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Item Number: 21

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

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BEFORE THE PUBLIC UTILITY
 COMMISSION OF TEXAS
 PUBLIC UTILITY COMMISSION
 FILING CLERK
 2016 OCT 21 AM 11:41

CRYSTAL CLEAR SPECIAL UTILITY DISTRICT'S MOTION FOR REHEARING

TO THE HONORABLE COMMISSIONERS:

NOW COMES, Crystal Clear Special Utility District ("Crystal Clear") and timely files this Motion for Rehearing.¹

I. INTRODUCTION

In granting Las Colinas San Marcos Phase I, LLC's ("Las Colinas") petition for expedited release ("Petition")², the Public Utility Commission ("PUC") erroneously concluded that: (1) the Commission may not deny the Petition based on the fact that Crystal Clear is a borrower under a federal loan program; and (2) Las Colinas has adequately proven that its 79.964-acre tract within Crystal Clear's water certificate of convenience and necessity ("CCN") No. 10297 in Hays County (the "Property") is not receiving water service under TWC § 13.254(a-5). In contrast, Crystal Clear's evidence demonstrates that it meets the standards for 7 U.S.C.A. § 1926(b) protection, federal preemption of TWC § 13.255 by § 1926(b) applies, and the Commission is required to deny or

¹ PUC Proc. Rule § 22.264(a) states that motions for rehearing shall be governed by APA. According to the APA, "[a] motion for rehearing in a contested case must be filed by a party not later than the 25th day after the date the decision or order that is the subject of the motion is signed. TEX. GOV'T CODE § 2001.146(a). The Order for which Crystal Clear seeks rehearing was signed on September 28, 2016 (Item No. 19). This Motion for Rehearing is filed on October 21, 2016. Therefore, this Motion for Rehearing is timely filed.

² The Petition is also considered the "Application" under PUC rules. See PUC Proc. Rule § 22.2(6).

dismiss the Petitioner's application under federal law. Crystal Clear also established that the Property is receiving water service under TWC § 13.254(a-5). Crystal Clear established that it has already undertaken various acts of service for the Property, including but not limited to providing facilities committed to the property and even used to run water beneath the Property to Las Colinas' owner, meeting the requirements for showing that the Property is receiving water service. Therefore, the PUC should grant this Motion for Rehearing, reverse its decision to grant Las Colinas' Petition, and render a final decision denying the Petition.

II. ARGUMENT

For the reasons set out below, the Commission erroneously granted Las Colinas' Petition. Accordingly, the PUC should grant this Motion for Rehearing, reverse its decision to grant Las Colinas' Petition, and render a final decision denying the Petition.

A. 7 U.S.C.A. § 1926(b) Preempts TWC §13.254 Under the U.S. Supremacy Clause.

Federal preemption is a *controlling legal principle* that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress. Such protection preempts any state law to the contrary, including TEX. WATER CODE § 13.254 and P.U.C. Subst. R. 24.113.³ Under federal law, the Commission cannot grant Las Colinas' application. Crystal Clear established that it is a federally indebted "association" under a loan issued pursuant to 7 U.S.C.A. § 1926(b), meets the "service" test under either the "bright line" or "ability to serve" standards for 7 U.S.C.A. § 1926(b) protection, and, therefore, federal preemption of TWC § 13.255 by § 1926(b) applies.⁴

³ Crystal Clear recognizes that TWC § 13.254(a-6) states that the Commission cannot deny a petition based on the fact that the certificate holder is a borrower under a federal loan program. But that state law does not change the fact that federal law controls.

⁴ See Crystal Clear's Motion to Intervene, Plea to the Jurisdiction, Motion to Dismiss and Response (Item No. 7); Crystal Clear's Response to Staff's Final Recommendation (Item No.10); Crystal Clear's Reply to Las Colinas' Aug. 23 Filing (Item No.12); and Crystal Clear's Exceptions to the Proposed Final Order (Item No. 14), all of which, including attachments thereto, are incorporated herein by reference.

Thus, the Commission must deny or dismiss Las Colinas' Petition due to the irreconcilable conflict. The Commission erroneously reached the opposite conclusion. Therefore the Commission must reverse its decision to grant Las Colinas' Petition and render a final decision denying the Petition.

B. The Property is Receiving Water Service.

TWC § 13.254(a-5) only permits release of a tract of land if it is “not receiving water or sewer service.” The Water Code broadly defines “service” as

- 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 this chapter 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.

TWC § 13.002(21). Notably, the statute does not require actual water or sewer service. In *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex.App.-Austin 2014, pet. filed), the Third Court of Appeals explained that “the term ‘service’ is of intentionally broad scope and encompasses an array of activities” in which a retail public utility might engage. This means that *any act* performed, *thing furnished or supplied*, or *any facilities or lines committed or used* for the property in question supports a finding that the property is receiving water service under Section 13.254(a-5) (emphasis added).⁵ Thus, actual water or sewer service is not required by the statute before a property is considered to be receiving water or sewer service, and a property could be receiving water or sewer service if the retail public utility performed an act in furtherance of providing water or sewer service to the property.⁶

Here, the Property is receiving water service under TWC § 13.254(a-5). Crystal Clear established that it has undertaken various acts of service for the Property. Crystal Clear has active water facilities running water under the Property and serving Las Colinas' owner's residence on a

⁵ *Id.* at 136.

⁶ *See id.* at 140; TWC § 13.002(21).

1.97-acre parcel that is surrounded by the Property on three borders, and by Interstate 35 to the West (“Dickerson Tract”).⁷ Crystal Clear has a 6" supply line running along the far-east part of the Property.⁸ That 6" line can provide basic domestic service to the entire Property.⁹ From that supply line, Crystal Clear has already installed a meter and a residential supply line that runs beneath the Property to Las Colinas’ owner’s residence on the Dickerson Tract.¹⁰

In addition to the active water service currently provided to Las Colinas’ owner on the Dickerson Tract, Crystal Clear has performed other “act[s]” and committed facilities qualifying as “service” to the remainder of the Property in which Reagan Dickerson owns by and through his company, Las Colinas. For example, Crystal Clear makes service available to Las Colinas’ owner and Las Colinas from its Hunter Plant, located approximately two miles from the Property.¹¹ The 6" service line currently supplying water to the Dickerson Tract via a service line from the meter running under the Property runs approximately 3.5 miles back to the Hunter Plant.¹² From the Hunter Plant, Crystal Clear has ample water supply to serve the remainder of the Property owned by Mr. Dickerson, and has incurred costs in connection with keeping adequate water supplies available for the Property.¹³

⁷ See Crystal Clear’s Motion to Intervene, Plea to the Jurisdiction, Motion to Dismiss and Response (Item No. 7).

⁸ *Id.*

⁹ *Id.* While the 6" line can provide basic domestic service to the entire Property, in order to provide fire flow, system modifications would need to be made.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Crystal Clear has also dedicated time and expense in responding to past service requests from Mr. Dickerson to serve the Property.¹⁴ For example, Crystal Clear incurred engineering, planning, and design expenses in preparing an estimate to add up to 1,292 connections to the Property.¹⁵ To date, Crystal Clear stands ready to perform additional acts of service and commit additional facilities to the Property as needed.

With this evidence in the record, and without an evidentiary hearing to weigh the credibility of the witnesses under cross examination, the PUC cannot conclude that Las Colinas met its burden of proving that the Property is not receiving water service. Therefore, the Commission should reverse its decision to grant Las Colinas' Petition and render a final decision denying the Petition.

IV. PRAYER

For the reasons set out above, the Commission erroneously granted Las Colinas' Petition and decided to reduce Crystal Clear's certificated service area. Accordingly, Crystal Clear respectfully requests that the Commission grant this Motion for Rehearing, reverse its decision to grant Las Colinas' Petition, and render a final decision denying the Petition. Crystal Clear further requests that the PUC grant to it all such other relief to which it is entitled.

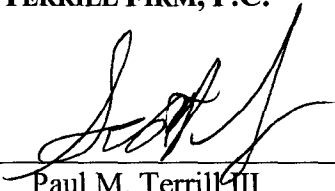
¹⁴ *Id.*

¹⁵ *Id.*

Respectfully submitted,

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**ATTORNEYS FOR CRYSTAL CLEAR SPECIAL UTILITY
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CERTIFICATE OF SERVICE

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