



Control Number: 51044



Item Number: 51

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## DOCKET NO. 51044

PETITION OF FCS LANCASTER,  
LTD. TO AMEND ROCKETT  
SPECIAL UTILITY DISTRICT'S  
WATER 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**  
**MOTION FOR REHEARING**

Rockett Special Utility District ("Rockett") files this Motion for Rehearing pursuant to PUC Rule 22.264 and Texas Government Code Chapter 2001 requesting that the Public Utility Commission of Texas (the "Commission") reconsider its Order granting FCS Lancaster Ltd.'s ("FCS" or "Petitioner") Petition to Amend Rockett's Certificate of Convenience and Necessity ("CNN") No. 10099 by expedited release and deny the Petition. In support thereof, Rockett would respectfully show as follows:

**I. INTRODUCTION**

On January 29, 2021, the Commissioners issued an Order in the above-referenced docket granting the Petition (the "Order"), which amended Rockett's water CNN No. 10099 to remove a 35-acre tract of land and a 121-acre tract of land (the "Property"). This Motion for Rehearing is timely filed pursuant to PUC Rule 22.264 and Texas Government Code § 2001.146.

Rockett is a political subdivision of the State of Texas with an elected board of directors. Rockett respectfully requests the Commission reconsider the Order and deny FCS's Petition. Specifically, Rockett requests the Commission reconsider the Findings of Fact Conclusions of Law set forth below in its Arguments and Authorities. Alternatively, Rockett requests that the Commission abate the proceeding until after Rockett's federal water rights have been fully adjudicated by the federal court system.<sup>1</sup>

The property identified in FCS's Petition (the "Property") is receiving water service from Rockett under applicable law and the Order should be reconsidered and FCS's Petition denied. Rockett's evidence demonstrates that it has water facilities and has the capacity to provide

<sup>1</sup> Rockett currently has two federal lawsuits seeking to adjudicate Rockett's federal rights. A third case, dismissed by the U.S. District Court for the Western District of Texas, is currently pending before the U.S. Fifth Circuit Court of Appeals. FCS is a named party in the federal lawsuit in the Western District of Texas.

service to the Property meeting the requirements for showing that the Property is receiving water service. The former version of Texas Water Code § 13.2541 placed the burden on FCS to prove that it was not receiving water “service.” The Water Code defines service broadly as including “*any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties [under Chapter 13] as well as the interchange of facilities between two or more retail public utilities.*” Tex. Water Code § 13.002(21) (emphasis added). FCS did not meet its burden. The undisputed evidence demonstrated that Rockett has committed or dedicated facilities or lines for providing service to the area that FCS seeks to decertify.

Rockett specifically requests the Commission reconsider Findings of Fact Nos. 21, 34, 35, 36, 42, 43, 44, and 46; Conclusions of Law Nos. 3, 4, 9, 10, and 13; and Ordering Paragraphs Nos. 1 and 3.

## **II. EVIDENCE**

In support of this Motion for Rehearing and for the convenience of the Commission, Rockett attaches copies of the following documents which were made part of the record:

| <b><u>Attachment No.</u></b> | <b><u>Document</u></b>  |
|------------------------------|---|
| 1.                           | The Affidavit of Kay Phillips, executed August 21, 2020, which was attached as Exhibit A to Rockett’s Response filed August 21, 2020.   |
| 2.                           | A map identifying the property and location of Rockett’s existing waterlines and facilities, and plans for future waterlines and current construction and improvements of waterlines and facilities, which was attached as Exhibits D-E to Rockett’s Response filed August 21, 2020.  |
| 3.                           | The Affidavit of Kay Phillips executed January 28, 2021, which was attached as Attachment 1 to Rockett’s Response filed January 28, 2021, and an updated map identifying the specific distances of the end of the nearest 2-inch and 6-inch waterlines in proximity to the Property, supported and proved up by the Affidavit of Rockett’s consulting engineer Benjamin S. Shanklin, P.E., which was attached as Attachment |

A to Rockett's Supplemental Response filed January 29, 2021.

### **III. FACTUAL HISTORY**

On July 13, 2020, FCS filed an original Petition for expedited release to amend Rockett's water CNN No. 10099 to remove two tracts of land, one that is 35 acres and another that is 121 acres. Then, on July 24, 2020, Rockett filed a Motion to Intervene.

On August 21, 2020, Rockett filed its Response and Objection to the Petition for Expedited Release and attached the supporting Affidavit of Rockett's General Manager Kay Phillips. As stated by Ms. Phillips, Rockett has *existing waterlines* and facilities adjacent to and near the Property and Rockett has new 8" and 12" waterlines at and along the proposed Loop 9 construction. Ms. Phillips also explained in her affidavit that water is transmitted from Water Plant No. 4 through "various Rockett waterlines to provide or make water service available to the Property" and that Rockett has "existing 1 1/2" and 2" waterlines north of the Property along Bear Creek Road."

### **IV. ARGUMENT AND AUTHORITY**

#### **A. The Property Cannot be Released Because the Property Does Not Qualify for Expedited Release**

Rockett proved that the Property cannot be released from Rockett's territory, and Rockett's Certificate of Convenience and Necessity (CCN) No. 10099 cannot be amended, under Texas Water Code (TWC) § 13.2541 because the Property is receiving water "service" as defined by state law. The Order states incorrect facts and conclusions of law regarding Rockett's "service" to the Property. The Order disregards that Rockett's facilities and waterlines are serving the Property and are committed or dedicated to providing water service. The Order also disregards evidence provided by Rockett that it is performing acts to supply water to the Property.

#### **B. The Commission Failed to Consider New Evidence Before Issuing its Revised Order**

One day before the Commission was set to rule on its proposed order, the administrative law judge issued a revised proposed order. The revised proposed order indicated the distance from Rockett's existing waterlines to the Property as addressed in Findings of Fact #38 and #39, but the proposed order failed to identify how the Commissioner calculated the alleged distances. After the revised proposed order was issued on January 28, 2021, Rockett submitted a Response to Commissioner Memorandum for Correction to Findings of Fact 38 and 39 (Response),

including the supporting affidavit of Rockett's General Manager Kay Phillips and indicating the location of its 2-inch waterline is approximately 600 feet from the southeast corner of the Property and the 6-inch waterline is approximately 280 feet from the southwest corner of the Property. On January 29, 2021, Rockett filed its Supplemental Response, which included the supporting affidavit of Rockett's consulting engineer of record Benjamin S. Shanklin, P.E., and a map reflecting the more accurate location as described in the Response. The Commission failed to consider these distances and refused to include the correct distances in its revised order. As such, Findings of Fact #38 and #39 are incorrect and should be rewritten to accurately reflect the distances between the Property and the two waterlines.

### **C. Objections and Corrections to Findings of Fact**

The Order incorrectly states that Rockett, as the CCN holder of the tract of land in which FCS Lancaster, Ltd. (Petitioner) is seeking to decertify in this proceeding (the Property), has not committed or dedicated any facilities or lines, does not have any facilities or lines, and has not performed any acts for or supplied anything to the tract of land. In response, Rockett provided facts and details in this proceeding that Rockett is providing water service (as defined by state law) to the Property. The Order ignores or misconstrues the evidence.

The Commission's findings of fact and conclusions of law violate Texas Government Code Section 2001.174(2), which states that a court:

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;
- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Tex. Gov't Code. Section 2001.174(a)(A)-(F). The Commission's findings of fact and conclusions of law violate each category in sections (A) through (F) as described in more detail below.

**1. Rockett Argued for Dismissal Under State Law**

In Rockett's first motion to dismiss, Rockett argued that the Petition should be dismissed on the basis that the Property is receiving water "service" per 16 Texas Administrative Code (TAC) §§24.245(h) and 24.3(33) and Texas Water Code (TWC) §§ 13.002 and 13.2541. The Order fails to acknowledge that Rockett's bases for dismissal are supported by these state statutes.

Supporting its Motion to Dismiss, Rockett attached an affidavit of its General Manager Kay Phillips, who attested to Rockett's existing waterlines and facilities, current construction plans, installation and improvements of future waterlines, and the locations of waterlines and facilities that Rockett committed to providing service to the Property.<sup>2</sup> Further, Rockett included a supporting affidavit of its consulting engineer of record, Benjamin S. Shanklin, P.E., who attested to the location of Rockett's existing waterlines and facilities and plans for future waterlines and facilities. Fact #21 in the Order incorrectly stated that Rockett's Motion to Dismiss was only based on federal laws and protections, but Rockett provided evidence to show it was also "providing service" under state laws, which was one of the bases for Rockett's Motion seeking dismissal of FCS's petition.

**2. Rockett Committed and/or Dedicated Facilities or Lines to the Property and Performed Acts for Providing Water Service to the Property**

The Order incorrectly states that Rockett "has not committed or dedicated any facilities or lines to the [Property] for water service." As stated previously in this motion and shown by evidence in this proceeding, Findings of Fact #34 and #45 are not true. Rockett has committed facilities and lines to serve the Property.

The Commission must determine whether the Property is *currently* receiving water "service"<sup>3</sup> including any lines and facilities committed to provide such "service." "Service" is defined broadly as:

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<sup>2</sup> Rockett Special Utility District's Response to the Petition and Motion to Dismiss at 10-11, Exhibit A (Aug. 21, 2020).

<sup>3</sup> Tex. Water Code § 13.254(a-5), *amended by* Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4, eff. Sept. 1, 2019.

*[A]ny act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under [Chapter 13 of the Water Code] to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.*

Tex. Water Code § 13.002(21) (emphasis added). Findings of Fact #34 and #45 in the Order as written should be removed, as they falsely suggest that a CCN holder must be able to provide the exact water quantity requested in the amount of time demanded by Petitioner contemporaneously with the demand. Rockett has met its burden under § 13.002(21). These details are important. If facts #34 and #45 in the Order are left as written, they are contrary to the undisputed fact that Rockett is providing water “service” to the Property, including the existing waterlines and facilities that are committed and used to provide “service” to the Property plus the future waterlines and facilities under construction that will continue Rockett’s commitment to provide water service to the Property.

The Order also states that Rockett “has not performed any acts for or supplied anything to the tract of land.” This is wrong. Both Rockett’s consulting engineer of record and its general manager attested that the existing waterlines and facilities are committed and used to provide “service” to the Property. After commencing this proceeding, Petitioner requested non-standard water service from Rockett by submitting an application and paying the processing fee. The application fee covers the cost for a hydraulic evaluation conducted by Rockett’s consulting engineer to analyze Petitioner’s requested quantities for *estimated* future water usage. Rockett’s engineer conducted the hydraulic analysis but the analysis was incomplete because Petitioner did not provide the required documentation for its estimated future needs. Rockett’s engineer issued a letter on October 12, 2020 requesting that Petitioner submit the additional required information, but Petitioner never responded.

Rockett performed numerous acts to provide water “service” to the Property, including but not limited to processing the non-standard service request of FCS for actual water service to the Property submitted during the pendency of this proceeding, as provided below, and as such Findings of Facts #36 and #46 in the Order must be corrected. Correcting these Findings of Fact is imperative to the analysis that Rockett was indeed providing water service to the Property.

### **3. The Order Misstates the Requirements for Rockett's Service Application**

Finding of Fact #42 only quotes part of Rockett's form Application for Non-Standard Water Utility Service but does not identify the unique requirements for this type of application. The purpose of Rockett's application for non-standard service is for applicants to supply the necessary and required information and supporting documentation with their application so that Rockett can analyze the requested water usage. This allows Rockett to confirm whether its existing waterlines and facilities can immediately supply the requested and projected amount of water that the development will use once it is completed. The application itself does not obligate Rockett to provide the *exact* amount of water requested by the applicant *immediately*, especially when the applicant fails to provide the required water usage information, accurate plans of waterlines and other facilities to be located on the Property, and calculations. Rockett needs the required application information and verifiable data to have its consulting engineer perform a hydraulic analysis.

Finding of Fact #42 must be revised to note that Petitioner submitted a non-standard service application, which requires submission of certain information and data before Rockett can process the application.

### **4. FCS Failed to Provide Rockett with Necessary and Required Information**

Petitioner failed to provide all required documents and information listed in the non-standard service application and as stated in the October 12, 2020 letter from Rockett's consulting engineer. Finding of Facts #43 and #44 in the Order state that Rockett did not complete its analysis of Petitioner's water service request, but the Order fails to mention that Petitioner has not and will not provide the required information Rockett needs to complete its hydraulic analysis. The Order should not reference Rockett's failure to process FCS's water service request without a clear recitation to the fact that FCS failed to (and refuses to) provide Rockett with the information that the application itself requires. Rockett cannot perform a hydraulic analysis without knowing the verified estimated future water usage from Petitioner. Petitioner's failure to provide this information also limits Rockett's ability to determine if it needs improvements or construction for the requested service or whether the Property can easily be served with existing infrastructure.

Findings of Facts #43 and #44 in the Order must be corrected, as it is imperative along with other findings to conclude that Rockett met its obligations for providing water "service" as



explained further herein. Fact #43 should be rewritten to reflect that Rockett and FCS cannot enter into a non-standard service contract for an undetermined amount of requested water service, as various terms in the contract depend on the results from a completed hydraulic analysis. Fact #44 should be revised to accurately reflect that Rockett did not complete the hydraulic analysis because Petitioner has not provided the required and necessary information to verify the request.

#### **D. Objections and Corrections to Conclusions of Law**

The following conclusions of law are incorrect and should be changed as follows:

- **Conclusions of Law Nos. 3 and 4.** These Conclusions of Law are incorrect. While Tex. Water Code § 13.2541 and 16 TAC § 24.245(*l*) do not explicitly provide for a contested case hearing, Rockett is still entitled to a contested case hearing under Texas law. There is nothing in those provisions that purports it is not a contested case, or that Rockett is not entitled to same. Furthermore, the Texas Administrative Procedures Act applies, and it includes a right to a contested case hearing. Tex. Water Code § 13.003 (“Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter.”); Tex. Gov’t Code § 2001.003(1) (defining contested cases as any “proceeding . . . in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing”). When the Legislature intended that disputes under Chapter 13 *not* be contested, they opt out explicitly. *See, e.g.*, Tex. Water Code § 13.188(b). Similarly, when the Legislature wanted to opt out of the APA, it does so explicitly, not implicitly. *See* current version of Tex. Water Code § 13.254(a-4).
- **Conclusion of Law No. 9.** The tract of land is receiving water service as a matter of state law. This Conclusion of Law is not supported by substantial or any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.
- **Conclusion of Law No. 10.** Petitioner is not entitled to decertify Rockett’s CCN. This Conclusion of Law is not supported by substantial or

any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.

- **Conclusion of Law No. 13.** The Commission processed the petition in violation of state and federal law, both of which the Commission is bound to follow. This Conclusion of Law is not supported by substantial or any evidence, and is belied as a matter of law by the undisputed evidence in this proceeding.

The bases for Rockett’s corrections to the above-listed conclusions of law are explained in more detail below.

The Order incorrectly states that the “[Property] is not receiving water service under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l),<sup>4</sup> as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).”<sup>5</sup> The facts in this proceeding show the Property is receiving water service under these statutes and as interpreted by the court in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*

#### 1. The Property Is Receiving Water “Service” Under TWC and TAC

16 TAC § 24.245(h) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsection “(B) the tract of land is not receiving **service** of the type that the current CCN holder is authorized to provide under the applicable CCN . . . . (emphasis added).” 16 TAC § 24.3(33) and TWC § 13.002(21) define “**service**” as follows:

**Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties** under TWC Chapter 13 to its patrons, employees, other retail public utilities and the public, as well as the interchange of facilities between two or more retail public utilities (emphasis added).

Further, the *Crystal Clear* court stated that “a tract of land would not necessarily be ‘receiving’ water service simply because the retail public utility has performed an act . . . , **unless** the act was performed **in furtherance** of providing water to the tract seeking decertification.”<sup>6</sup>

<sup>4</sup> Now 16 Tex. Admin. Code § 24.245(h), adopted to be effective July 2, 2020, 45 TexReg 4321.

<sup>5</sup> Order at 7, ¶ 9 (Jan. 29, 2021).

<sup>6</sup> *Crystal Clear Water Supply Corp.*, 449 S.W.3d at 140.

Not only has Rockett provided water service to the Property, Rockett has also performed actions in furtherance of providing water service to the Property by planning and approving the installation, expenditure, and construction of new waterlines throughout the Property to serve the future development on the Property and surrounding tracts. By these actions (and Petitioner's refusal to provide adequate engineering support for anticipated future consumption), the Commission cannot conclude that Rockett has not performed any acts, furnished or supplied anything (water) to the Property, or committed or used any of its facilities and waterlines to provide "service" (including actual water service) to the Property, in furtherance of its duties as a retail water utility.

## **2. Actual Present Delivery of Water to The Tract Is Not Required**

In *Crystal Clear*, the court found that "in [the Commission and petitioner's] view, a tract of land is not receiving water service 'if the landowner is not receiving actual water on the property.' We find *nothing* in the text of the statute, *however, that compels this interpretation*."<sup>7</sup>

The court also stated that "it is important to consider whether the facilities and lines are 'committed' to the tract seeking expedited release or 'used' to provide water to that tract."<sup>8</sup> In Rockett's Response to the Petition and Motion to Dismiss, filed prior to Petitioner submitting its non-standard service application, Rockett's consulting engineer attested that the specific waterlines and facilities that will be used to provide actual water service to the Property.

Further, unlike the facts in *Crystal Clear* where the Commission reasonably declined to attribute any evidentiary weight to a deficient exhibit not supported or proved up by an affidavit or bearing the stamp of a licensed engineer,<sup>9</sup> Rockett has provided a depiction of the location of the waterlines and facilities, as prepared by Rockett's consulting engineer of record and supported and proved up by the affidavit of Rockett's general manager.

Rockett diligently performed actions in furtherance of Rockett's duties and continues its commitment to provide actual water service to the Property. For example, Rockett processed Petitioner's incomplete non-standard service application and subsequent hydraulic analysis as much as possible with the information provided by Petitioner. Rockett will provide the complete hydraulic analysis and the non-standard service contract after Petitioner submits the required

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<sup>7</sup> *Id.* at 140 (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 141.

information and supporting documents. The Commission cannot determine that Rockett has not performed acts or no longer commits to providing actual water service to the Property.

**3. Under *Crystal Clear*, Rockett Is Not Required To Have The Water Supply To Serve Petitioner’s Requested Water Amount Within The Time Period Demanded By Petitioner**

The Order misleads in its statement that Rockett informed Petitioner that it does not have sufficient water supply and any existing waterlines that can provide service to the Property as requested by Petitioner.<sup>10</sup> This statement implies that there is a requirement authorizing expedited release if CCN holders are unable to immediately provide the exact water usage requested (predicted) by petitioners by the timeline requested, instead of the actual statutory language in 16 TAC § 24.245(l) and TWC § 13.254(a-5).

Neither *Crystal Clear* nor Texas law require that landowners are only “receiving service” if the utility has the capacity to immediately serve the water usage requested by Petitioner in the time period demanded by the Petitioner. Here, the Petitioner requested water service and did not provide verifiable engineering data or what amount would be designated for fire protection or fire flow, or other documentation required by Rockett for its engineer to provide a complete analysis. Petitioner cannot use unsupported future speculative volumes of water demand, to contend that water service is not being provided. If that were so, any landowner could immediately cause any applicable tract to decertify merely by making an unreasonable and excessive demand for water. Petitioner had the burden to show it was not receiving water and failed to meet that burden.

Rockett informed the Commission of the federal issues (in accord with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964)). Rockett is not asking the Commission to adjudicate any federal issues, or federal law concerning “service.” Rockett has already demonstrated by evidence filed in the record that the Property is receiving “service” consistent with the *Crystal Clear* case.

**V. CONCLUSION**

Rockett established that it is providing water service to the Property under Tex. Water Code §§ 13.002(21) and 13.2541(b) and 16 Tex. Admin. Code § 24.245(h), as interpreted by

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<sup>10</sup> Order at 6, Findings of Fact ¶ 45-46 (Jan. 29, 2021).

*Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*. Rockett provided substantial evidence that the Property is receiving water “service.” Rockett has committed or dedicated its facilities and lines to provide water service to the Property when Rockett provided such service and continues to do so. Rockett performed acts and supplied/dedicated substantial infrastructure in furtherance of providing water service to the Property.

WHEREFORE, Rockett respectfully requests that the Commission reconsider its January 29, 2021 Order, deny FCS’s Petition and amend its Order, or alternatively, set this matter for rehearing and abate the proceeding until Rockett’s federal protections are fully adjudicated by the federal court system.

Respectfully submitted,

**JAMES W. WILSON & ASSOCIATES, PLLC**

*/s/ Maria Huynh*

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**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 February 23, 2021, via e-mail in accordance with the Commission's Order.<sup>11</sup>

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

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*/s/ Maria Huynh*

\_\_\_\_\_  
Maria Huynh

<sup>11</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

## **ATTACHMENT 1**

**SUPPORTING AFFIDAVIT OF KAY PHILLIPS**

STATE OF TEXAS

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COUNTY OF ELLIS

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BEFORE ME, the undersigned authority, on said date personally appeared Kay Phillips, who being first duly sworn states as follows:

"1. My name is Kay Phillips. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. Since 2007, I have been the duly appointed general manager of Rockett Special Utility District ("Rockett") and I am custodian of the records of Rockett.

2. I have read Rockett's Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's CCN in Dallas County by Expedited Release in Docket No. 51044 and Motion to Dismiss (the "Response") and each and every factual statement contained therein is true and correct.

3. Rockett has an outstanding loan guaranteed by the United States Department of Agriculture (USDA) qualifying Rockett for 7 U.S.C. § 1926(b) protection. Exhibit B attached to the Response is a true and correct copy of a wire receipt reflecting funds received by Rockett on September 26, 2019, in the amount of \$1,640,765.23. The loan proceeds are part of a federal USDA guaranteed loan program.

4. Exhibit C attached to the Response is (i) a true and correct copy of the executed Conditional Commitment for Guarantee of the USDA dated July 25, 2019, reflecting CoBank, ACB as the Lender and Rockett Special Utility District as the Borrower; (ii) a true and correct copy of the Acceptance of Conditions executed by the authorized representatives of the Lender and Borrower; and (iii) a true and correct copy of the Request for Obligation of Funds Guaranteed Loans and Certification Approval executed by the authorized representative of the USDA dated August 7, 2019. Exhibit C at p. 2, item 36(2) states: "This Loan Guarantee is approved subject to the conditions on the Conditional Commitment."

5. Exhibit D attached to the Response is a true and correct copy of the supporting Affidavit of Benjamin S. Shanklin, P.E., the consulting engineer of record for Rockett Special Utility District.

6. Exhibit E attached to the Response is a depiction identifying the Property in the Petition, Rockett's existing waterlines and facilities adjacent to and near the Property, Rockett's Water Plant No. 4, the location of the proposed Loop 9 to be constructed by the Texas Department of Transportation, and the location of Rockett's new 8" and 12" waterlines at and along the proposed Loop 9 (indicated by blue and green lines, respectively, in Exhibit E).

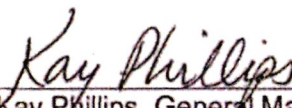


7. Rockett maintains and operates its facilities and waterlines, and Rockett has provided or made service available to the Property. Water is transmitted from Water Plant No. 4 through various Rockett waterlines to provide or make water service available to the Property. Rockett has existing 1½" and 2" waterlines north of the Property along Bear Creek Road and an existing 2" waterline near the southeast corner of the Property along Western Hills Road; also nearby are existing 2½", 4", and 6" waterlines east of the Property on Houston School Road, and existing 6" and 1½" waterlines south of the Property, in addition to various other existing waterlines indicated in Exhibit E.

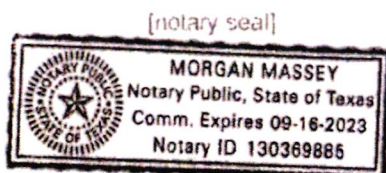
8. Rockett is currently making improvements to Water Plant No. 4 to be completed by November 2020. At and along the proposed Loop 9, Rockett's new 8" and 12" waterlines are projected to be installed and completed by Fall of 2021.

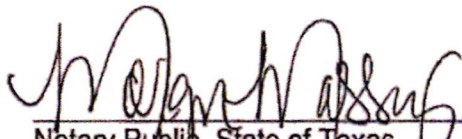
9. Rockett has performed many acts in furtherance of its duties as a retail public utility to the Property, including but not limited to the installation, construction, maintenance, operation, and/or improvements of all Rockett waterlines and facilities that serve its certificated area, and specifically 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 water infrastructure that transmit water service to the Property and surrounding areas from Water Plant No. 4. Rockett has committed or used, and continues to commit or use, its facilities and waterlines, including but not limited to the improvements of Water Plant No. 4 to be completed November 2020 and the new 8" and 12" waterlines south of the Property to be completed by Fall of 2021, in the performance of its duties as the retail public utility with the legal right to provide water service to the Property and by providing or making service available to the Property within a reasonable time.

10. The documents indicated in Exhibits B-C to the Response are records that were made at or near the time of each act, event or condition set forth. These records were kept in the course of a regularly conducted business activity of the District. It is the regular practice of the District to make and/or retain such records."

  
Kay Phillips, General Manager  
Rockett Special Utility District

21<sup>st</sup> SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the  
day of August, 2020, by Kay Phillips, General Manager of Rockett Special  
Utility District, a political subdivision of the State of Texas.



  
Notary Public, State of Texas

## **ATTACHMENT 2**

**SUPPORTING AFFIDAVIT OF BENJAMIN S. SHANKLIN**

STATE OF TEXAS

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COUNTY OF JOHNSON

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BEFORE ME, the undersigned authority, on said date personally appeared Benjamin S. Shanklin, who being first duly sworn states as follows:

1. My name is Benjamin S. Shanklin. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

2. I am a registered professional engineer in the State of Texas.

Since 1996, I have been the consulting engineer of record for Rockett Special Utility District ("Rockett"), and I am familiar with the water delivery system that is owned and operated by Rockett. I have been personally involved, along with my staff, in maintaining a computer model of the hydraulic capability of Rockett's water delivery system for many years.

3. I have read Rockett's Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's CCN in Dallas County by Expedited Release in Docket No. 51044 and Motion to Dismiss (the "Response") and each and every factual statement contained therein is true and correct.

I prepared Exhibit E attached to the Response, which is an accurate depiction identifying Rockett's existing waterlines and facilities adjacent to and near the Property, including Rockett's Water Plant No. 4, the location of the proposed Loop 9 to be constructed by the Texas Department of Transportation, and the location of Rockett's proposed (new) 8" and 12" waterlines (indicated by blue and green lines, respectively, in Exhibit E) at and along the proposed Loop 9.

4. Rockett is currently making improvements to its Water Plant No. 4, which is to be completed by approximately November 14, 2020. The improvements to Water Plant No. 4 will provide additional pumping capacity to approximately 3.5 million gallons per day in the service area of Plant No. 4 which includes the Property.

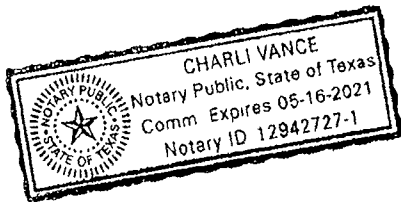
5. Rockett's new 8" and 12" waterlines along Loop 9 are projected to be installed and completed in the Fall of 2021. The 8" and 12" waterlines will serve as distribution mains to service existing and proposed customers in the area north and south of Loop 9 including the Property.

6. Rockett's new 8" waterline will be constructed to a point immediately south of the Property and can be extended north to also serve the Property.

7. In my professional opinion, Rockett has made water service available to the property that the Petitioner is seeking to decertify/release from Rockett's CCN (the "Property") or can do so within a reasonable period of time, from when a request for water service is made, using existing facilities which are nearby the Property."

Benjamin S. Shanklin  
Benjamin S. Shanklin

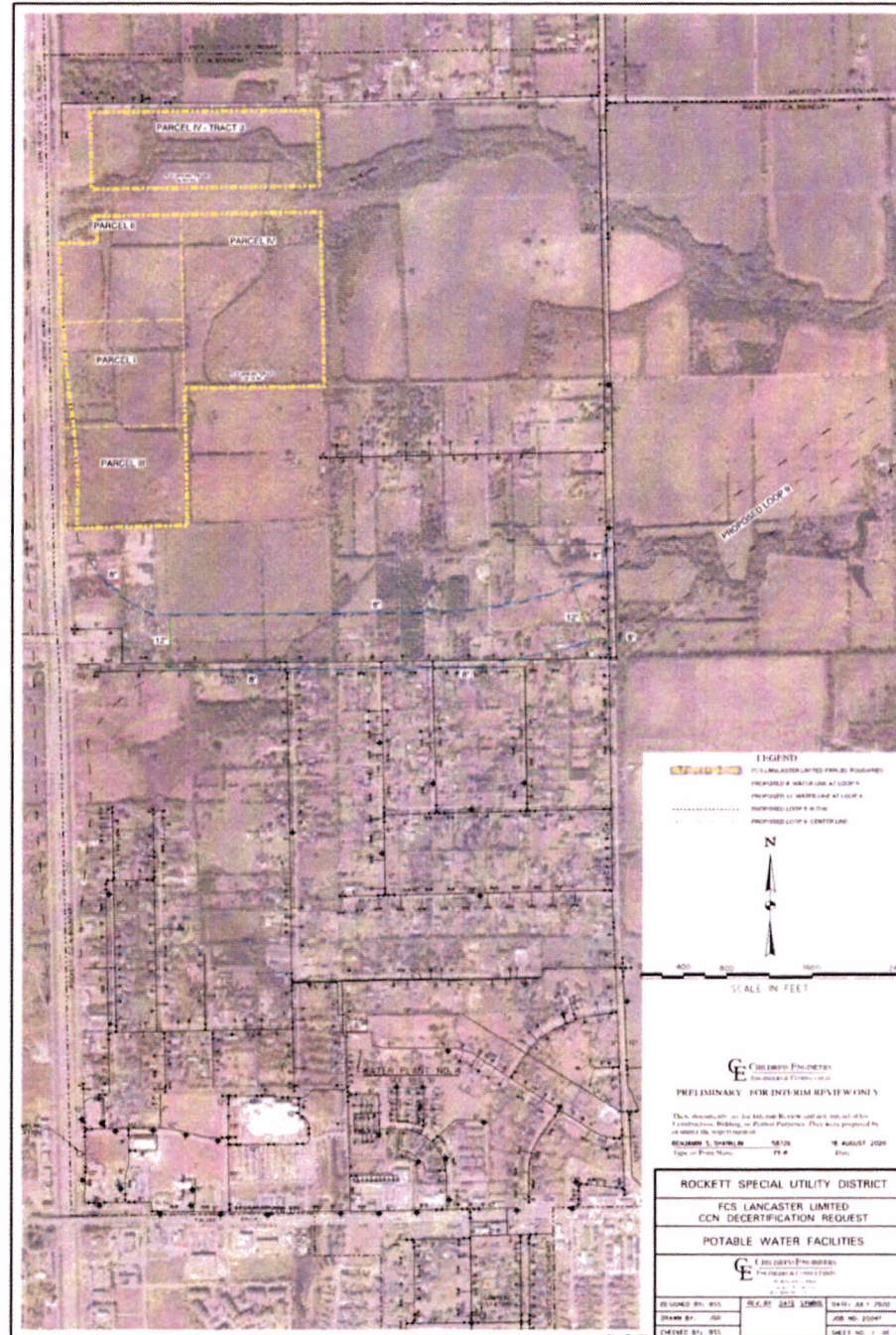
21st SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the \_\_\_\_\_ day of August, 2020, by Benjamin S. Shanklin.



Charli Vance  
Notary Public, State of Texas

## **EXHIBIT E**





## **ATTACHMENT 3**

**SUPPORTING AFFIDAVIT OF KAY PHILLIPS**

STATE OF TEXAS

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COUNTY OF ELLIS

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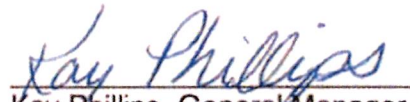
BEFORE ME, the undersigned authority, on said date personally appeared Kay Phillips, who being first duly sworn states as follows:

"1. My name is Kay Phillips. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. Since 2007, I have been the duly appointed general manager of Rockett Special Utility District ("Rockett") and I am custodian of the records of Rockett.

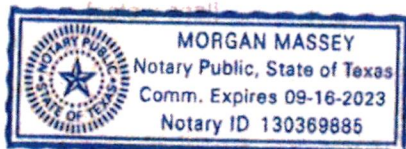
2. I have read the Commissioner Memorandum from Chairman DeAnn T. Walker dated and filed January 28, 2021 in PUC Docket No. 51044.

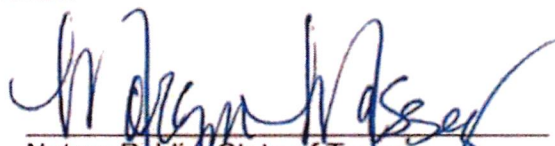
3. Regarding the proposed modification of Finding of fact 38, Rockett's 2-inch waterline is approximately 600 feet from the southeast corner of the Property, specifically the tract identified as "Parcel IV" in Rockett's Response to the Petition and Motion to Dismiss, Exhibit E, filed on August 21, 2020.

4. Regarding the proposed modification of Finding of fact 38, Rockett's 6-inch waterline is approximately 280 feet from the southwest corner of the Property, specifically the tract identified as "Parcel III" in Rockett's Response to the Petition and Motion to Dismiss, Exhibit E, filed on August 21, 2020."

  
\_\_\_\_\_  
Kay Phillips, General Manager  
Rockett Special Utility District

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 28<sup>th</sup> day of January, 2021, by Kay Phillips, General Manager of Rockett Special Utility District, a political subdivision of the State of Texas.



  
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Notary Public, State of Texas



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COUNTY OF JOHNSON

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BEFORE ME, the undersigned authority, on said date personally appeared Benjamin S. Shanklin, who being first duly sworn states as follows:

1. My name is Benjamin S. Shanklin. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

2. I am a registered professional engineer in the State of Texas.

Since 1996, I have been the consulting engineer of record for Rockett Special Utility District ("Rockett"), and I am familiar with the water delivery system that is owned and operated by Rockett. I have been personally involved, along with my staff, in maintaining a computer model of the hydraulic capability of Rockett's water delivery system for many years.

3. I prepared Exhibit E attached to Rockett's Response to the Petition of FCS Lancaster, Ltd. to amend Rockett's CCN in Dallas County by Expedited Release in Docket No. 51044 and Motion to Dismiss (the "Response") filed on August 21, 2020, depicting Rockett's various existing and proposed waterlines and facilities near the Property.

4. I have read the Commissioner Memorandum from Chairman DeAnn T. Walker dated and filed January 28, 2021 in PUC Docket No. 51044 (the "Memorandum"). I have also read Rockett's Response to the Memorandum including the affidavit of Kay Phillips, Rockett's General Manager, filed on January 28, 2021.

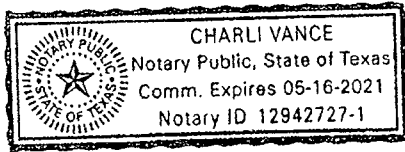
5. Shortly after the Memorandum was filed in the proceeding, I was requested to review the Memorandum and verify the distance of Rockett's 2-inch waterline and 6-inch waterline referred to therein.

6. After review of the Memorandum and discussions with Rockett's staff and General Manager Kay Phillips, I became aware that Rockett's 6-inch waterline ends approximately 280 feet from the southwest corner of the Property (tract identified as "Parcel III") along Interstate Highway 35E.

7. I prepared Attachment B to the Supplemental Response, which reflects the accurate location of Rockett's 6-inch waterline as verified by Rockett's staff and General Manager Kay Phillips and stated above."

Benjamin S. Shanklin  
Benjamin S. Shanklin

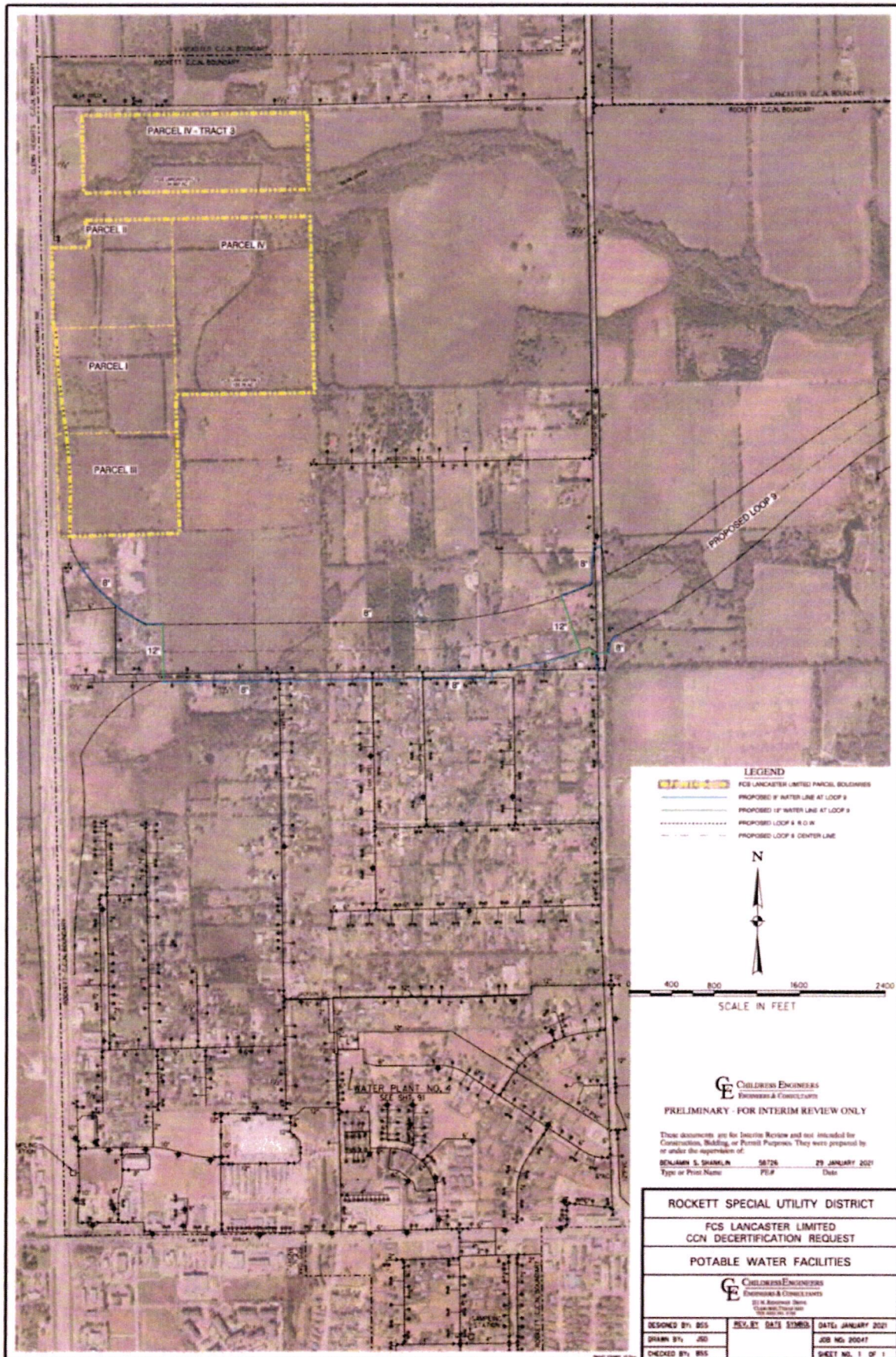
29th SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this  
day of January, 2021, by Benjamin S. Shanklin.



Charli Vance  
Notary Public, State of Texas

**ATTACHMENT B**





- LEGEND**
- FOR LANCASTER LIMITED PARCEL BOUNDARIES
  - PROPOSED 12" WATER LINE AT LOOP 9
  - PROPOSED 12" WATER LINE AT LOOP 9
  - PROPOSED LOOP 9 R.O.W.
  - PROPOSED LOOP 9 CENTER LINE



400 800 1600 2400  
SCALE IN FEET

**CHILDRENS ENGINEERS**  
ENGINEERS & CONSULTANTS  
PRELIMINARY - FOR INTERIM REVIEW ONLY  
These documents are for Interim Review and not intended for Construction, Bidding, or Permit Purposes. They were prepared by or under the supervision of:  
BENJAMIN S. SHANKLIN 58726 29 JANUARY 2021  
Type or Print Name PELP Date

|  |          |       |                  |
|--|----------|-------|------------------|
| ROCKETT SPECIAL UTILITY DISTRICT   |          |       |                  |
| FCS LANCASTER LIMITED<br>CCN DECERTIFICATION REQUEST   |          |       |                  |
| POTABLE WATER FACILITIES   |          |       |                  |
| <b>CHILDRENS ENGINEERS</b><br>ENGINEERS & CONSULTANTS<br>221 N. Broomfield Street<br>Lancaster, PA 17602<br>(717) 391-1100 |          |       |                  |
| DESIGNED BY: BGS   | REV. BY: | DATE: | SYMBOL:          |
| DRAWN BY: JSD  |          |       |                  |
| CHECKED BY: BWS  |          |       |                  |
| DATE: JANUARY 2021   |          |       | JOB NO: 20047    |
|  |          |       | SHEET NO. 1 OF 1 |