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PUBLIC UTILITY COMMISSION  
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PETITION OF LAS COLINAS SAN §  
MARCOS PHASE I LLC TO AMEND §  
CRYSTAL CLEAR SPECIAL UTILITY §  
DISTRICT'S CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
HAYS COUNTY BY EXPEDITED §  
RELEASE §

PUBLIC UTILITY COMMISSION  
OF TEXAS

### ORDER

This Order addresses the petition of Las Colinas San Marcos Phase I LLC for expedited release from Crystal Clear Special Utility District's water certificate of convenience and necessity (CCN) number 10297 in Hays County. Commission Staff recommended approval of Las Colinas' petition. Consistent with Commission Staff's recommendation, the petition is approved.

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

#### I. Background

On July 11, 2016, Las Colinas filed a petition for expedited release of an approximately 79.964-acre tract of land in Hays County from Crystal Clear's water CCN number 10297. Las Colinas asserted that the petitioned property is not receiving water service from Crystal Clear.

On August 9, 2016, Crystal Clear responded to the petition, claiming that the petitioned property receives water service from Crystal Clear, and is therefore not entitled to expedited release.<sup>1</sup> Crystal Clear stated that it has active water facilities running under the petitioned property which serves a 1.97-acre parcel owned by Mr. Dickerson, managing partner of Las Colinas, and that it can provide basic domestic service to the petitioned property through the six-inch supply line that runs along the far-east part of the property.<sup>2</sup> Crystal Clear also stated that the petition should be denied because it has performed acts and committed facilities qualifying as service to the petitioned property.<sup>3</sup> Additionally, Crystal Clear argued that it meets the standard

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<sup>1</sup> Crystal Clear's Motion to Intervene, Plea to Jurisdiction and Motion to Dismiss and Response (Aug. 9, 2016).

<sup>2</sup> *Id.* at 15.

<sup>3</sup> *Id.* at 13.

for protection under 7 U.S.C. § 1926(b), and that such protection preempts any state law to the contrary.<sup>4</sup>

On August 16, 2016, Commission Staff recommended approval of the petition.<sup>5</sup> Commission Staff argued that the Texas Third Court of Appeals in *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation* affirmed that determining whether a tract is receiving service is a “fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract.”<sup>6</sup> Further, the Court there made clear that “[I]t is essential that any qualifying services are being ‘received’ by the property for which expedited decertification is sought before such property is rendered ineligible for decertification pursuant to section 13.254(a-5).”<sup>7</sup> Commission Staff noted that Crystal Clear has asserted it has active facilities running under the petitioned property and has submitted a map showing a six-inch water supply line running along the far-east portion of the petitioned property.<sup>8</sup> Commission Staff argued that although Crystal Clear asserts that it has active lines that are servicing Mr. Dickerson’s residence, Crystal Clear has not stated that Mr. Dickerson’s residence, located on a 1.97-acre parcel, is part of the tract of land for which release is sought.<sup>9</sup> Regarding the issue of federal preemption, Commission Staff noted that the Legislature has instructed that the Commission “may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program.”<sup>10</sup>

On August 23, 2016, Las Colinas filed a response to Crystal Clear’s motion to intervene, plea to the jurisdiction, motion to dismiss and response, a response to Commission Staff’s final recommendation, and a reply to Crystal Clear’s response to Commission Staff’s final recommendation.<sup>11</sup> Las Colinas agreed with Commission Staff that the Commission should not consider any federal loan Crystal Clear may have and further argued that no court has squarely

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<sup>4</sup> *Id.* at 12.

<sup>5</sup> Commission Staff’s Final Recommendation (Aug. 16, 2016).

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 4.

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

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

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Las Colinas San Marcos Phase I LLC’s Combined Response to Crystal Clear’s Motion to Intervene, Plea to the Jurisdiction, Motion to Dismiss and Response, and Response to Commission Staff’s Final Recommendation, and a Reply to Crystal Clear’s Response to Commission Staff’s Final Recommendation (Aug. 23, 2016).

held that 7 U.S.C. § 1926(b) prevents a state agency from granting a decertification petition.<sup>12</sup> Las Colinas disputed Crystal Clear's claim that it has active water facilities running under the petitioned property.<sup>13</sup> Las Colinas provided an affidavit from Mr. Dickerson which acknowledged the existence of a water line but indicates that it is a private water line owned by Mr. Dickerson, not Crystal Clear.<sup>14</sup> Las Colinas argued that the fact that "Crystal Clear provides water (through a pipe it doesn't own) to the single house on a nearby parcel is irrelevant to whether Las Colinas's Property is 'receiving water service'."<sup>15</sup>

The Commission finds that it may not deny a petition under Texas Water Code (TWC) § 13.254(a-5) on the basis that a certificate holder is a borrower under a federal loan program, that Las Colinas has adequately proven that the petitioned property is not receiving actual water service under TWC § 13.254(a-5), and approves the petition.

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

## II. Findings of Fact

### *Procedural History, Description and Background*

1. On July 11, 2016, Las Colinas filed a petition for expedited release of 79.964 acres from Crystal Clear's water CCN number 10297 in Hays County by expedited release.
2. On July 15, 2016, Order No. 1 was issued, setting a deadline for comments on administrative completeness of the application and notice, establishing deadlines, and other procedural matters.
3. On July 28, 2016, Commission Staff recommended that the petition be found administratively complete.
4. On August 2, 2016, Order No. 2 was issued, finding the petition administratively complete and adopting a procedural schedule.
5. On August 9, 2016, Crystal Clear filed a motion to intervene, plea to the jurisdiction, motion to dismiss and response.

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 10-11.

<sup>15</sup> *Id.* at 7 (citation omitted).

6. On August 16, 2016, Commission Staff recommended that Las Colinas' petition for expedited release be approved. Commission Staff also provided an amended CCN certificate and service area map.
7. On August 17, 2016, Order No. 3 was issued, granting Crystal Clear's motion to intervene.
8. On August 18, 2016, Crystal Clear filed a response to Commission Staff's final recommendation.
9. On August 23, 2016, Las Colinas filed a response to Crystal Clear's motion to intervene, plea to the jurisdiction, motion to dismiss and response, a response to Commission Staff's final recommendation, and a reply to Crystal Clear's response to Commission Staff's final recommendation.
10. On August 26, 2016, Crystal Clear filed a response to Las Colinas' August 23, 2016 filing.
11. The map and CCN certificate referenced in finding of fact 6 are attached to this Order.
12. No protests, motions to intervene, or request for hearing were filed that were not dealt with in this proceeding.

#### **Notice**

13. Las Colinas provided a copy of the petition to Crystal Clear on July 11, 2016.
14. Notice of the petition was published in the *Texas Register* on July 29, 2016.

#### **Project Description**

15. Las Colinas owns the 79.964-acre tract.
16. The 79.964-acre tract is located in Hays County.

#### **Water Service**

17. Crystal Clear provides water service to a separate 1.97-acre parcel that is surrounded by the petitioned property on three borders through a residential supply line that runs beneath the petitioned property.
18. The water supply line traversing the petitioned property was constructed by Mr. Dickerson and his family members and is a private line owned by Mr. Dickerson.

19. The water supply line traversing the petitioned property connects one tract of land which is not part of the petitioned property to another tract of land which is not part of the petitioned property.
20. Crystal Clear has a six-inch water supply line which runs adjacent to the petitioned property.
21. Crystal Clear has not committed facilities or lines providing water service to the 79.964-acre tract.
22. Crystal Clear has not performed acts or supplied anything to the 79.964-acre tract.
23. The 79.964-acre tract is not receiving water service from Crystal Clear as that term has been defined by the courts.
24. The 79.964-acre tract is not receiving actual water service from Crystal Clear.
25. Crystal Clear is a borrower under a federal loan program.

### **III. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.041 and 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 Texas Administrative Code (TAC) § 24.113(s) and 16 TAC §§ 22.54 - 22.55.
3. Hays County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
4. The presence of a residential supply line that runs beneath the petitioned property and serves a separate property is not proof that the 79.964-acre tract is receiving water service under TWC § 13.254(a-5).
5. The presence of the six-inch water supply line which runs adjacent to the petitioned property is not proof that the 79.964-acre tract is receiving water service.
6. The 79.964-acre property is not receiving water service from Crystal Clear under TWC § 13.254(a-5).
7. Las Colinas is entitled to approval of the petition having sufficiently satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r) and (s) by adequately

demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.

8. Under TWC § 13.254(a-6), the Commission may not deny the petition based on the fact that Crystal Clear is a borrower under a federal loan program.
9. Under TWC §13.257(r) and 16 TAC § 24.106(f), Crystal Clear is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording

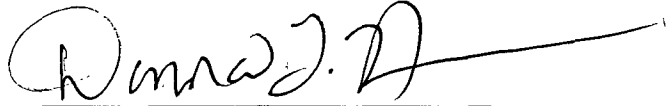
#### **IV. Ordering Paragraphs**

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

1. Las Colinas San Marcos Phase I LLC's petition is approved.
2. Las Colinas' 79.964-acre tract is removed from Crystal Clear Special Utility District's water CCN number 10297.
3. Crystal Clear's water CCN number 10297 is amended in accordance with this Order.
4. Crystal Clear shall comply with the recording requirements of TWC § 13.257(r) for the area in Hays County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
5. All other motions, requests for entry of specific fact statements and legal conclusions, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 28<sup>th</sup> day of September 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

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