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

<b>APPLICATION OF CRYSTAL CLEAR</b>	<b>§</b>	<b>BEFORE THE PUBLIC UTILITY</b>
<b>SPECIAL UTILITY DISTRICT FOR A</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>NAME CHANGE AND TO AMEND ITS</b>	<b>§</b>	
<b>SEWER CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>COMAL, HAYS, AND GUADALUPE</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	

**CRYSTAL CLEAR' S PROPOSED LIST OF ISSUES AND  
THRESHOLD LEGAL AND POLICY ISSUES TO BE ADDRESSED**

COMES NOW, Crystal Clear Special Utility District (“Crystal Clear” or the “District”) and files this List of Issues and Threshold Legal and Policy Issues to be Addressed. This filing is timely made pursuant to the stated deadline established in the June 16, 2020 Order of Referral.

**I. BACKGROUND**

On September 3, 2019, Crystal Clear filed its application to amend its sewer certificate of convenience and necessity No. 21086 in response to a request for service from the landowner, MCLB Land, LLC (“MCLB”), who had previously “opted out” of the City of San Marcos’ (the “City”) sewer CCN amendment application in PUC Docket No. 48751 and entered into a service agreement with Crystal Clear. As further explained herein, neither the Commission ALJ nor the Commission’s June 16, 2020 Order of Referral has addressed the issues raised by Crystal Clear and MCLB in their June 3, 2020 joint response in opposition to the requests for hearing of the City and Carson Select Investments, LLC (“Carson”). The Commission should consider and address the arguments raised in opposition to these hearing requests as threshold legal and policy issues in the Preliminary Order because a determination on these issues could render the order of referral moot by disposing of the City and Carson’s issues without the need for a contested case hearing.

## II. PROPOSED LIST OF ISSUES TO BE ADDRESSED

Pursuant to the Order of Referral, Crystal Clear submits the following issue to be addressed in this proceeding:

1. **Has Crystal Clear complied with the criteria for amending a certificate of convenience and necessity in accordance with Texas Water Code (“TWC”) § 13.241 and 16 TEX. ADMIN. CODE § 24.227?**

## III. PROPOSED LIST OF ISSUES NOT TO BE ADDRESSED

Pursuant to the Order of Referral, Crystal Clear submits the following issues not to be addressed in this proceeding:

1. **Whether Carson “may be directly or indirectly impacted by the Crystal Clear Special Utility District's proposed onsite wastewater treatment plant to be situated in the area of the proposed CCN.”<sup>1</sup>**

As further addressed below with regard to Threshold Legal and Policy Issues, the above issue was the sole basis offered by Carson in support of its intervention and request for hearing in this proceeding. Whether Crystal Clear’s CCN amendment is granted or denied will have no effect on the sole issue raised by Carson. As a special utility district, Crystal Clear is not required to obtain a CCN amendment to provide sewer service to the areas subject to this application. Moreover, the Commission lacks jurisdiction to determine whether a proposed wastewater treatment facility might affect a landowner. Such an inquiry is outside the scope of the Section 24.227 criteria. Rather, any alleged effects on Carson of a wastewater treatment plant to serve the area are within the sole jurisdiction of the Texas Commission on Environmental Quality (“TCEQ”) to determine. The TCEQ has asserted jurisdiction over these issues in a pending contested case hearing on Crystal Clear’s TPDES permit application to which Carson is a party.<sup>2</sup> Thus, even if

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<sup>1</sup> See Docket Item No. 15, Carson’s Motion to Intervene (Feb 5, 2020).

<sup>2</sup> TCEQ Docket No. 2020-0411-MWD, *Application by Crystal Clear Special Utility District and MCLB Land, LLC for New TPDES Permit No. WQ0015266002* (pending).

the Commission had jurisdiction over the issue raised by Carson, directing that the issue not be considered in this proceeding would not deprive Carson of an appropriate forum in which to voice its concerns.

**2. Whether the City will be negatively affected if it “no longer has the opportunity to respond” to requests for service.<sup>3</sup>**

As with Carson’s alleged harm resulting from granting of Crystal Clear’s CCN amendment application, the City’s basis for intervention and requesting a hearing on the theory that it might lose an opportunity for future business in the area is not among the identified authorized criteria under either TWC Section 13.241 or Commission Rule 24.277 for evaluation of whether to grant a CCN amendment. And as with Carson, the City has availed itself of a forum in Crystal Clear’s pending TPDES permit application in which to assert any claims as to why Crystal Clear should not operate a wastewater treatment plant in one of the areas to be incorporated into Crystal Clear’s CCN through this proceeding.

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

The Commission should address the following legal and policy issues raised by the City’s and Carson’s interventions and requests for hearing in this docket prior to the initiation of the proceedings before SOAH:

**1. Should the City be authorized to challenge the grant of a CCN to Crystal Clear for a tract for which the landowner has already “opted out” of the City’s CCN amendment application pursuant to TWC § 13.246(h)?**

Crystal Clear respectfully submits that the answer to this legal and policy question is “no.” The City has no legal right to serve the areas in question. For the tract nearest the City limits, the owner, MCLB, elected to be removed and was removed from the City’s pending CCN amendment

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<sup>3</sup> City of San Marcos’ Motion to Intervene at 2 (Jan. 24, 2020).

application pursuant to TWC § 13.246(h)<sup>4</sup> State law has granted the right to landowners such as MCLB to determine which service provider best meets their respective needs.<sup>5</sup> The Texas Legislature made clear in adopting the opt-out provisions of TWC § 13.246(h) and the related streamlined expedited release provisions under TWC § 13.2541(b) that landowners should choose their water or wastewater utility service provider. As shown in the District's application, the landowners have chosen Crystal Clear, who already holds the water CCN for that MCLB tract, to be its wastewater utility service provider, not the City.<sup>6</sup>

State policy not only allows but promotes a property owner's choice of utility provider for property in a certain geographic area like the District's.<sup>7</sup> Allowing the City to collaterally attack through a third parties' CCN application what state law clearly authorizes in the context of the City's own application, would undermine the plain words and intent of Section 13.246(h). As this is the only basis for the City's intervention and request for hearing, the City's intervention should be revoked and Crystal Clear's amendment application should proceed as an uncontested case.

**2. Should Carson be allowed to contest a CCN application when the Carson property is not within the areas to be added to the applicant's CCN service area?**

The Commission should determine as a matter of policy that a protestant that is not located within the area to be amended has no standing to challenge a CCN amendment application unless the protestant can establish a connection between the alleged harm and the relevant statutory and

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<sup>4</sup> See Docket No. 48571. , *Application of the City of San Marcos to Amend a Sewer Certificate of Convenience and Necessity in Hays, Guadalupe, Comal and Caldwell Counties* (pending). The City never objected to the release of MCLB Land or numerous other landowners.

<sup>5</sup> 16 TAC § 22.103(b).

<sup>6</sup> The District is already the authorized water provider to the MCLB property pursuant to water CCN No. 10297 and a binding agreement between MCLB and the District.

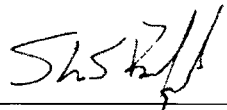
<sup>7</sup> TWC § 13.2541(b).

Commission criteria for granting a CCN amendment application. As discussed in Crystal Clear's Issues Not to be Addressed, Carson cannot establish any connection between its alleged harm caused by granting Crystal Clear's amendment and the Commission's statutorily-authorized CCN amendment considerations. To the contrary, Carson's alleged harm is within the sole jurisdiction of the TCEQ to decide.

## **V. CONCLUSION**

Because the Commission has yet to rule on the June 3, 2020 joint response of Crystal Clear and MCLB to the City and Carson's hearing requests, the Commission should address the threshold legal and policy issues raised herein, determine that neither the City nor Carson have raised issues that are the proper subject matter of a CCN amendment application under the Texas Water Code and Commission rules, and deny their respective requests for contested case hearing. In the event that the Commission allows this case to proceed to contested case hearing, it should adopt Crystal Clear's issues to be addressed and issues not to be addressed so that the scope of the contested case is limited to the statutorily-authorized criteria for evaluating CCN amendment applications.

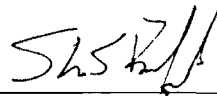
Respectfully submitted,

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**ATTORNEYS FOR CRYSTAL CLEAR SPECIAL  
UTILITY DISTRICT**

### **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.

A handwritten signature in black ink, appearing to read "Shan S. Rutherford", written over a horizontal line.

Shan S. Rutherford