



Control Number: 51545



Item Number: 50

DOCKET NO. 51545

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

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PUBLIC UTILITY COMMISSION

OF TEXAS

2020-07-14 11:15

ORDER ON REHEARING

This Order addresses the petition of Compass Datacenters DFW III, LLC for streamlined expedited release of a tract of land in Ellis County from Rockett Special Utility District's service area under certificate of convenience and necessity (CCN) number 10099. For the reasons stated in this Order, the Commission releases the tract of land from Rockett SUD's certificated service area. In addition, the Commission amends Rockett SUD's CCN number 10099 to reflect the removal of the tract 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 SUD, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Compass Datacenters DFW III, LLC is a Delaware limited liability company registered with the Texas secretary of state under filing number 803462401.

CCN Holder

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

Petition

4. On November 20, 2020, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10099.
5. The petition includes documentation demonstrating the petitioner is registered with the Texas secretary of state as a foreign limited liability company; an affidavit, dated November 20, 2020, of Jared Day, the petitioner's president and chief financial officer; general and detailed maps; a special warranty deed dated November 1, 2019, which includes metes and bounds descriptions of the parcels composing the tract of land; digital mapping data; and proof of notice to the CCN holder.
6. On May 6, 2021, the petitioner filed an amended petition.
7. The amended petition includes documentation demonstrating the petitioner is registered with the Texas secretary of state as a foreign limited liability company; an affidavit, dated May 4, 2021, of Mr. Day; revised mapping materials; a special warranty deed dated November 1, 2019; a special warranty deed executed on November 1, 2019, to be effective on November 8, 2019; revised digital mapping data; and proof of notice to the CCN holder.
8. In Order No. 6 filed on June 4, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

9. On November 20, 2020, a copy of the petition was sent by the petitioner to the CCN holder, by certified mail, return receipt requested.
10. In Order No. 6 filed on June 4, 2021, the ALJ found the notice sufficient.

Intervention and Response to Petition

11. In Order No. 2 filed on January 27, 2021, the ALJ granted the CCN holder's motion to intervene.
12. On December 29, 2020, the CCN holder filed a response to the petition.
13. The response includes an affidavit, dated December 29, 2020, of Kay Phillips, general manager of the CCN holder; email correspondence between Ms. Phillips and the CCN holder's legal counsel; a conditional commitment for guarantee dated July 25, 2019, between the CCN holder and the United States Department of Agriculture (USDA) and

- related documents; a loan note guarantee dated December 8, 2020; a map of the tracts of land; an application for non-standard water utility service; a non-standard service contract between the petitioner and the CCN holder dated March 17, 2020, with attachments; invoices from the CCN holder to the petitioner; a CCN holder receipt dated March 18, 2020; and a waterline easement dated May 12, 2020, with attachments.
14. On May 14, 2021, the CCN holder filed a response to the amended petition.
 15. The response includes the same materials that were included in the CCN holder's December 29, 2020 response.
 16. On June 24, 2021, the CCN holder filed another response to the amended petition.
 17. The response includes the same materials that were included in the CCN holder's December 29, 2020 response. In addition, the response included additional invoices from the CCN holder to the petitioner; and an affidavit, dated June 23, 2021, by Robert Woodall, the CCN holder's operations manager.

The Motion to Abate

18. On December 17, 2020, Commission Staff moved to have this proceeding abated, pending resolution of Docket No. 49871.¹
19. In Order No. 4 filed on March 9, 2021, the ALJ denied Commission Staff's motion to abate.

The Motions to Dismiss

20. On December 29, 2020, the CCN holder filed a motion to dismiss.
21. On January 7, 2021, the petitioner filed a response to the motion to dismiss.
22. In Order No. 4 filed on March 9, 2021, the ALJ denied the motion to dismiss.
23. On May 14, 2021, the CCN holder filed a second motion to dismiss.
24. On May 21, 2021, the petitioner filed a response to the second motion to dismiss.
25. In Order No. 6 filed on June 4, 2021, the ALJ denied the second motion to dismiss.
26. On June 24, 2021, the CCN holder filed a third motion to dismiss.

¹ *Petition of the City of Red Oak Industrial Development Corporation to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release*, Docket No. 49871, Order (Mar. 5, 2021).

27. On July 15, 2021, the petitioner filed a response to the third motion to dismiss.
28. In Order No. 7 filed on July 30, 2021, the ALJ denied the third motion to dismiss.

The Tract of Land

29. The petitioner owns property in Ellis County that is approximately 171.158 acres.
30. The tract of land for which the petitioner seeks streamlined expedited release is a portion of petitioner's property that is approximately 149.34-acres.
31. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

32. The petitioner acquired its property through two transactions.
33. The petitioner acquired two parcels, one approximately 93.713 acres and the other approximately 74.900 acres, by a special warranty deed dated November 1, 2019.
34. The petitioner acquired a third parcel of approximately 2.545 acres by a special warranty deed executed on November 1, 2019, to be effective on November 8, 2019.

Qualifying County

35. Ellis County has a population of more than 47,500 and is adjacent to Dallas County.
36. Dallas County has a population of at least one million.

Water Service

37. The tract of land is not receiving actual water service from the CCN holder.
38. The petitioner has not requested water service from the CCN holder or any other utility for the tract of land, nor has it paid any fees or charges to initiate or maintain such service.
39. There are no billing records or other documents indicating an existing water account with the CCN holder for the tract of land.
40. The CCN holder provides water service to an approximately 20.752-acre area within the petitioner's property referred to as phase one, but that area is not within the tract of land.
41. On December 20, 2019, 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 phase one, which is located outside the tract of land, and to phases two, three, and four, which lie, in whole or in part, within the tract of land.

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. Effective March 17, 2020, the petitioner and the CCN holder executed a final non-standard contract which obligated the CCN holder to provide water service to phase one.
44. A final non-standard contract has not been executed by the petitioner and the CCN holder in relation to phases two, three, and four.
45. The CCN holder has installed equipment on the phase one portion of the petitioner's property, including an 8-inch domestic water meter, a 2-inch irrigation meter, and a fire hydrant meter, but that equipment is located outside of the tract of land and does not serve the tract of land.
46. The CCN holder provides water service in the vicinity of, but not on, the tract of land.
47. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
48. The CCN holder has no facilities or lines that provide water service to the tract of land.
49. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

50. On July 8, 2021, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's certificated 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 Texas Administrative Code (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 and under 16 TAC § 24.245(h)(7) no hearing will be held on such a petition.
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. Under 16 TAC § 24.245(7), the Commission's decision is based on the information submitted by the landowner, the CCN holder, and Commission Staff.
7. 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.
8. The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water service under TWC § 13.2541(b). Whether a tract might have previously received water or sewer service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all of its property.
10. Ellis County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
11. The petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release through the petition.
12. The tract of land is 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).

13. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder's certificated service area.
14. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to the tract of land.
15. The Commission may release only the property of the landowner from a CCN under TWC§ 13.2541(b). The Commission has no authority to decertificate 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).
16. The Commission processed the petition in accordance with the TWC and Commission rules.
17. 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 Ellis County no later than the 31st day after the date the CCN holder receives this Order.
18. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

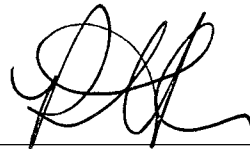
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tract of land identified in the petition from the CCN holder's service area under CCN number 10099.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the tract of land.
3. The Commission amends CCN number 10099 in accordance with this Order.
4. The Commission approves the map attached to this Order.
5. The Commission issues the certificate attached to this Order.

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 14th day of January, 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER