

Control Number: 46148



Item Number: 25

Addendum StartPage: 0

**Hernandez, Nancy**

**From:** Journeay, Stephen  
**Sent:** Monday, December 05, 2016 1:51 PM  
**To:** agency\_req\_rep (agency\_req\_rep@texasattorneygeneral.gov)  
**Cc:** Hubenak, Priscilla; Preister, David; Sterling, Elizabeth; Linda Secord (linda.secord@texasattorneygeneral.gov); Billings-Ray, Kellie; Journeay, Stephen; Pemberton, Margaret; Hernandez, Nancy; Commissioners Offices  
**Subject:** Request representation, PUC Docket No. 46148, Crystal Clear SUD v. PUC, D-1-GN-16-005840  
**Attachments:** 46148\_CrystalClear\_citations.pdf; 46148\_CrystalClear\_petition.pdf

46148  
RECEIVED

2016 DEC -5 PM 2:45

PUBLIC UTILITY COMMISSION

Mr. Jim Davis, Deputy, Attorney General for Civil Litigation

Re: Crystal Clear Special Utility District v. PUC, No. D-1-GN-16-005840

Dear Mr. Davis:

The Public Utility Commission of Texas was served with a citation in the above referenced cause number on December 2, 2016. This letter is to request representation by the Attorney General in this matter. A copy of the petition and four citations are attached.

This lawsuit relates to PUC Docket No. 46148 – 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.

If you need further information, please call me at 512-936-7215.

Stephen Journeay, Director

Commission Advising and Docket Management  
Public Utility Commission of Texas

[stephen.journeay@puc.state.tx.us](mailto:stephen.journeay@puc.state.tx.us)  
[stephen.journeay@puc.texas.gov](mailto:stephen.journeay@puc.texas.gov)

(512) 936-7215  
(512) 936-7208 (fax)

35

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
CAUSE NO. D-1-GN-16-005840

CRYSTAL CLEAR SPECIAL UTILITY DISTRICT

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DONNA L. NELSON; KENNETH W. ANDERSON, JR.;  
AND BRANDY MARTY MARQUEZ, IN THEIR OFFICIAL CAPACITIES AS COMMISSIONERS OF THE , Defendant  
PUBLIC UTILITY COMMISSION OF TEXAS; AND LAS COLINAS SAN MARCOS PHASE I, LLC

TO: PUBLIC UTILITY COMMISSION OF TEXAS  
BY SERVING ITS EXECUTIVE DIRECTOR BRIAN LLOYD  
1701 NORTH CONGRESS AVE  
AUSTIN, TEXAS 78701  
OR WHEREVER THEY MAY BE FOUND

Defendant, in the above styled and numbered cause:

**YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFFS ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on DECEMBER 01, 2016 in the 53RD JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 02, 2016.

REQUESTED BY:  
SCOTT RAMSEY SHOEMAKER  
810 W 10TH ST  
AUSTIN, TX 78701  
BUSINESS PHONE: (512) 474-9100 FAX: (512) 474-9888



*[Signature]*  
Velva L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: RUBEN TAMEZ

R E T U R N

Came to hand on the 2 day of DECEMBER 2016 at 12:40 o'clock P.M., and  
executed at 1701 North Congress Avenue, Austin, Texas within the County of  
TRAVIS on the 2 day of DECEMBER 2016, at 3:14 o'clock P.M.,  
by delivering to the within named PUBLIC UTILITY COMMISSION OF TEXAS, each  
in person, a true copy of this citation together with the PLAINTIFFS ORIGINAL PETITION, LAWYER  
REFERRAL accompanying pleading, having first attached such copy of such citation to such copy of  
pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\* BY DELIVERY TO ITS  
EXECUTIVE DIRECTOR,  
BRIAN LLOYD, RECEIVED

*[Signature]*  
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

*[Signature]*  
BY TAMEZ HARRIS,  
LEARN ASSISTANT

By: *[Signature]*

*[Signature]*  
Printed Name of Server

\_\_\_\_\_ day of \_\_\_\_\_

Notary Public, THE STATE OF TEXAS

TRAVIS County, Texas

D-1-GN-16-005840

SERVICE FEE NOT PAID

P01 - 000046876

☐ Original

☐ Service Copy

**Velva L. Price  
District Clerk  
Travis County  
D-1-GN-16-005840  
Ruben Tamez**

CAUSE NO. \_\_\_\_\_

~~~~~

53RD JUDICIAL DISTRICT

1. This case is an appeal from a final Order issued by the PUC and Commissioners granting Las Colinas' petition for "expedited release" pursuant to Texas Water Code section 13.254(a-5). Crystal Clear SUD files this appeal and seeks judicial review of the Order granting Las Colinas' expedited release petition. Crystal Clear SUD also seeks declarations regarding the constitutionality, construction, and application of certain sections of the Texas

Water Code. The PUC's and Commissioners' interpretation of the Texas Water Code interferes with and impairs Crystal Clear SUD's legal rights and privileges.

## **II. DISCOVERY CONTROL PLAN**

2. Discovery in this matter will be conducted under Level 3 of the Discovery Control Plan set forth in Texas Rule of Civil Procedure 190.4.

## **III. PARTIES**

3. Plaintiff Crystal Clear SUD is a special utility district created under the authority of Texas Water Code chapter 65, with its principal place of business in San Marcos, Hays County, Texas. Crystal Clear's 165 square-mile service area covers portions of Guadalupe, Comal, and Hays Counties, including part of the high-growth I-35 corridor between Austin and San Antonio.

4. Defendant Las Colinas is the owner of a 79.964-acre tract of land in Hays County, Texas (the "Property"), which lies within Crystal Clear SUD's water CCN No. 10297. Las Colinas may be served with citation by serving its Managing Member, Reagan T. Dickerson, at Las Colinas' business office located at 5225 Interstate Highway 35 South, San Marcos, Texas 78666, or wherever else he may be found within or without the State of Texas.

5. Defendant, the PUC, is a state governmental agency. The PUC may be served with process by serving its Executive Director, Brian Lloyd, at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas 78701, or wherever else he may be found within or without the State of Texas.

6. Defendants, the Commissioners, are sued in their official capacities. Each of the Commissioners may be served with process at the PUC's business office located at 1701 North

Congress Avenue, Austin, Travis County, Texas 78701, or wherever else they may be found within or without the State of Texas.

7. The Attorney General of Texas is notified of this proceeding pursuant to Section 37.006(b) of the Texas Civil Practice and Remedies Code. The Attorney General may be served with process by serving the Honorable Ken Paxton at 209 West 14th Street, 8th Floor, Austin, Travis County, Texas 78701.

#### **IV. JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action because Crystal Clear SUD seeks to vindicate its rights under the Texas Constitution, and because Crystal Clear SUD seeks a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code chapter 37, and because Crystal Clear SUD seeks judicial review of an Order issued by the PUC and its Commissioners. The District Court has jurisdiction to hear this suit pursuant to Texas Utilities Code section 15.001 and/or Texas Water Code section 13.381.

9. Venue is proper in Travis County because Crystal Clear SUD requests declarations regarding the validity, construction, and applicability of provisions of the Texas Water Code. The principal office of the PUC and the Commissioners is in Travis County. Venue is therefore proper in Travis County, Texas pursuant to Texas Civil Practice and Remedies Code sections 15.002(3), 15.004, and 15.016.

#### **V. RULE 47 STATEMENT**

10. The damages Plaintiff seeks are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief. Plaintiff does not

waive by this paragraph its right to an award of monetary relief in excess of \$100,000. Plaintiff also demands a judgment for all the other relief to which it deems itself entitled.

## **VI. CONDITIONS PRECEDENT**

11. All conditions precedent to this suit have been performed or have occurred.

## **VII. BACKGROUND**

12. Crystal Clear SUD provides water service pursuant to a Certificate of Convenience and Necessity ("CCN") regulated by the PUC, under which Crystal Clear SUD is the exclusive water utility services provider within its certificated service area. Such water services are also provided in accordance with Texas Water Code chapter 65.

13. Las Colinas owns Property within Crystal Clear SUD's certificated service area.

14. On July 11, 2016, Las Colinas filed an expedited release petition with the PUC. Las Colinas claimed it qualified for expedited release under Texas Water Code section 13.254(a-5) because its Property is at least 25 acres, is located in a qualified county, and is allegedly not receiving water service.

15. Under Texas Water Code section 13.254(a-5), the owner of a tract of land that is at least 25 acres and that is not receiving water or water service may petition for expedited release of the area from a certificate of public convenience and necessity, and is entitled to that release, if the landowner's property is located in a county with a population of at least one million or in a county adjacent to a county with a population of at least one million. *See* TEX. WATER CODE § 13.254(a-5).

16. However, Crystal Clear SUD is the recipient of a loan issued by the United States Department of Agriculture, Rural Development under 7 U.S.C. section 1921 *et seq* (the "Federal Loan"). The debt was issued in July 22, 2016, and remains outstanding. The Federal Loan was

in the original amount of \$3,200,000 from the United States to Crystal Clear SUD, under the authority of 7 U.S.C. section 1926, and was then purchased by the USDA.

17. Section 1926(b) states: “The service provided or made available through any such [federally indebted] association shall not be curtailed or limited . . . by the granting of any private franchise for similar service within such area during the term of such loan.” 7 U.S.C. § 1926(b). However, by its petition for expedited release, Las Colinas sought, pursuant to section 13.254(a-5) of the Texas Water Code, authority from the PUC to have Crystal Clear SUD replaced as the provider of water service on the Property. The Property was properly certificated to Crystal Clear SUD, and was properly certificated to Crystal Clear SUD at the time its Federal loan was funded. Therefore, federal law prohibits the PUC and Commissioners from granting Las Colinas’ section 13.254(a-5) petition.

18. Rather than apply section 1926(b) to Las Colinas’ application, the PUC and Commissioners declined to apply or even consider the federal law. This is because, contrary to the supremacy of federal law, the Texas Legislature has enacted section 13.254(a-6), which states that the PUC “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.” In other words, the PUC took the position that Texas law, on its face, instructs the PUC to ignore and violate federal law. If section 13.254(a-6) is applied in this fashion, it violates the Supremacy Clause of the United States Constitution.

19. On September 28, 2016, the PUC and Commissioners approved Las Colinas’ section 13.254(a-5) petition for decertification. *See Exhibit A* (PUC Order). Such approval was contrary to Texas law set forth in section 13.254(a-5). Such approval was also contrary to federal law set forth in section 1926(b).



20. On October 21, 2016, Crystal Clear SUD filed a motion for rehearing. On November 2, 2016, the PUC and Commissioners overruled Crystal Clear SUD's motion for rehearing. Crystal Clear SUD hereby appeals the PUC's Order.

## **VIII. CAUSES OF ACTION**

### **A. Judicial Review of an Agency Order**

21. The Texas Water Code provides that any party to a proceeding before the PUC is entitled to judicial review under the substantial evidence rule. *See* TEX. WATER CODE § 13.381. The Texas Utilities Code also provides that any party to a proceeding before the PUC is entitled to judicial review under the substantial evidence rule. *See* TEX. UTIL. CODE § 15.001. Pursuant to Texas law, Crystal Clear SUD seeks judicial review of the PUC's Order granting Las Colinas' petition for expedited release, and requests that this Court reverse the PUC's Order.

22. The PUC's Order is erroneous and should be reversed because Las Colinas has not proven that Crystal Clear SUD provides no service to the Property, and therefore expedited release under section 13.254(a-5) is not available. The PUC erroneously applied section 13.254(a-5) by granting Las Colinas' expedited release petition. Under section 13.254(a-5), the owner of a tract of land may petition for expedited release of the area from a certificate of public convenience and necessity if the tract of land is "not receiving water or water service." TEX. WATER CODE § 13.254(a-5).

23. Las Colinas was not entitled to expedited release under section 13.254(a-5) if its Property was receiving "service" from Crystal Clear SUD. 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 . . . to its patrons, employees, other retail public utilities, and the public." *Id.* § 13.002(21). The term "facilities,"

in turn, is defined to include “[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.” *Id.* § 13.002(9).

24. These broad statutory definitions mean that “service” includes more than just active connections; it means “any facilities committed or used” to provide service to the Property. Thus, if a utility has “facilities” in connection with certain property, it provides “service” to that property. Las Colinas’ Property received water “service” under the provisions of the Water Code at the time it filed its decertification petition. Crystal Clear SUD has facilities or lines committed to providing water service to the Property and has performed acts in furtherance of its obligation to provide water service to the Property pursuant to its CCN.

25. Because Las Colinas has not established that Crystal Clear SUD does not provide “service” to the Property as defined in the Water Code, Las Colinas did not qualify for decertification under § 13.254(a-5). Thus, the involuntary decertification of the Property violates the Water Code as well as public policy and PUC policy, resulting in the stranding and squandering of Crystal Clear SUD’s investments to serve land in its service area.

26. In addition, the PUC and Commissioners erred by imposing the burden of proof on the wrong party. Las Colinas, as the applicant, has the burden to show that Crystal Clear SUD does not provide service to the Property. By its Order, the PUC and Commissioners improperly required Crystal Clear SUD to prove that it *did* provide service to the Property. As a result, Crystal Clear’s SUD’s substantial rights have been prejudiced because the administrative findings, inferences, conclusions, and decisions are in violation of a constitutional or statutory

provision, made through unlawful procedure, and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

27. The PUC's conclusion that Las Colinas satisfied all criteria under § 13.254(a-5) was clearly erroneous. The PUC's misapplication of § 13.254(a-5) contravenes the Texas Water Code, is affected by errors of law, is not supported by substantial evidence considering the reliable and probative evidence in the record as a whole, and thus interferes with and impairs Crystal Clear SUD's legal right, privilege, and obligation to serve its certificated service area pursuant to its CCN. Therefore, this Court should overturn the PUC's Order decertifying the Property from Crystal Clear SUD's CCN.

**B. Claims for Declaratory Judgment**

28. The issues in this case are of significant importance and extend beyond the PUC's Order. Crystal Clear SUD seeks declarations regarding the constitutionality, construction, and application of certain sections of the Texas Water Code pursuant to the Uniform Declaratory Judgment Act, Texas Civil Practice and Remedies Code chapter 37.

**1. Violation of Supremacy Clause of the United States Constitution**

29. Crystal Clear SUD respectfully requests that the Court enter a judgment declaring that the second sentence of Texas Water Code section 13.254(a-6) violates the Supremacy Clause of the United States Constitution. The United States Constitution states that "the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby." U.S. CONST. art. VI. Federal law prohibits the PUC from curtailing a federally indebted water service provider's certificated area by allowing another person to provide such service in that area, *see* 7 U.S.C. § 1926(b), and yet the second sentence of Water Code section 13.254(a-6) instructs the PUC that it cannot deny a petition for decertification based on such federal law:

The utility 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.

TEX. WATER CODE § 13.254(a-6). Such state law prohibition violates the Supremacy Clause.

30. As a result of Las Colinas' application, and the PUC's grant thereof, Crystal Clear SUD is being deprived of its right to non-encroachment, non-curtailment, and non-limitation under 7 U.S.C. section 1926(b) and is in danger of permanently losing the Property from its service area along with the associated revenue stream derived therefrom. The PUC is engaging in such deprivation of rights secured by federal law under color of state law by way of following the unconstitutional mandate of section 13.254(a-6). 7 U.S.C. section 1926(b) preempts any conflicting state law, and must be enforced pursuant to the Supremacy Clause of the United States Constitution.

31. The PUC and Commissioners concluded that they were bound by the second sentence of section 13.254(a-6) and could not, therefore, comply with section 1926(b). Because section 13.254(a-6) is unconstitutional, Crystal Clear SUD respectfully requests that the Court enter a judgment declaring the Order null and void as entered pursuant to an unconstitutional state law.

**2. Ultra vires issuance of Order contrary to section 1926(b)**

32. Because Crystal Clear SUD is a federally indebted association, Las Colinas could not have its Property decertified from Crystal Clear SUD's certificated area. However, the Commissioners entered an Order granting Las Colinas' petition for decertification. Such Order is contrary to 7 U.S.C. section 1926(b) and, therefore, was an ultra vires act. Crystal Clear SUD respectfully requests that the Court enter a judgment declaring the Order null and void as entered in violation of federal law.

**3. Ultra vires issuance of Order contrary to section 13.254(a-5)**

33. Because Crystal Clear SUD provides “service” to the Property as defined in the Water Code, Las Colinas did not qualify for decertification under section 13.254(a-5). However, the Commissioners entered an Order granting Las Colinas’ petition for decertification. Such Order is contrary to Texas Water Code section 13.254(a-5) and, therefore, was an ultra vires act. Crystal Clear SUD respectfully requests that the Court enter a judgment declaring the Order null and void as entered in violation of state law.

**4. Construction of “service” under section 13.254(a-5)**

34. Crystal Clear SUD requests a declaration construing the term “service” in section 13.254(a-5). Crystal Clear SUD requests a declaration that the term “service” in section 13.254(a-5) incorporates the full definition of “service” in section 13.002(21) and the full definition of “facilities” in section 13.002(9). Any act by Crystal Clear SUD that constitutes “service” as defined in section 13.002(21) and that is committed or directed to the subject Property is sufficient to disqualify the Property from decertification under section 13.254(a-5). The PUC’s and Commissioners’ Order is based on a definition of “service” that is narrower than provided under Texas law. Crystal Clear SUD respectfully requests that the Court enter a judgment declaring the Commissioners’ Order null and void as entered in violation of state law.

**5. Burden of proof**

35. Crystal Clear SUD requests a declaration that the burden of proof in a section 13.254(a-5) proceeding is on the applicant, not on the water service provider. The PUC’s and Commissioners’ Order is based on the improper imposition of the burden of proof on Crystal Clear SUD instead of on Las Colinas where it belongs. This is clear error that affected the PUC’s Order and the rights of Crystal Clear SUD. Crystal Clear SUD respectfully requests that

the Court enter a judgment declaring the PUC's and Commissioners' Order null and void as entered in violation of state law.

**C. Claim for Attorneys' Fees and Costs**

36. Crystal Clear SUD requests judgment against the PUC, the Commissioners, and Las Colinas for all of Crystal Clear SUD's reasonable and necessary attorneys' fees and costs under section 37.009 of the Texas Civil Practice and Remedies Code. Crystal Clear SUD also seeks a conditional award of its attorneys' fees, expenses, and costs incurred in any appeal of this matter. Crystal Clear SUD also seeks recovery of all pre-judgment, post-judgment, and/or other interest allowed by law on any and all sums Crystal Clear SUD seeks in this lawsuit.

**IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Crystal Clear Special Utility District respectfully requests the following relief:

- a. That Defendants Las Colinas San Marcos Phase I, LLC, the Public Utility Commission of Texas, and Donna L. Nelson, Kenneth W. Anderson, Jr., and Brandy Marty Marquez, in their official capacities as Commissioners of the Public Utility Commission of Texas (collectively, "Defendants") be cited to appear and answer herein;
- b. That the Court reverse the PUC's Order;
- c. That Plaintiff Crystal Clear Special Utility District have judgment against Defendants declaring that:
  1. If a utility has "facilities," as defined in Texas Water Code section 13.002(9), committed or used in connection with a property, the property

owner is receiving “service” from the utility for purposes of Texas Water Code section 13.254(a-5).

2. If a utility provides “service” to a property as defined in Texas Water Code section 13.002(21), the property owner is receiving “service” from the utility for purposes of Texas Water Code section 13.254(a-5).
3. The term “service” in Texas Water Code section 13.254(a-5) fully incorporates the definition of “service” in Texas Water Code section 13.002(21).
4. On a petition for expedited release under Texas Water Code section 13.254(a-5), the burden of proof is on the applicant to demonstrate that his property is not receiving water or water service.
5. Texas Water Code section 13.254(a-6)’s requirement that “The utility 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,” is unconstitutional, void, and of no effect.
6. The PUC’s and Commissioners’ September 28, 2016 Order is null and void as entered in violation of 7 U.S.C. section 1926(b).
7. The PUC’s and Commissioners’ September 28, 2016 Order is null and void as entered pursuant to an unconstitutional state law.
8. The PUC’s and Commissioners’ September 28, 2016 Order is null and void as entered in violation of Texas Water Code section 13.254(a-5).
9. Las Colinas San Marcos Phase I, LLC’s Property is not removed from Crystal Clear Special Utility District’s water CCN No. 10297; and Crystal

Clear Special Utility District's water CCN No. 10297 is not amended to remove Las Colinas San Marcos Phase I, LLC's Property from the certificated service area for water CCN No. 10297.

- d. That Crystal Clear Special Utility District have judgment for reasonable and necessary attorneys' fees and costs pursuant to Texas Civil Practice and Remedies Code section 37.009;
- e. That Crystal Clear Special Utility District be awarded pre-judgment and post-judgment interest as provided by law; and
- f. That Crystal Clear Special Utility District be awarded all other relief to which it may be entitled.

Respectfully submitted,

TERRILL & WALDROP

By: 

Paul M. Terrill III  
State Bar No. 00785094  
G. Alan Waldrop  
State Bar No. 20685700  
Ryan D. V. Greene  
State Bar No. 24012730  
Scott R. Shoemaker  
State Bar No. 24046836  
810 West 10th Street  
Austin, Texas 78701  
Tel (512) 474-9100  
Fax (512) 474-9888  
pterrill@terrillwaldrop.com  
awaldrop@terrillwaldrop.com  
rgreene@terrillwaldrop.com  
sshoemaker@terrillwaldrop.com

**ATTORNEYS FOR CRYSTAL CLEAR SPECIAL  
UTILITY DISTRICT**





DOCKET NO. 46148

RECEIVED

2016 SEP 28 AM 11:22

PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

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 §

### 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

<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

---

<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.

---

<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

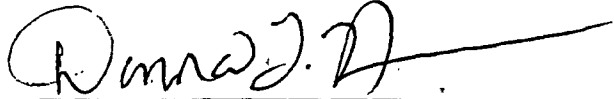
#### IV. Ordering Paragraphs

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

W2013

q:\cadm\orders\final\46000\46148 fo.docx