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SOAH DOCKET NO. 473-20-3997.WS  
PUC DOCKET NO. 49926



APPLICATION OF CRYSTAL CLEAR §  
SPECIAL UTILITY DISTRICT FOR A §  
NAME CHANGE AND TO AMEND §  
ITS SEWER CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
COMAL, HAYS, AND GUADALUPE §  
COUNTIES §

PUBLIC UTILITY COMMISSION

OF TEXAS

**COMMISSION STAFF'S LIST OF ISSUES**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this list of issues. In support thereof, Staff would show the following:

**I. BACKGROUND**

On September 3, 2019, Crystal Clear Special Utility District (Crystal Clear) filed an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 21086 in Comal, Hays, and Guadalupe Counties. The application was filed pursuant to Texas Water Code (TWC) § 13.242-.250 and Texas Administrative Code (TAC) § 24.225-.237. Crystal Clear amended its application on September 20, 2019, October 9, 2019, and December 2, 2019.

On January 24, 2020, the City of San Marcos (City) filed a motion to intervene. On February 5, 2020, Carson Select Investments, LP (Carson) filed a motion to intervene. Both interventions were granted, and on May 27, 2020, both the City and Carson filed a request for hearing.

On June 16, 2020, an Order of Referral was issued, allowing Staff to file a list of issues by June 29, 2020. This pleading, therefore, is timely filed.

**II. ISSUES TO BE ADDRESSED**

**Applicant**

1. Does Crystal Clear possess the financial, managerial, and technical capability to provide continuous and adequate sewer service to the requested service area in accordance with TWC § 13.241(a) and 16 TAC § 24.227?

2. Does Crystal Clear possess a TCEQ-approved system that is capable of meeting TCEQ's design criteria for sewer treatment plans, TCEQ rules, and the TWC in accordance with TWC § 13.241(b)(2) and 16 TAC § 24.227(a)(2)(A)?
3. Does Crystal Clear have access to sewer treatment or capacity, or both, or a long-term contract for purchased sewer treatment or capacity, or both, with an entity whose system meets the requirements of 16 TAC § 24.227(a)(2)(A) in accordance with TWC § 13.241(b)(2) and 16 TAC § 24.227(a)(2)(B)?

**Notice**

4. Has Crystal Clear given notice as required by TWC § 13.246(a) and (a-1) and 16 TAC § 25.235(a) through (d)?

**Application**

5. Does Crystal Clear's amended application contain all relevant information required by TWC § 13.244 (b) through (d) and 16 TAC §§ 24.233(a) and 24.257?
6. What modifications to the application and mapping documents, if any, must be made to reflect the land removed from the initially requested service area to reflect the amended requested service area?

**Requested Area**

7. Does the requested service area require the construction of a physically separate sewer system? If so, has Crystal Clear proven that regionalization or consolidation with a retail public utility for public sewer service is not economically feasible as required by TWC § 13.241(d) and 16 TAC § 24.227(b)?
8. Does Crystal Clear's requested service area overlap with the certificated service area of the City of San Marcos under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
  - a. What specific areas, if any, will overlap?
  - b. Has Crystal Clear received the appropriate consent to provide sewer service within the City of San Marcos' service boundaries?

9. Does Crystal Clear's requested service area overlap with the certificated service area of other entities under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
  - a. What specific areas, if any, will overlap?
  - b. Has Crystal Clear received appropriate consent to provide sewer service within the entities' service boundaries?
10. Does Crystal Clear's requested sewer service area overlap with the extraterritorial jurisdiction of the City of San Marcos or any other municipality under TWC § 13.244(c) and 16 TAC § 24.233(c)? In answering this issue, please address the following sub-issues:
  - a. What specific areas, if any, will overlap?
  - b. Does any municipality whose extraterritorial jurisdiction overlaps with the requested sewer service area have a population of 500,000 or more? If so, does the municipality consent to the Commission's grant of a CCN for those areas under TWC § 13.245 and 16 TAC § 24.233(c)?

**Effect of Granting the CCN Amendment**

11. Is the requested sewer CCN amendment necessary for the service, accommodation, convenience, or safety of the public in the requested service area as required by TWC § 13.246(b) and 16 TAC § 24.227(d)?
12. Does the balance of factors under TWC § 13.246(c) and TAC § 24.227(e) weigh in favor of granting Crystal Clear a CCN amendment to include the requested service area? In answering this issue, please address the following sub-issues:
  - a. Is the served area currently receiving adequate sewer service in accordance with TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?
  - b. Does the served area need sewer service or additional sewer service in accordance with but not limited to the following considerations under TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2)?

- i. Have any landowners, prospective landowners, tenants, or residents in the requested service area requested sewer service?
    - 1. If so, where are they or where will they be located?
    - 2. If so, were the requests for service for the entire requested service area?
  - ii. Are there economic needs for additional sewer service in the requested service area?
  - iii. Are there environmental needs for additional sewer service in the requested service area?
  - iv. Are there written applications or requests for sewer service?
  - v. Are there reports or market studies demonstrating existing or anticipated growth in the requested service area?
- c. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3), what are the effects—including but not limited to regionalization, compliance, and economic effects—of granting Crystal Clear a CCN amendment to include the requested service area on
  - i. Crystal Clear,
  - ii. landowners located within the requested service area, and
  - iii. any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested service area?
  - iv. In particular, how will granting Crystal Clear the CCN amendment affect the development plans of any municipality?
- d. Taking into consideration the current and projected density and land use of the requested service area, does Crystal Clear have the ability to provide adequate sewer service, including meeting the standards of the TCEQ and the Commission, under TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4)?

- e. What is the feasibility of obtaining sewer service in the served area from an adjacent retail public utility in accordance with TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5)?
- f. Is Crystal Clear financially capable of paying for the facilities necessary to provide continuous and adequate service in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)?
  - i. Does Crystal Clear have existing facilities adequate to provide continuous and adequate sewer service to the requested sewer service area? If not, are additional facilities needed to ensure that Crystal Clear can provide continuous and adequate service to the requested service area?
  - ii. Is Crystal Clear planning to build facilities for the requested service area?
    - 1. If so, what facilities is Crystal Clear planning to build and where will Crystal Clear construct the facilities?
    - 2. If so, has Crystal Clear entered into any agreements regarding the construction of the facilities?
    - 3. If so, does Crystal Clear have a timetable for when construction of the facilities will actually begin? If not, when does Crystal Clear contemplate construction will begin and conclude?
    - 4. If so, who will construct any sewer infrastructure necessary to serve the requested service area? How will Crystal Clear finance that construction? Has Crystal Clear created any budget projections for the construction of any necessary sewer infrastructure?
    - 5. If so, has Crystal Clear completed an engineering plan for any sewer infrastructure necessary to serve the requested service area? If so, what are the parameters of that plan? If not, when will Crystal Clear engage an engineering firm to develop such a plan?
    - 6. If so, how will the addition of new facilities affect the bills of Crystal Clear's existing customers?

- iii. What is the amount of credit available to Crystal Clear?
    - iv. Does Crystal Clear possess the ability to finance facilities or upgrades to existing facilities through its retained earnings?
  - g. Is Crystal Clear financially stable under TWC § 13.246(c)(6) and 16 TAC §§ 24.11(e) and 24.227(e)(6)?
    - i. Can Crystal Clear satisfy one of the five leverage tests under 16 TAC § 24.11(e)(2)?
    - ii. Can Crystal Clear satisfy the operations test under 16 TAC § 24.11(e)(3)?
  - h. How, if at all, would environmental integrity be affected by granting Crystal Clear a CCN amendment to include the entire requested service area under TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
  - i. Is it probable that sewer service would be improved or costs to consumers in that area would be lowered by granting the requested certificate amendment under TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?
  - j. How, if at all, would the land in the served area be affected by granting Crystal Clear a CCN amendment to include the land under TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?
13. Should the Commission require Crystal Clear, in accordance with TWC § 13.246(d) and 16 TAC § 24.227(f), to provide a bond or other financial assurance to ensure that it provides continuous and adequate sewer service?
14. If applicable, what were Crystal Clear's efforts to:
- a. extend sewer service to any economically distressed area, within the meaning of TWC § 15.001(11), located within Crystal Clear's certificated service area, as required by TWC § 13.246(e)(1) and 16 TAC § 24.227(g); and
  - b. enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply as required by TWC § 13.246(e)(2)?

15. Does Crystal Clear provide water or plan to provide water service in the future? If not, and if the Commission grants Crystal Clear a CCN amendment for all or part of the requested service area, what effect will the amendment have on future access to water service for landowners in the added service area?
16. Should the authority that may be granted to Crystal Clear to amend its sewer CCN and expend its certificated area be conditioned on facilities necessary to provide continuous and adequate service being installed within a set period of time? If so, what is the appropriate period of time? Should the authority that may be granted to Crystal Clear to amend its sewer CCN and expend its certificated area be conditioned on facilities necessary to provide continuous and adequate service being installed within a set period of time? If so, what is the appropriate period of time?
17. If the Commission grants Crystal Clear a sewer CCN amendment, should the area added to Crystal Clear's service area only include the area in which Crystal Clear currently has facilities and is providing sewer service?
18. Alternatively, if the Commission grants Crystal Clear a sewer CCN, should the area added to Crystal Clear's service area only include the area in which it currently has facilities and is providing sewer service and to areas where it has a definite plan to construct facilities to provide sewer service?

### **III. ISSUES NOT TO BE ADDRESSED**

Staff recommends that Crystal Clear's request to change its name should be uncontested. Staff notes that although the applicant was filing as Crystal Clear Special Utility District (SUD) and conducting business as such, the name on sewer CCN No. 21086 is Crystal Clear Water Supply Corporation (WSC). Staff notes that although the CCN was issued to the WSC,<sup>1</sup> in the intervening time, the WSC was dissolved and the entity reformed as an SUD.<sup>2</sup> The SUD was

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<sup>1</sup> *Application of Crystal Clear Water Supply Corporation for a Sewer Certificate of Convenience and Necessity in Comal County*, Docket No. 44695, Notice of Approval (Feb. 12, 2016).

<sup>2</sup> See Certificate of Filing, Certificate of Termination; August 23, 2016 Minutes; Resolution Authorizing Dissolution of Crystal Clear Water Supply Corporation; Assignment of Claims and Acknowledgement at Exhibit C and D (Sep. 20, 2019); the Water Supply Corporation was dissolved with the Secretary of State Oct. 26, 2016 — see Exhibit A.



created by an act of the Texas Legislature in 2014,<sup>3</sup> and the existing water CCN was updated to reflect that change prior to the issuance of the sewer CCN.<sup>4</sup> Since that time, Crystal Clear has been holding itself out as and doing business under Crystal Clear SUD.

#### **IV. THRESHOLD LEGAL AND POLICY ISSUES**

Staff has not identified any legal or policy issues that should be briefed for the purposes of a preliminary order.

Dated: June 29, 2020

Respectfully Submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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/s/ Creighton R. McMurray

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<sup>3</sup> See Tex. Spec. Dist. Loc. Laws Code Ann. §§ 7206.001-7206.104 (West).

<sup>4</sup> *Conversion of a WSC to SUD*, Docket No. 45302 (Jan. 22, 2016).

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on June 29, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray

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Creighton R. McMurray