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DOCKET NO. 51545

PETITION OF COMPASS	§	PUBLIC UTILITY COMMISSION
DATACENTERS DFW III, LLC TO	§	
AMEND ROCKETT SPECIAL UTILITY	§	
DISTRICT'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
ELLIS COUNTY BY EXPEDITED	§	
RELEASE	§	

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 Chapter 2001 of the Texas Government Code, requesting that the Public Utility Commission of Texas (the "Commission") reconsider its Order granting the Petition to Amend Rockett's Certificate of Convenience and Necessity ("CNN") No. 10099 by expedited release filed by Compass Datacenters DFW III, LLC, a Delaware limited liability company ("Petitioner" or "Compass") and deny said petition. In support thereof, Rockett would respectfully show as follows:

I. INTRODUCTION

On November 20, 2020, Compass 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 (the "Petition"), where the properties subject to the Petition are Tract A being approximately 73 acres and Tract B being approximately 73 acres in Ellis County (collectively, the "Property").

On October 12, 2021, the Commission issued its Order releasing the Property from Rockett's service area under CCN No. 10099.¹ Thus, 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 the 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

¹ Order at 7, ¶ 1 (Oct. 12, 2021).

Commission abate the proceeding until after Rockett's federal water rights have been fully adjudicated by the federal court system.²

The Property is receiving water service from Rockett under applicable law, and the Order should be reconsidered and the Petition be denied. Rockett's evidence demonstrates that it has water facilities and provides 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 Petitioner 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). Petitioner 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 Compass seeks to decertify. Petitioner has the burden of proof, and has not overcome the evidence that Rockett's water lines, connect to Petitioner's internal waterlines as described and supported by affidavits referenced below. Petitioner cannot merely allege that water lines on the Property are not connected to Rockett's water lines serving the Property, but must *prove* the allegation with competent evidence.

Rockett specifically requests the Commission reconsider Findings of Fact Nos. 37, 38, 39, 40, 42, 44, 45, 46, 47, 48, and 49; 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:

<u>Attachment No.</u>	<u>Document</u>
1.	The Affidavit of Kay Phillips, executed December 29, 2020, which was attached as Exhibit A to Rockett's Response filed December 29, 2020 and June 24, 2021.

² Rockett currently has two federal lawsuits seeking to adjudicate Rockett's federal rights. Rockett reserves all federal to be resolved exclusively in a federal forum pursuant to *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 421 (1964).

2. A map identifying the Property and location of Rockett's existing waterlines and facilities, which was prepared by Rockett's consulting engineer of record and attached as Attachment E to Rockett's Response filed December 29, 2020.
3. The Phasing Exhibit to the Project, showing the location of Rockett's 8" domestic water meter and 12" waterline that connects to Petitioner's internal waterlines, which was attached as Exhibit B of Attachment G to Rockett's Response filed December 29, 2020.
4. The Affidavit of Robert Woodall June 23, 2021 which was attached as Attachment K to Rockett's Response filed June 24, 2021.

III. FACTUAL HISTORY

On November 20, 2020, Petitioner filed an original Petition for expedited release to amend Rockett's water CNN No. 10099 to remove two tracts of land, Tract A that is approximately 73 acres and Tract B that is approximately 73 acres. Then, on December 2, 2020, Rockett filed a Motion to Intervene.

On December 29, 2020, Rockett filed its Response to the Petition and Motion to Dismiss and attached the supporting Affidavit of Rockett's General Manager Kay Phillips. As stated by Ms. Phillips, the Preliminary Plat of the Property provided by Petitioner to Rockett reflects the location of ponds, buildings, internal 12" waterlines, 8" domestic water meter, 2" irrigation meter, and fire hydrant served by Rockett and its 12" waterline on the Property, and the phasing plan shows Phases 1-4 of Project Cardinal (the "Project").³ At the time the Petition was filed, Petitioner installed its 12" internal waterlines throughout Phase 2 and connected to Rockett's 12" waterline and 8" domestic water meter located on Phase 1 of Petitioner's property.⁴ Part of Phase 1 of the Project is located on Tract B of the Property, as reflected in the exhibit of the non-standard service

³ Rockett Special Utility District's Response to the Petition and Motion to Dismiss at 8-9, Attachment A ¶ 8 (Dec. 29, 2020).

⁴ *Id.* at 9.

contract between Rockett and Petitioner.⁵ The Affidavit of Ms. Phillips also provides that Petitioner granted an easement to Rockett for Rockett's 12" waterline and water service to Petitioner's tract of land, which includes the Property.⁶ Further, Rockett submitted billing statements for Petitioner's water usage through the 8" domestic water meter, 2" irrigation meter, and fire hydrant meter, which included actual water service to Phase 2 and other payments for water service.⁷ Ms. Phillips also provided that Rockett's staff was present when Automatic Fire Protection was inspected on the 12" fire lines located on the Property for Phase 2, where water to the 12" fire lines were furnished or supplied from Rockett's 12" waterline and 8" domestic water meter.⁸

On June 3, 2021, Order No. 6 was issued, finding the Petition to be deemed administratively complete.⁹ Further, Order No. 6 established a procedural schedule, requiring Rockett to provide a response to the now administratively complete Petition.¹⁰

On June 24, 2021, Rockett timely filed its response to the administratively complete Petition in accordance with Order No. 6. In addition to providing the same evidence with updated billing statement for Petitioner's water usage in its December 29, 2020 Response to the Petition and Motion to Dismiss, Rockett also provided the Affidavit of Robert Woodall, Rockett's Operations Manager.¹¹ Mr. Woodall states that Petitioner's temporary office building for construction of the Property has been relocated from Phase 1 of the Project to another phase of the Project, which is located *on* the Property.¹² More importantly, Petitioner was using water *from* Rockett for construction of at least one other phase (other than Phase 1) of the Project and such water usage was being billed through Rockett's fire hydrant meter.¹³

⁵ *Id.* at 9, Attachments E, G.

⁶ Rockett's Response to the Petition and Motion to Dismiss at 8-9, Attachment A ¶ 8.

⁷ *Id.* at 4, 8, Attachments A ¶ 9 and H.

⁸ *Id.* at Attachment A ¶ 12.

⁹ Order No. 6 at 1 (Jun. 3, 2021).

¹⁰ *Id.* at 2.

¹¹ Rockett Special Utility District's Response and Objection to the Administratively Complete Petition and Motion to Dismiss, Attachment K (Jun. 24, 2021).

¹² *Id.* at Attachment K ¶ 4.

¹³ *Id.* at 5, 12, Attachments H-3 and K ¶ 5-6.

On July 15, 2021, Petitioner filed its Reply to Rockett's Response and Objection to the Administratively Complete Petition and Motion to Dismiss and Commission Staff's Recommendation on Final Disposition, Petitioner claims Rockett provided no evidence that Compass was using water from Rockett for Phases 2-4 of the Project¹⁴ by ignoring that Petitioner was currently using water from Rockett for construction on other phases of the Project (located *on* the Property) and Rockett's evidence of billing statements from Rockett's fire hydrant meter paid by Petitioner, as provided in Rockett's June 24, 2021 Response and Mr. Woodall's affidavit.

IV. ARGUMENT AND AUTHORITY

A. The Commission Erred When It Failed To Deny The Petition per 16 TAC § 24.245(h)(7)

The Commission erred in granting the Amended Petition because it did so in violation of TWC § 13.2541(c), which provides, "The utility commission shall grant the petition not later than the 60th day after the date the landowner files the petition." Further, the Order is in clear violation of the Commission's substantive rules, which require the Commission to "issue a decision on a petition" for streamlined expedited release "no later than 60 calendar days after the presiding officer determines that the petition is administratively complete."¹⁵

Order No. 6 was issued on June 4, 2021 and found the Petition, as supplemented, to be administratively complete. Sixty (60) days after June 4, 2021 is August 3, 2021. The Order granting the Petition was issued on October 12, 2021, which is more than 60 days after the Petition was deemed administratively complete. This procedural error of granting the Petition is arbitrary and capricious, as it violates 16 TAC § 24.245(h)(7). To correct the error, the Commission must deny the Petition.

B. 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 unsupported by any evidence and erroneous conclusions

¹⁴ *Id.*

¹⁵ 16 TAC § 24.245(h)(7).

of law (premised on unsupported allegations) 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.

It is arbitrary and capricious for the Commission to release property from Rockett's service area and amend its CCN when Petitioner failed to set forth facts to establish that the Property is not receiving service. Here, Petitioner provided an affidavit that included no facts regarding water service, but merely unsupported claims. Further, the Order fails to explain why it determined that the Property is not receiving water service as interpreted by *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied), when Rockett provided evidence of billing statements, fire hydrant meter, waterlines, and facilities in which Petitioner uses water for construction on the Property.

Petitioner has not met its burden of proof for the Commission to grant the Petition.

C. Objections and Corrections to Findings of Fact

The Order incorrectly states that Rockett, as the CCN holder of the Property in which Petitioner is seeking to decertify in this proceeding, 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 admissible evidence in this proceeding proving that Rockett is providing water service (as defined by state law) to the Property. The Order disregards this 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.¹⁶

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. The Property Is Receiving Actual Water Service From Rockett

In Rockett's Response to the Petition and Motion to Dismiss filed on December 29, 2020 and its Response and Objection to the Administratively Complete Petition and Motion to Dismiss filed on June 24, 2021, among other filings, 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 both Motions to Dismiss, Rockett attached an affidavit of its General Manager Kay Phillips, who attested to Rockett's existing waterlines and facilities, and the locations of waterlines and facilities that Rockett committed to providing service to the Property.¹⁷ Rockett's staff was present when Automatic Fire Protection was inspected on the 12" fire lines located on the Property for Phase 2, where water to the 12" fire lines were furnished or supplied from Rockett's 12" waterline and 8" domestic water meter.¹⁸

Further, Rockett included a supporting affidavit of its Operations Manager, Robert Woodall, who attested that the temporary construction building previously located on Phase 1 of the Project has been relocated *on* the Property to another phase of the Project, and Petitioner was using water from Rockett through Rockett's fire hydrant meter, which water is transmitted from Rockett's 12" waterline, for construction *on* the Property.¹⁹ Rockett also included billing statements for the current water usage by Petitioner through said fire hydrant meter.²⁰

¹⁶ Tex. Gov't Code. Section 2001.174(a)(A)-(F).

¹⁷ Rockett's Response to the Petition and Motion to Dismiss at Attachment A (Dec. 29, 2020); Rockett's Response and Objection to the Administratively Complete Petition and Motion to Dismiss at Attachment A (Jun. 24, 2021).

¹⁸ *Id.* at Attachment A ¶ 12.

¹⁹ Rockett Special Utility District's Response and Objection to the Administratively Complete Petition and Motion to Dismiss, Attachment K (Jun. 24, 2021).

²⁰ *Id.* at Attachment H-3.

In its Reply, Petitioner did not provide a supporting affidavit of its representative or list any sources of water for the continued construction on the Property. More importantly, Petitioner has stopped or at least paused construction on Phase 1, yet Petitioner continues to use and pay for water through Rockett's fire hydrant meter for the construction of other phases of the Project located *on* the Property.

Facts #37, 38, 39, and 40 in the Order incorrectly stated (supported only by a Compass allegation), respectively, that the Property is not receiving actual water service from Rockett, that Petitioner has not paid any fees or charges to initiate or maintain such service, that there are no billing records or other documents indicating an existing water account with Rockett for the Property, and that Rockett does not provide water service to the Property. Rockett has provided evidence that the Property is receiving *actual* water service, and bills have been submitted to and paid by Compass for such water service.

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 (unsupported by any evidence) 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 Facts #47 and 48 are not supported by any evidence and are not true. Rockett has committed and dedicated facilities and lines to serve the Property, and has facilities and lines that provide water service to the Property—including but not limited to the easement granted by Petitioner to Rockett for Rockett's 12" waterline, usage of Rockett's 12" waterline, 8" domestic water meter, fire hydrant meter, Rockett's 12" waterlines and Plant No. 4., which provide water to the Property as explained above. Rockett provided the non-standard service contract between Rockett and Petitioner to include the water plans and to show the location of Rockett's 8" domestic water meter and 12" waterline, and Petitioner's internal waterlines and fire lines for Phases 1-4. Petitioner's fire lines located *on* the Property uses water from Rockett for construction. Additionally, Rockett's general manager provided that Rockett staff was present when the Automatic Fire Protection was inspected on the 12" fire lines located on the Property for Phase 2, where water to the 12" fire lines were furnished or supplied from Rockett's 12" waterline and 8" domestic water meter.

Additionally, following construction on Phase 1, Petitioner continues to use Rockett's water for construction on the Property for the remaining phases of the Project, as evidenced through the billing statements to Petitioner for usage of water through Rockett's fire hydrant meter.

The Commission must determine whether the Property is *currently* receiving water “service”²¹ including any lines and facilities committed to provide such “service.” “Service” is defined broadly as:

[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). Finding of Fact #47 in the Order as written should be removed, as the finding 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 Finding of Fact #47 in the Order is left as written, it is contrary to the undisputed fact that Rockett is providing water “service” to the Property, including the easement granted by Petitioner to Rockett and Rockett’s existing 12” waterline and facilities that are committed and used to provide “service” to the Property. Waterlines and facilities under construction demonstrate that Rockett remains committed to provide water service to the Property.

Finding of Fact #49 in the Order also states that Rockett “has not performed any acts for or supplied anything to the tract of land.” This is demonstrably wrong. There is no *evidence* in the record to support this finding. Both Rockett’s general manager and operations manager attested that the existing waterlines and facilities are committed *and* used to provide “service” to the Property: Rockett was granted an easement by Petitioner and Rockett’s 8” domestic water meter and 12” waterline were installed, which connects to Petitioner’s internal waterlines. Rockett’s staff was present when Petitioner’s fire lines on the Property (Phase 2) were tested *using Rockett’s water*. Rockett continues to provide water for construction on the Property and Petitioner is billed and pays for such water usage.

Rockett performed numerous acts to provide water “service” to the Property, including but not limited to processing the non-standard service request of Petitioner for actual water service, which Petitioner continued to use and pay for water from Rockett through Rockett’s fire hydrant meter for construction of Phases 2-4 of the Project *on* the Property. As such Findings of Facts

²¹ Tex. Water Code § 13.254(a-5), *amended by* Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4, eff. Sept. 1, 2019.

#45, 46, 47, 48, and 49 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.

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 and uncontroverted 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 and uncontroverted 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 and uncontroverted 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),²² as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied)."²³ 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."²⁴

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, the Commission

²² Now 16 Tex. Admin. Code § 24.245(h), adopted to be effective July 2, 2020, 45 TexReg 4321.

²³ Order at 6, ¶ 9 (Oct. 12, 2021).

²⁴ *Crystal Clear Water Supply Corp.*, 449 S.W.3d at 140.

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 (though Rockett’s Water is Presently Delivering Water to the Property)

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*.”²⁵

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.”²⁶ In Rockett’s Response to the Petition and Motion to Dismiss and Rockett’s Response and Objection to the Administratively Complete Petition and Motion to Dismiss, Rockett’s general manager and operations manager, respectively, attested that the specific meter, waterlines and facilities that are 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,²⁷ 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.

Here, the Petitioner requested water service for Phase 1 of the Project and received water service for Phases 2-4 by Rockett. Petitioner began construction on Phases 2-4 of the Project—located *on* the Property—using water from Rockett through a fire hydrant meter, which Petitioner has paid Rockett for such water usage. Rockett diligently performed actions in furtherance of Rockett’s duties and continues its commitment to provide actual water service to the Property located in its service area. The Commission cannot determine that Rockett has not performed acts or no longer commits to providing actual water service to the Property.

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)).

²⁵ *Id.* at 140 (emphasis added).

²⁶ *Id.*

²⁷ *Id.* at 141.

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 through admissible evidence, 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), including as interpreted by *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. Petitioner has failed to present any evidence in conflict with or contradicting Rockett’s evidence.

WHEREFORE, Rockett respectfully requests that the Commission reconsider its October 12, 2021 Order, deny Compass’ 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,

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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 November 5, 2021, by e-mail in accordance with the Commission's Order.²⁸

via e-mail: forrest.smith@puc.texas.gov

Forrest Smith

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Public Utility Commission

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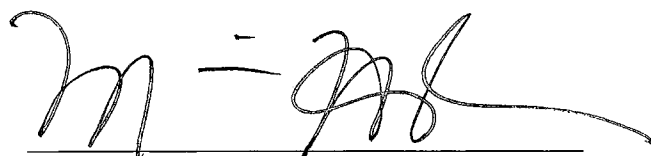
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²⁸ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

ATTACHMENT 1

SUPPORTING AFFIDAVIT OF KAY PHILLIPS

STATE OF TEXAS

§

COUNTY OF ELLIS

§

§

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 and Motion to Dismiss (the "Response") in Docket No. 51545, the Petition of Compass Datacenters DFW III, LLC ("Compass") to amend Rockett's CCN in Ellis County by Expedited Release, and each and every factual statement contained herein is true and correct.

3. Rockett has an outstanding loan from CoBank, ACB guaranteed by the United States Department of Agriculture (USDA) qualifying Rockett for 7 U.S.C. § 1926(b) protection. Attachment B 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. Attachment C 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. Attachment D to the Response is a true and correct copy of the Loan Note Guarantee issued by the USDA on December 8, 2020.

6. Attachment E attached to the Response is a depiction identifying the Property in the Petition and Rockett's waterlines and facilities as prepared by Rockett's consulting engineer of record.

7. Attachment F to the Response is a true and correct copy of the email dated December 20, 2019 and attachment being the Application for Non-standard Water Utility Service and related documents submitted by KFM Engineering & Design requesting water service to the Property on behalf of Compass (the "Application").

8. In addition to the Application, KFM Engineering & Design and other Compass representatives (to be referred further herein as "Compass") provided various information, documents, and plans including changes and revisions thereto, to Rockett's staff and consulting engineer not specifically mentioned herein. These supplemental materials were reviewed and analyzed for the preparation of the Non-standard Service Contract between Rockett and Compass to provide service to the Property.

Attachment G to the Response is a true and correct copy of the Non-standard Service Contract between Rockett and Compass effective March 17, 2020, which includes the following exhibits:

Exhibit A is the Preliminary Plat of the Property provided by Compass;

Exhibit B, also provided by Compass, contains the Phasing Plan (reflecting the locations of ponds, buildings, internal 12" waterlines, 8" domestic water meter and 2" irrigation meters, and Rockett's 12" waterline on the Property) and Compass' requested Water Demand divided into four phases developing from 2019 until 2028 and reflecting total water usage to be 2,104,500 gallons per day (gpd) by 2028;

Exhibit C contains the hydraulic analysis evaluation letters dated January 14, 2020 and March 4, 2020, prepared by Rockett's consulting engineer of record, Benjamin S. Shanklin, P.E. of Childress Engineers;

Exhibit D is the filed Easement granted by Compass to Rockett on November 25, 2019 for Rockett's 12" waterline and water service to the Property; and

Exhibit E is the itemized costs in accordance with various terms of the Non-standard Service Contract paid by Compass.

9. Attachment H to the Response contains true and correct copies of Compass' most recent water bills for water service to the Property:

Attachment H-1 is for water usage from the 8" domestic water meter,

Attachment H-2 is for water usage from the 2" irrigation meter, and

Attachment H-3 is for the fire hydrant meter serving the Property.

10. Attachment I to the Response is a true and correct copy of the receipt for costs and fees in the amount of \$24,302.62 paid by Compass to Rockett, under the terms of the Non-standard Service Contract (see *Exhibit E* in Attachment G).


11. Attachment J to the Response is a true and correct copy of the Easement granted by Compass on May 12, 2020, for Rockett's 12" waterline along Houston School

Road to provide water service to the Property, including on both Tracts A and B of the Property.

12. Compass has constructed its internal 12" water (fire) lines on the Property for Phase 2 of its project. On Wednesday, December 16, 2020, Rockett's staff was present when Automatic Fire Protection inspected the 12" fire lines on the Property for Phase 2, where water to the 12" fire lines were furnished or supplied from Rockett's 12" waterline and through the 8" domestic water meter.

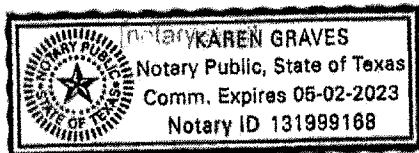
13. Rockett is providing water service to the Property through, without limitation, Rockett's 12" waterline, 8" domestic water meter, 2" irrigation meter and a fire hydrant meter (see Attachments G-H), Rockett's 12" waterlines and Plant No. 4. Rockett is providing and making water service available to the Property through, without limitation, its Non-standard Service Contract with Compass, hydraulic analysis and evaluation and ongoing participation to provide water service to Phases 2-4 to be constructed on the Property, in these act, among others are in furtherance of providing water service to the Property. Rockett has committed or used, and continues to commit or use, its facilities and waterlines, without limitation, by utilizing the Easements granted by Compass for Rockett's waterlines and meters to provide service to the Property, improvements of Water Plant No. 4 and Robert W. Sokoll Water Treatment Plant (paid by the CoBank loan guaranteed by the USDA), 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.

14. The instruments or documents indicated in Attachments B-J 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 Rockett. It is the regular practice of Rockett to make and/or retain such records."



Kay Phillips, General Manager
Rockett Special Utility District

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 29th day of December, 2020, by Kay Phillips, General Manager of Rockett Special Utility District, a political subdivision of the State of Texas.





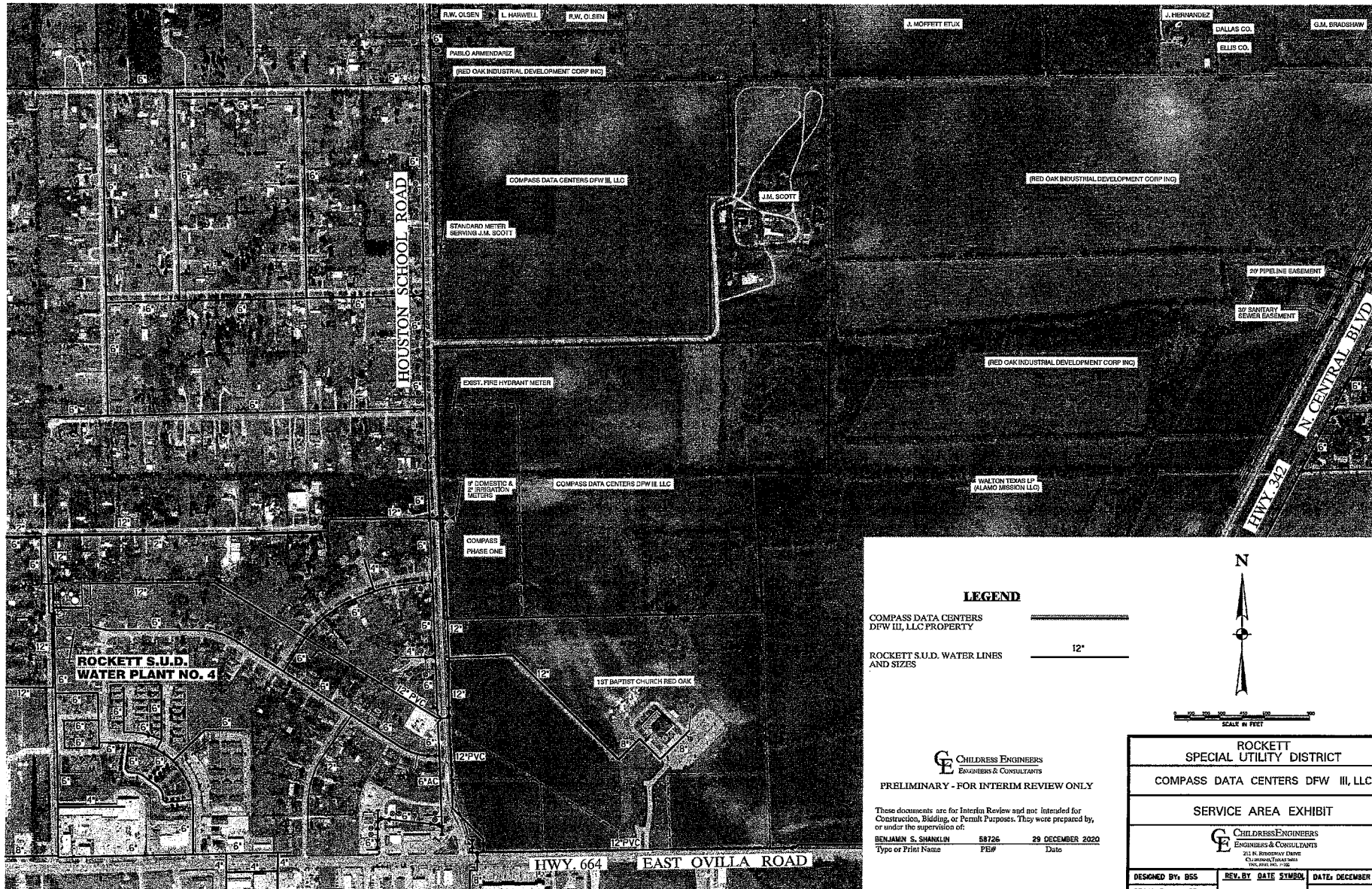
Notary Public, State of Texas

ATTACHMENT 2

SCALE 1/8"=100'

PLOT DATE: 12/29/2020

THICK EXHIBIT COMPASS



LEGEND

COMPASS DATA CENTERS
DFW III, LLC PROPERTY

ROCKETT S.U.D. WATER LINES
AND SIZES



SCALE IN FEET

CHILDRESS 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 DECEMBER 2020
Type or Print Name FE# Date

ROCKETT SPECIAL UTILITY DISTRICT			
COMPASS DATA CENTERS DFW III, LLC			
SERVICE AREA EXHIBIT			
CHILDRESS ENGINEERS ENGINEERS & CONSULTANTS 211 N. RIVERSIDE DRIVE CLARK COUNTY, TEXAS 75006 (940) 249-1100			
DESIGNED BY: BSS	REV. BY	DATE	SYMBOL
DRAWN BY: JSO			
CHECKED BY: BSS			
DATE: DECEMBER 2020			JOB NO: 19003
			SHEET NO. 1 OF 1

19003 EXHIBIT COMPASS

ATTACHMENT 3

ATTACHMENT 4

SUPPORTING AFFIDAVIT OF ROBERT WOODALL

STATE OF TEXAS

§
§
§

COUNTY OF ELLIS

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

1. "My name is Robert Woodall. I am over the age of 18 years and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. Since 2000, I have been an employee of Rockett Special Utility District ("Rockett") and am currently the Operations Manager of Rockett.

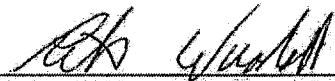
2. Compass previously requested water service to Phases 1-4 of the project and later revised their request to Rockett for immediate water service for Phase 1 first.

3. Rockett has furnished or supplied water to the Property through the internal 12" waterlines connected to Rockett's 12" waterline and 8" domestic water meter of Phase 1. The plans provided by Compass shown in Exhibit B of the Non-standard Service Contract (Attachment G) show internal 12" waterlines that connect or loop all Phases 1-4 of the project.

4. The temporary office building for construction of the Property, which was previously used during and located on Phase 1 of the project, has now been relocated to another phase of the project that is located on the Property.

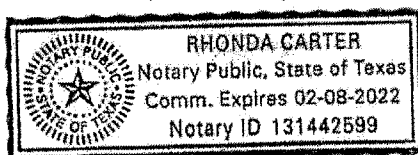
5. Compass has begun construction on the Property for at least one phase, other than Phase 1.

6. Compass is paying for, receiving, and utilizing water service from Rockett for construction purposes through the fire hydrant meter, as seen in the water bills in Attachments H-3, for construction for at least one phase, other than Phase 1."


Robert Woodall, Operations Manager
Rockett Special Utility District

23 SUBSCRIBED AND SWORN TO before me, the undersigned authority on the day of June, 2021, by Robert Woodall, Operations Manager of Rockett Special Utility District, a political subdivision of the State of Texas.

[notary seal]




Notary Public, State of Texas