



Control Number: 46148



Item Number: 27

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2021 SEP 14 PM 2:22

## *Public Utility Commission of Texas*

**TO:** Central Records

**FROM:** Stephen Journey  
Commission Counsel

**DATE:** September 14, 2021

**RE:** 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*

The Commission entered its order in this Docket on September 28, 2016 and the control number was closed. Crystal Clear Special Utility District sought judicial review of that order and the Travis County District Court recently entered an agreed order remanding this matter to the Commission.

Please reopen this control number so that parties may make filings in this docket.

In addition, please file the attached remand order of the district court in this docket.

Let me know if you have any questions.

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**Cause No. D-1-GN-16-005840**

CRYSTAL CLEAR SPECIAL  
UTILITY DISTRICT,

*Plaintiff,*

v.

PUBLIC UTILITY COMMISSION OF TEXAS; DONNA L. NELSON, KENNETH W. ANDERSON, JR., AND BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas; and LAS COLINAS SAN MARCOS PHASE I, LLC,

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS)

53RD JUDICIAL DISTRICT

**AGREED ORDER TO REMAND  
TO THE PUBLIC UTILITY COMMISSION OF TEXAS**

Before the Court is the parties' Agreed Motion for Remand filed by Crystal Clear Special Utility District ("Crystal Clear SUD" or "Plaintiff"), the Public Utility Commission of Texas and its Commissioners and Executive Director (collectively, the "PUC Defendants") and Las Colinas San Marcos Phase I, LLC ("Las Colinas"). Crystal Clear SUD and Las Colinas have entered into a settlement agreement, contingent upon additional relief to be requested from the Public Utility Commission of Texas ("PUC").

## I. Background

1. This is an appeal from an order of the Public Utility Commission of Texas of September 28, 2016 releasing property owned by Las Colinas from Crystal Clear SUD's certificated water-utility service area pursuant to the expedited release provision in Tex. Water Code § 13.254(a-5).<sup>1</sup>

2. Las Colinas filed an application in July 2016 for expedited release of the property at issue under section 13.254(a-5) of the Texas Water Code. *Id.* The PUC granted the application and removed the 79.964-acre property from Las Colinas' service area by its order of September 28, 2016. Tex. Pub. Util. Comm'n, *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*, Docket No. 46148.

3. Pursuant to section 5.351 of the Texas Water Code, Crystal Clear SUD sought judicial review of the order granting the expedited release, naming both the PUC Defendants and Las Colinas as defendants.

4. This case originally was assigned to Judge Scott Jenkins pursuant to Travis County Local Rule 10.2. After Judge Jenkins' retirement from the bench, the

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<sup>1</sup> Since the release of the property at issue from the Crystal Clear SUD service area pursuant to Tex. Water Code § 13.254(a-5), the provision has been amended and moved to Tex. Water Code § 13.2541.

case was reassigned to Judge Maria Cantu Hexsel by Local Administrative Judge Lora Livingston on March 10, 2021.

5. No hearing on the merits has been held in the case, although briefing regarding summary judgment has been completed. By Order dated November 29, 2017, Judge Jenkins entered a scheduling order that would have governed the remainder of the case. But in January of 2018, Judge Jenkins informally abated the case pending the outcome of the parallel lawsuit filed in the United States District Court for the Western District of Texas, Docket No. 1:17-cv-00254-LY. The case has remained in abatement since that time.

6. Crystal Clear's federal lawsuit challenged the release order at issue in this case under 7 U.S.C. § 1926(b), a pivotal federal statute that bears upon a state regulatory agency such as the PUC's legal authority to remove acreage from certain utilities' service areas. Judge Yeakel ultimately ruled in favor of Crystal Clear, but that judgment was appealed to the United States Court of Appeals for the Fifth Circuit. After the en banc Fifth Circuit issued an opinion in a related but different case involving Section 1926(b), thereby reversing prior Fifth Circuit interpretations of that statute, the Fifth Circuit vacated the judgment in favor of Crystal Clear and remanded the case back to the United States District Court for the Western District of Texas for further proceedings in light of the en banc decision.

## **II. The interested parties have settled their dispute**

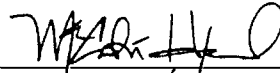
7. In April 2021, Crystal Clear SUD and Las Colinas entered into a settlement agreement regarding the release order at issue in this suit. Pursuant to this settlement agreement, Crystal Clear SUD and Las Colinas will jointly ask the PUC to allow Las Colinas to withdraw its petition for release of the property from Crystal Clear SUD's service area and thus order that the property at issue be reinstated into Crystal Clear SUD's service area.

8. At the request of all parties, Judge Yeakel has stayed the related federal case, as the settlement between Crystal Clear and Las Colinas, if approved by the PUC, should eliminate any need for any further litigation between the parties in state or federal court.

9. Thus, Crystal Clear SUD, the PUC Defendants, and Las Colinas jointly ask the Court to remand this matter to the PUC so the PUC may consider the settlement between Crystal Clear SUD and Las Colinas. The PUC's potential approval of the settlement, and its vacatur of its previous order releasing the property from Crystal Clear SUD's service area, should eliminate the need for judicial review of this matter by the Travis County District Court. Under the terms of the settlement agreement, the federal lawsuit will be dismissed upon the PUC's reinstatement of the property in question to Crystal Clear's water certificate of convenience and necessity service area, thus terminating all litigation in this case.

The Court finds that the motion has merit and should be granted. It is therefore ORDERED that the parties' Agreed Motion to Remand to the Public Utility Commission of Texas is hereby GRANTED. This matter is remanded to the Public Utility Commission of Texas for further proceedings and consideration of the settlement agreement.

Signed on this day, August 5, 2021.

  
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MARIA CANTÚ HEXSEL  
Presiding Judge

**AGREED AS TO FORM AND SUBSTANCE:**

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THE PUBLIC UTILITY COMMISSION  
OF TEXAS AND ITS COMMISSIONERS**

Cause No. D-1-GN-16-005840, 53rd Judicial District, Travis County, Texas  
Agreed Order to Remand to the PUC

/s/ Paul M. Terrill, III (by John R. Hulme with permission)

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