

Control Number: 42983



Item Number: 34

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DOCKET NO. 42983

RECEIVED

APPLICATION OF CRYSTAL CLEAR §
WATER SUPPLY CORPORATION §
AND CITY OF SAN MARCOS FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND TO AMEND A §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COMAL, §
GUADALUPE, AND HAYS COUNTIES §
(37671-S) §

2015 SEP 10 PM 2:20
PUBLIC UTILITY COMMISSION
OF TEXAS

PROPOSED NOTICE OF APPROVAL AND REQUEST TO ADMIT EVIDENCE

Staff of the Public Utility Commission files this Proposed Notice of Approval and Request to Admit Evidence of Crystal Clear Water Supply Corporation (Crystal Clear WSC or Seller) and the City of San Marcos (Purchaser) application for the sale, transfer, or merger of a Retail Public Utility pursuant to TEX. WATER CODE ANN. §§ 13.246 and 13.301 and 30 TEX. ADMIN. CODE § 291.109 (TAC). This Proposed Notice of Approval and Request to Admit Evidence includes findings of fact, conclusions of law, and ordering paragraphs. Staff contacted Applicants to provide them with the opportunity to review and agree to the Proposed Order attached hereto and the Applicants have no objection. Order No. 7, issued July 14, 2015, set September 10, 2015 as the deadline for Commission Staff to file a Proposed Notice of Approval, including Findings of Fact, Conclusions of Law, and Ordering Paragraphs, therefore, this Proposed Notice of Approval is timely filed.

I. BACKGROUND

On July 26, 2013, Crystal Clear WSC and the City of San Marcos filed a sale, transfer, merger (STM) application with the Texas Commission on Environmental Quality (TCEQ) pursuant to TEX. WATER CODE ANN. § 13.301 and 16 TAC §§ 24.109 and 24.112. Through the application, the City of San Marcos requests to: (1) decertify a portion of its water Certificate of Convenience and Necessity (CCN) No. 10298; (2) amend its water CCN No. 10298; and (3) purchase facilities and transfer a portion of CCN No. 10297, held by Crystal Clear WSC. The TCEQ accepted the application for filing on January 10, 2014. The City of San Marcos indicated that notice of the application was concluded on April 7, 2014, triggering the 120-day deadline for

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STMs required by 16 TAC § 24.109(e). The 120-day deadline for Commission action on the application was August 5, 2014.

On June 5, 2014, the TCEQ issued a letter informing the Applicants that a public hearing would not be requested, that the parties could complete their proposed transaction, and that a transfer of the CCN would occur following receipt of a copy of the signed contract or bill of sale and documents supporting the disposition of customer deposits. The 365-day deadline to complete the transaction, as required by 16 TAC § 24.112(e), ends on June 5, 2015.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. On September 24, 2014, Order No. 2 Requiring Comments on Status was issued requiring Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by October 7, 2014. On October 7, 2014, Staff filed its Response to Order No. 2 in which Staff confirmed that the parties have submitted the proper documentation to the Commission to confirm that the transaction has been completed and that Staff was in the process of finalizing the maps for the parties' consent. The parties filed the completed and signed consent forms with the Commission on November 13, 2014. On October 14, 2014, Order No. 3 was issued requiring Staff to file a recommendation on final disposition of the application by December 15, 2014 and, if no disputed issues arose, for parties to file a proposed notice of approval with findings of fact, conclusions of law, and ordering paragraphs by January 14, 2015. On December 15, 2014, Staff filed its Final Recommendation, in which Staff recommended final approval of the application. Thereafter, on January 30, 2015, the Commission issued order No. 4, Requiring Clarification, noting discrepancies between the application and the parties' attached agreement. Order No. 4 established February 13, 2015, as the deadline for parties to file information that clarifies the precise transactions, transfers and amendments requested in both this docket and Docket No. 42984 *Application of City of San Marcos and Crystal Clear Water Supply Corporation for Sale, Transfer, or Merger of Facilities and to Amend a Certificate of Convenience and Necessity in Comal, Guadalupe, and Hays Counties*.

Due to further review, based on Order No. 4, and subsequent clarification made by the Applicants, Commission Staff directed that notice be reissued. Proper public notice was provided on April 28, 2015 to neighboring systems, landowners, cities, and affected parties. Notice was

published in the *San Marcos Daily Record*, *Seguin Gazette*, and *New Braunfels Herald – Zeitung* on May 17, 2015 and May 24, 2015, respectively, in Hays, Guadalupe, and Comal Counties in accordance with 16 TAC § 24.112(c). The affidavit of notice was received by the Commission on June 11, 2015 and the comment period ended June 23, 2015 with no protests, opt out requests, or requests for hearing being received by the Commission. Order No. 7 also extended the one-year deadline in 16 TAC § 24.112(e) to September 25, 2015.

II. REQUEST TO ADMIT EVIDENCE

Parties request to admit the following evidence into the record of this proceeding: (a) Application of the City of San Marcos and Crystal Clear WSC and all attachments thereto, filed July 26, 2013 (Items Nos. 1 and 2); (b) Applicant City of San Marcos' Response to Order No. 4 Seeking Clarification and all attachments thereto, filed April 13, 2015 (Item No. 19); (c) Staff's Second Response to Order No. 4 and all attachments thereto, filed April 14, 2015 (Item No. 20); (d) Commission Staff's Supplemental Recommendation and all attachments thereto, filed April 7, 2015 (Item No. 21); (e) all affidavits and attached proofs of notice, filed June 11, 2015 (Item Nos. 23 - 26); (f) Bill of Sale and Assignment and all attachments thereto, filed August 13, 2015 (Item No. 29); (g) all consent forms, filed August 24, 2015 (Item Nos. 31 and 32); and (h) Commission Staff's Final Recommendation and all attachments thereto filed August 27, 2015 (Item No. 33).

III. PROPOSED NOTICE OF APPROVAL

Pursuant to Order No. 7, Staff recommends approval of the attached Proposed Notice of Approval. This docket was processed in accordance with applicable statutes and Texas Commission on Environmental Quality (TCEQ) and Public Utility Commission of Texas rules. Notice of the Application was provided to interested parties. The only parties to this proceeding are Commission Staff, the City of San Marcos and Crystal Clear WSC. There are no contested issues of law or fact in this proceeding.

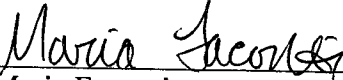
III. CONCLUSION

Commission Staff has reviewed the Application and all amendments and recommends its approval. Commission Staff, therefore, respectfully requests that the Commission adopt the attached findings of fact and conclusions of law as well as grant the admittance of the specified pieces of evidence.

DATED: September 10, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director- Legal Division



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DOCKET NO. 42983
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 10th of September, 2015, in accordance with 16 TAC § 22.74.



Maria Faconti

**ATTACHMENT 1
DOCKET NO. 42983**

APPLICATION OF CRYSTAL CLEAR WATER SUPPLY CORPORATION AND CITY OF SAN MARCOS FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY IN COMAL, GUADALUPE, AND HAYS COUNTIES (37671-S)	§ § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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PROPOSED ORDER

This Order addresses the application of Crystal Clear Water Supply Corporation (Crystal Clear WSC or Seller) and the City of San Marcos (Purchaser) for the sale, transfer, or merger of a Retail Public Utility pursuant to TEX. WATER CODE ANN. §§ 13.246 and 13.301 and 16 TEX. ADMIN. CODE § 24.109 (TAC). Through the application, the City of San Marcos requests to: (1) decertify a portion of its water Certificate of Convenience and Necessity (CCN) No. 10298; (2) amend its water CCN No. 10298; and (3) purchase facilities and transfer a portion of CCN No. 10297, held by Crystal Clear WSC pursuant to TEX. WATER CODE ANN. §§ 13.246 and 13.301 and 16 TAC §§ 24.109 and 24.112. Public Utility Commission of Texas (PUC or Commission) Staff recommended approval of the Application on August 27, 2015. This docket was processed in accordance with applicable statutes and Texas Commission on Environmental Quality (TCEQ) and PUC rules. No party requested a hearing in this docket and there are no contested issues of law or fact in this proceeding. Based on the City of San Marcos and Crystal Clear WSCs' Application and all amendments and Commission Staff's Final Recommendation, the Application is hereby approved.

The Commission adopts the following findings of fact and conclusions of law.

Fact Statements

1. On July 26, 2013, Crystal Clear WSC and the City of San Marcos filed with the TCEQ an Application for Sale, Transfer, or Merger of a Retail Pubic Utility pursuant to TEX. WATER CODE ANN. §§ 13.246, 13.254, 13.301 and 16 TAC §§ 24.109 and 24.112.

2. Crystal Clear WSC holds water CCN No. 10297 in Comal, Guadalupe, and Hays Counties.
3. The City of San Marcos holds water CCN No. 10298 in Comal, Guadalupe, and Hays Counties.
4. Currently, the boundaries for CCN Nos. 10297 and 10298 overlap, forming an area dually certified to both Crystal Clear WSC and the City.
5. The Application requested the decertification and transfer of an approximately 4,044 acre portion of City of San Marcos' water CCN No. 10298 to Crystal Clear WSC and the amendment of the City of San Marcos' water CCN No. 10298. In addition, the City of San Marcos requested the addition of approximately 2,462 acres to add to their CCN No. 10298 and the purchase of facilities and transfer of approximately a 4,510 acre portion of CCN No. 10297, held by Crystal Clear, in Guadalupe, Hays, and Comal Counties, to the City of San Marcos.
6. The Application contemplates the transfer of 206 customers from the Crystal Clear WSC's CCN No. 10297 to the City of San Marcos, CCN No. 10298.
7. The TCEQ determined sufficient notice was published and provided to all affected and interested parties by April 7, 2014.
8. The comment period at the TCEQ ended with the TCEQ receiving one protest letter; however, the TCEQ determined that the concerns listed in the protest letter did not meet the criteria in 30 TAC § 291.109(e).
9. By letter dated June 5, 2014, the TCEQ instructed Crystal Clear WSC and the City of San Marcos to proceed with the sale and to provide final documentation of assets being transferred to Crystal Clear WSC and documents supporting the disposition of customer deposits.
10. On July 11, 2014, the City of San Marcos provided the TCEQ the signed sale contract. The City of San Marcos indicated that the signed sale contract provides that both parties will refund any customer deposits provided by customers whose service will be transferred.
11. On September 1, 2014, pursuant to House Bill 1600 and Senate Bill 567 of the 83rd Legislature, Regular Session, functions relating to the economic regulation of water and sewer utilities were transferred from the TCEQ to the PUC.

12. On December 15, 2014, Commission Staff recommended that the Application to decertify a portion of and amend CCN No. 12098 and to acquire facilities held under and transfer a portion of CCN No. 10297 be approved.
13. On January 1, 2015, the Commission issued Order No. 4 Requiring Clarification.
14. Applicants filed Applicant Crystal Clear Water Supply Corporation's Response to Order No. 4 Seeking Clarification on April 13, 2015, clarifying the transaction and asking for an extension of the 365 day period contained in 16 TAC § 24.112(e) to allow for the dissemination of the amended notices.
15. On April 17, 2015, Commission Staff filed Commission Staff's Supplemental Recommendation, requesting Applicants provide revised mailed notice pursuant to 16 TAC § 24.112(c)(3) and to publish notice pursuant to 16 TAC § 24.112(c)(2).
16. On April 24, 2015, the Commission issued Order No. 6 Requiring Revised Notice, Granting Extension and Establishing Schedule, requiring Applicants to provide revised notice and extending the 365-day deadline found in 16 TAC § 24.112(e) from June 5, 2015 to July 31, 2015.
17. On May 17, 2015 and May 24, 2015, Applicants' published notice in the *San Marcos Daily Record*, a newspaper of general circulation in Hays County, Texas.
18. On May 17, 2015 and May 24, 2015, Applicants' published notice in the *Seguin Gazette*, a newspaper of general circulation in Guadalupe County, Texas.
19. On May 17, 2015 and May 24, 2015, Applicants' published notice in the *New Braunfels Herald-Zeitung*, a newspaper of general circulation in Comal County, Texas.
20. On April 28, 2015, Applicants' mailed notice to neighboring utilities, landowners, and affected parties.
21. On June 11, 2015, Applicants provided all affidavits of proof of notice.
22. Sufficient notice was published and provided to all affected and interested parties by June 11, 2014.
23. The comment period ended on June 23, 2015 and no protests, opt-out requests, or requests for hearing were received by the Commission.

24. A hearing on the merits was not necessary.
25. On July 13, 2015, Commission Staff filed Commission Staff's Response to Order No. 6 and Joint Request for Extension requesting additional documentation be provided by Applicants, including closing documents indicating that the transaction has been completed, including an affidavit of closing, and documents indicating that customer deposits have been transferred or refunded to the customers with interest. Parties requested the 365-day deadline found in 16 TAC § 24.112(e) be extended to September 25, 2015.
26. On July 14, 2015, Order No. 7 was issued, granting the second extension of the 365-day deadline.
27. On August 20, 2015, the City of San Marcos provided additional maps.
28. On August 21, 2015, Commission Staff transmitted a map to Crystal Clear WSC and the City of San Marcos for review and consent. The transmitted map to the City of San Marcos did not include the area marked as area "A" from the Application.
29. On August 21, 2015, authorized parties for Crystal Clear WSC and the City signed documents consenting to the map of CCN Nos. 10297 and 10298 prepared by Staff.
30. The map described in Findings of Fact 28 and 29 are attached to Commission Staff's Final Recommendation. The CCNs of Crystal Clear WSC and the City are also attached to Commission Staff's Final Recommendation.
31. On August 27, 2015, Commission Staff recommended that the Application to decertify a portion of and amend CCN No. 12098 and to acquire facilities held under and transfer a portion of CCN No. 10297 be approved as modified by Staff's Final Recommendation which removed area "A" from the final map because the majority of area "A" was found to be based on future growth which did not meet the requirements of TWC § 13.246(c)(2). In their Final Recommendation, Commission Staff found the area designated as "A" did not currently have any infrastructure to serve and no preliminary engineering report was submitted regarding this area.
32. On September 10, 2015, Parties filed a Proposed Notice of Approval and Request to Admit evidence, requesting the following pieces of evidence be admitted into the record (a) Application of the City of San Marcos and Crystal Clear WSC and all attachments thereto,

filed July 26, 2013 (Items Nos. 1 and 2); (b) Applicant City of San Marcos' Response to Order No. 4 Seeking Clarification and all attachments thereto, filed April 13, 2015 (Item No. 19); (c) Staff's Second Response to Order No. 4 and all attachments thereto, filed April 14, 2015 (Item No. 20); (d) Commission Staff's Supplemental Recommendation and all attachments thereto, filed April 7, 2015 (Item No. 21); (e) all affidavits and attached proofs of notice, filed June 11, 2015 (Item Nos. 23 - 26); (f) Bill of Sale and Assignment and all attachments thereto, filed August 13, 2015 (Item No. 29); (g) all consent forms, filed August 24, 2015 (Item Nos. 31 and 32); and (h) Commission Staff's Final Recommendation and all attachments thereto filed August 27, 2015 (Item No. 33).

33. On September __, 2015, Order No. _ was issued admitting (a) Application of the City of San Marcos and Crystal Clear WSC and all attachments thereto, filed July 26, 2013 (Items Nos. 1 and 2); (b) Applicant City of San Marcos' Response to Order No. 4 Seeking Clarification and all attachments thereto, filed April 13, 2015 (Item No. 19); (c) Staff's Second Response to Order No. 4 and all attachments thereto, filed April 14, 2015 (Item No. 20); (d) Commission Staff's Supplemental Recommendation and all attachments thereto, filed April 7, 2015 (Item No. 21); (e) all affidavits and attached proofs of notice, filed June 11, 2015 (Item Nos. 23 - 26); (f) Bill of Sale and Assignment and all attachments thereto, filed August 13, 2015 (Item No. 29); (g) all consent forms, filed August 24, 2015 (Item Nos. 31 and 32); and (h) Commission Staff's Final Recommendation and all attachments thereto filed August 27, 2015 (Item No. 33).

Legal Conclusions

1. The Commission has jurisdiction over these matters pursuant to TEX. WATER CODE ANN. §§ 13.246, 13.254, 13.301 and 16 TAC §§ 24.109 and 24.112.
2. Crystal Clear WSC and the City of San Marcos are retail public utilities as defined in TEX. WATER CODE ANN. § 13.002(19) and 16 TAC § 24.3(41).
3. Public notice of the Application was provided as required by TEX. WATER CODE ANN. § 13.301(a)(2) and 16 TAC § 24.112(c).
4. This application was processed in accordance with the requirements of TEX. WATER CODE ANN. § 13.301, 16 TAC §§ 24.109 and 24.112.

5. Crystal Clear WSC and the City of San Marcos completed the sale within the Commission extended 365 day period for approval of the sale, consistent with 16 TAC § 24.112(e).
6. After considering the factors in TEX. WATER CODE ANN. § 13.246(c), the City of San Marcos has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area, as modified by Commission Staff's Final Recommendation, and any areas certificated to the Purchaser.
7. The City of San Marcos and Crystal Clear WSC have demonstrated that the transaction requested in this application, as amended and modified by Commission Staff's Final Recommendation, is necessary for the service, accommodation, convenience, and safety of the public.
8. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

Ordering Paragraphs

In accordance with these statements of fact and legal conclusions, the Commission issues the following Order.

1. The City of San Marcos' Application is approved as modified by Commission Staff's Final Recommendation.
2. The 4,044 acre portion of the City of San Marcos' service area in CCN No. 10298 is decertified and transferred to Crystal Clear WSC, CCN No. 10297.
3. CCN No. 10298, held by the City of San Marcos, is amended to add approximately 1,092 acres and the acquisition of 206 current customers from Crystal Clear WSC.
4. Crystal Clear WSC's CCN No. 10297 and the City of San Marcos' CCN No. 10298 are hereby amended to reflect this Application as amended by Commission Staff's Final Recommendation.
5. This docket was processed in accordance with the terms and conditions set forth herein and in the CCNs.
6. The City of San Marcos shall serve every customer and applicant for service within the areas certified under CCN No. 10298, and such service shall be continuous and adequate.

7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the _____ day of September, 2015.

PUBLIC UTILITY COMMISSION OF TEXAS
