



Control Number: 46148



Item Number: 29

DOCKET NO. 46148

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

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER GRANTING WITHDRAWAL AND DISMISSING PETITION

This Order addresses the motion of Las Colinas San Marcos Phase I LLC to withdraw its petition for streamlined expedited release and for vacatur of the Commission's order granting that petition. Finding the circumstances of this docket present good cause, the Commission grants Las Colinas' request to withdraw its petition, dismisses the petition for without prejudice, and vacates its order.

On July 11, 2016, Las Colinas filed its petition to release an 80-acre tract of land in Hays County from the service area certificated to Crystal Clear Special Utility District under certificate of convenience and necessity number 10297.¹ The Commission granted the petition for streamlined expedited release by order dated September 28, 2016.² Subsequently, Crystal Clear appealed the order in Travis County.³ Later, Crystal Clear also filed suit in the United States District Court for the Western District of Texas seeking declaratory and injunctive relief.⁴

The federal district court ruled that the Commission's order violated federal law and was void. The court also found that two provisions of the Texas Water Code were preempted by federal law. Both the Commission and Las Colinas appealed the judgment to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit stayed the appeals pending the hearing and decision

¹ Petition (July 11, 2016).

² Order (Sept. 28, 2016).

³ *Crystal Clear Spec. Util. Dist. v. Public Utility Commission*, No. D-1-GN-16-005840 (53rd Dist. Ct., Travis County, Tex., Apr. 26, 2019).

⁴ *Crystal Clear Spec. Util. Dist. v. Walker*, No. A-17-CV-00254-LY, 2018 WL 6242370 (W.D. Tex. Nov. 29, 2018), report and recommendation adopted as modified sub nom. *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-Ly, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

in a different proceeding involving the same issues.⁵ In *Green Valley*, the Fifth Circuit *en banc* reversed prior circuit precedent, vacated the district court's judgment in that case, and remanded the matter for further action. Following the decision in *Green Valley*, the Fifth Circuit vacated the judgment against the Commission and Las Colinas and remanded the case back to the district court for further proceedings applying the standards established in the *Green Valley* case.

After Crystal Clear's federal suit was remanded, Crystal Clear and Las Colinas entered into a settlement agreement regarding the order at issue in this case. The state court entered an agreed order remanding the Commission's order for further proceedings in light of the settlement agreement.

Subsequent to the remand, Las Colinas filed its motion requesting withdrawal of its July 11, 2016 petition for streamlined expedited release and that the Commission vacate its prior order granting Las Colinas's petition. Under 16 TAC § 22.181(g)(3), a request to withdraw an application with or without prejudice after a proposed order has been issued may be granted only upon a finding of good cause by the Commission.

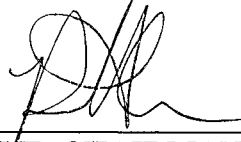
Granting this motion to withdraw will reinstate Las Colinas's property back into Crystal Clear's certificated service area and allow Crystal Clear to provide utility service to Las Colinas as it now desires. In addition, under the settlement agreement, granting this motion will end the on-going litigation and preserve Commission resources. The Commission finds these circumstances constitute good cause to grant Las Colinas' request to withdraw its application, without prejudice.

The Commission grants Las Colinas' request to withdraw its petition in this proceeding and dismisses the petition without prejudice under 16 TAC § 22.181(d)(10). Further, the Commission vacates its order dated September 28, 2016 that granted Las Colinas's petition.

⁵ *Green Valley Special Utility District v. City of Schertz*, 969 F. 3d 460 (5th Cir. 2020).

Signed at Austin, Texas the 2nd day of November 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER