



Control Number' 46148



Item Number' 8

Addendum StartPage 0

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PUBLIC UTILITY COMMISSION
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OF TEXAS

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

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Final Recommendation in response to Order No. 2. In support thereof, Staff would show the following:

I. BACKGROUND

On July 11, 2016, Las Colinas San Marcos Phase I LLC (Las Colinas or Petitioner) filed with the Public Utility Commission of Texas (Commission) a petition for expedited release of approximately 79.964 acres from Crystal Clear Special Utility District's (Crystal Clear SUD) water certificate of convenience and necessity (CCN) number 10297 in Hays County.¹ The petition was filed pursuant to Tex. Water Code § 13.254 (a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC).

On August 2, 2016, the Administrative Law Judge (ALJ) issued Order No. 2, which required Crystal Clear SUD to file a response by August 9, 2016. On August 9, 2016, Crystal Clear SUD filed its Motion to Intervene, Plea to the Jurisdiction, Motion to Dismiss, and Response.² Order No. 2 also required Staff to file its final recommendation by August 16, 2016. Therefore, this pleading is timely filed.

¹ 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 (July 11, 2016) ("Petition").

² Crystal Clear Special Utility District's Motion to Intervene, Plea to the Jurisdiction, Motion to Dismiss, and Response (Aug. 9, 2016) ("Motion to Intervene").

II. STATUTORY APPROVAL DEADLINE

Pursuant to TWC § 13.254(a-5) and 16 TAC § 24.113(s), the Commission must render a decision on a petition for expedited release 'not later than the 60th day after the date the landowner files the petition. A petition is not considered filed until it is deemed administratively complete.³ Las Colinas' petition was deemed administratively complete in Order No. 2, issued on August 2, 2016. Therefore, the 60-day deadline for administrative approval is October 3, 2016.

III. STAFF'S RESPONSE TO CRYSTAL CLEAR SUD'S MOTION TO INTERVENE

Staff is unopposed to Crystal Clear SUD's motion to be joined as an intervenor. Such an intervention is contemplated in 16 TAC § 24.113(s) by requiring the petitioner to give notice of the petition to the CCN holder. Furthermore, subsection (s) specifically states, 'The CCN holder may submit a response to the commission. Therefore, Staff recommends that the ALJ grant Crystal Clear SUD intervenor status.

In Crystal Clear SUD's Plea to Jurisdiction, Motion to Intervene, and Response, it argues (1) that Crystal Clear SUD has outstanding federal debt under 7 U. S. Code § 1926 (USC) that prevents the state of Texas from diminishing the District's franchise to provide utility service (i.e. its CCNs),⁴ and (2) that Crystal Clear SUD has taken actions which should be interpreted as constituting acts of service under the Texas Water Code.⁵ Staff disagrees that the property is receiving service and further notes that a CCN holder's position as having outstanding federal debt is explicitly removed from consideration by both TWC § 13.254(a-6) and 16 TAC § 24.113(s).

As to its first argument, Crystal Clear SUD argues that it is a special utility district with federal debt under the loan program referenced in 7 U.S. Code § 1926 (USC). Crystal Clear SUD argues this prevents the State of Texas from decertifying property pledged in security of indebtedness under such program. Staff notes that Crystal Clear SUD's argument involving

³ *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Conclusion of Law No. 13 (May 1, 2015).

⁴ Motion to Intervene at 2-3.

⁵ Motion to Intervene at 8.

federal debt is addressed and removed from consideration by TWC § 13.254(a-6) and 16 TAC § 24.113(s). Crystal Clear SUD's argument relating to its outstanding federal debt is specifically addressed by TWC § 13.254(a-6), which states: '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. Further, the Commission recently considered and rejected the same argument made by a different utility, concluding that '[u]nder TWC § 13.254(a-6), the Commission may not deny the petition based on the fact that [the special utility district] is a borrower under a federal loan program.'⁶ Thus, both Texas statute and Commission precedent preempt Crystal Clear SUD's argument. The fact that Crystal Clear SUD has outstanding debt cannot be the basis for a denial of Las Colinas' petition.

As for Crystal Clear SUD's second argument, that the property is receiving service, Crystal Clear SUD argues that it has 'active water facilities running under the property and servicing Mr. Dickerson's residence on a 1.97-acre parcel that is surrounded by the property on three borders'⁷ Crystal Clear further asserts it has installed a meter and a 6' residential supply line that runs adjacent to the property, which can provide domestic service to the entire property.⁸ Crystal Clear SUD also asserts that this supply line runs 3.5 miles to its Hunter Plant, which has ample water reserve to service the property.⁹ Crystal Clear also asserts that it is 'ready to perform additional acts of service and commit additional facilities to the property as needed.'¹⁰

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

⁶ *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County by Expedited Release*, Docket No. 45798, Conclusion of Law No. 8 (July 11, 2016). Staff notes that a Motion for Rehearing was filed in this case on July 29, 2016; however, no Commissioner voted to add the Motion for Rehearing to the Open Meeting agenda.

⁷ Motion to Intervene at 8.

⁸ *Id.*

⁹ *Id.* See also, Affidavit of Mike Taylor, Exhibit B, at 9.

¹⁰ *Id.*

anything to the particular tract.”¹¹ 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).”¹² In applying the rule of *Crystal Clear*, the Commission has specifically denied this definition-of-service argument made by CCN holders in other expedited release dockets.¹³ Here Crystal Clear SUD has asserted it has active facilities running under the property, and has submitted a map, showing the 6’ supply line running along the far-east portion of the property. According to the Affidavit of Mark Taylor, the General Manager of Crystal Clear SUD, this supply line can provide domestic service to the entire property.¹⁴ However, there are two problems with Crystal Clear SUD’s ‘service’ argument. To begin, while Crystal Clear SUD asserts that it has active lines that are ‘servicing’ Mr. Dickerson’s residence, Crystal Clear SUD has not clearly stated that Mr. Dickerson’s residence, located on a 1.97 acre parcel, is part of tract of land for which release is being sought.¹⁵ Secondly, even if that 1.97 acre parcel is part of the tract of land for which release is being sought, Crystal Clear SUD is applying a broader definition of “service”¹⁶ than that established under the precedent in *Crystal Clear*. Crystal Clear SUD fails to assert that Mr. Dickerson’s residence is currently receiving water from the active facilities, as required by Commission precedent. Therefore, Staff disagrees that the property is receiving service as that term has been defined by the *Crystal Clear* precedent.

¹¹ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.* 449 S.W.3d 130, 140-41 (Tex. App.—Austin, 2014, pet. denied) (emphasis original) (“*Crystal Clear*”).

¹² *Id.* at 140.

¹³ See e.g. *Petition of SLF IV – 114 Assemblage, L.P. to Amend Aqua Texas, Inc.’s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 44667, Final Order at 6-9 (Sept. 11, 2015); *Petition of HMP Ranch, Ltd. to Amend Johnson County Special Utility District’s Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Finding of Fact No. 23 (Dec. 18, 2015) (“Consistent with the Commission’s other recent decisions, even though a utility has facilities available and capable of providing water service, that does not mean the facilities are committed and dedicated to serving that particular tract.”).

¹⁴ Motion to Intervene at 8. See also, Affidavit of Mike Taylor, Exhibit B, at 9

¹⁵ *Id.* Exhibit B at 8, stating that ‘Mr. Dickerson’s residence on the small, 1.97-acre parcel that is surrounded by the Property on three borders. Under Staff’s reading the ‘Property’ is the area to be decertified, and 1.97 acre parcel containing Mr. Dickerson’s residence is not part of that ‘Property,’ but rather, is surrounded by it.

¹⁶ *Id.* Exhibit B at 8.

IV. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed Las Colinas' petition, and as supported by the attached memorandum of Leila Guerrero and Kristy Nguyen of the Water Utility Regulation Division (Attachment A), Staff recommends that Las Colinas' petition be approved. The maps and digital data submitted by Las Colinas' provide adequate information to demonstrate that Petitioner has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC §§ 24.113(r). Specifically, the petition shows that the property for which Las Colinas' seeks expedited release is located in a qualifying county (Hays County), the property is not receiving service, and the aggregated, contiguous tracts of land make up a single property that is at least 25 acres. Las Colinas' has shown through its petition that it meets the requirements for expedited release and therefore is entitled to such release.

The final map (Attachment B) and CCN (Attachment C) are attached to this filing.

V. CONCLUSION

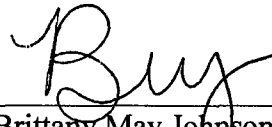
Staff respectfully requests that the ALJ issue an order finding Las Colinas' petition be approved

Filed: August 16, 2016

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Katherine Lengieza Gross
Managing Attorney
Legal Division

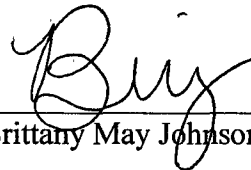


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DOCKET NO. 46148

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 16, 2016 in accordance with 16 TAC § 22.74.



Brittany May Johnson

Attachment A

PUC Interoffice Memorandum

To: Brittany Johnson, Attorney
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Manager
Heidi Graham, Manager
Water Utility Regulation Division

From: Leila Guerrero, Regulatory Accountant/Auditor
Kristy Nguyen, GIS Specialist
Water Utility Regulation Division

Date: August 8, 2016

Subject: **Docket No. 46148**, *Petition by Las Colinas San Marcos Phase I LLC for Expedited Release from Crystal Clear Special Utility District's Water Certificate of Convenience and Necessity (CCN) by Expedited Release in Hays County*

On July 11, 2016, Las Colinas San Marcos Phase I LLC ("Las Colinas" or "Petitioner"), filed a Petition for Expedited Release from water Certificate of Convenience and Necessity (CCN) No. 10297 held by Crystal Clear Special Utility District ("Crystal Clear SUD") in Hays County, pursuant to Texas Water Code § 13.254 (a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC). The petitioner asserts that the land is at least 25 acres, is not receiving water service, and is located in a qualifying county.

The Petitioner is requesting release of 79.964 contiguous acres of land, from Crystal Clear SUD. The Petitioner submitted an adequate map delineating the requested area for decertification with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.113(r). Mapping Staff confirmed the total acreage of the property and determined that the tracts are located within the subject property and are contiguous. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's uniform ownership of the tracts of land within the subject property.

The Petitioner provided an affidavit stating that Las Colinas is not receiving water service from Crystal Clear SUD, or any other water service provider. The affidavit further states that, there are no billing records or other documents indicating an existing account for the property. Furthermore, the Petitioner is not aware of any meters, lines or other facilities owned or operated by Crystal Clear SUD on the property. The property is located in Hays County, which is a qualifying county for expedited release petitions.

Therefore, the Petition meets the criteria set forth in TWC §13.254(a-5) and 16 TAC §24.113(r) and Staff recommends the Petition be approved. Attached is the amended map for Crystal Clear Special Utility District's water CCN and an amended certificate for CCN No. 10297.



Attachment B

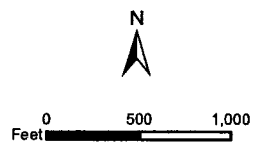
Crystal Clear Special Utility District
Portion of Water Service Area
CCN No. 10297
PUC Docket No. 46148
Petition by Las Colinas San Marcos I LLC to Amend
Crystal Clear SUD's CCN by Expedited Release in Hays County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

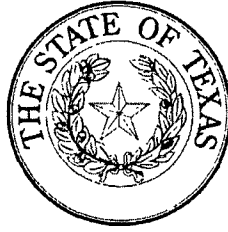
Water CCN Service Areas

-  10297 Crystal Clear SUD
-  10298 City of San Marcos



Map by: Kristy Nguyen
Date created: August 5, 2016
Project Path: n:\Final Maps\46148.mxd

Attachment C



Public Utility Commission of Texas

By These Presents Be It Known To All That

Crystal Clear Special Utility District

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10297

to provide continuous and adequate sewer utility service to that service area or those service areas in Hays County as by final Order or Orders duly entered by this Commission, which Order resulting from Docket No. 46148 is on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Crystal Clear Special Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the _____ day of _____ 2016.