

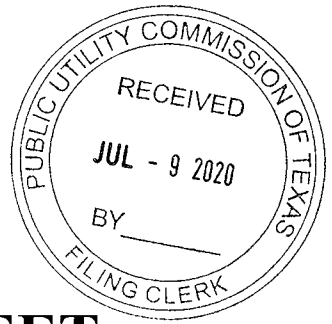


Control Number: 49926



Item Number: 40

Addendum StartPage: 0



OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: JULY 16, 2020

DATE DELIVERED: JULY 9, 2020

AGENDA ITEM NO.: 4

CAPTION: Docket No. 49926; SOAH No. 473-20-3997.ws
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

DESCRIPTION: Draft Preliminary Order

Distribution List:

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Chairman

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Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Brandy Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record

FROM: Alexander Scheifler
Commission Advising

RE: *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, Docket No. 49926, SOAH Docket No. 473-20-3997.WS, Draft Preliminary Order, July 16, 2020 Open Meeting, Item No. 4.*

DATE: July 9, 2020

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the July 16, 2020 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 16, 2020 open meeting.

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

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

DRAFT PRELIMINARY ORDER

Crystal Clear Special Utility District filed an application to amend its certificate of convenience and necessity (CCN) in Comal, Hays, and Guadalupe counties to respond to sewer service requests. Crystal Clear also seeks approval of a change in name on its sewer CCN from Crystal Clear Water Supply Corporation to Crystal Clear Special Utility District. This preliminary order identifies the issues that must be addressed, the issues that shall not be addressed, and answers threshold legal issues.

The Application

Crystal Clear provides sewer service under sewer CCN No. 21086. Crystal Clear seeks approval to serve two undeveloped subdivisions that have requested service. Fleming Farms is a proposed 65-acre single-family and mixed-use subdivision,¹ and Independence Trail is a proposed 73-acre single-family residential subdivision that adjoins the corporate limits of the City of San Marcos.² Independence Trail's owner, MCLB Land, Inc., opted the property out from the City of San Marcos's CCN amendment in Docket No. 48571.³

On September 3, 2019, Crystal Clear filed the application requesting an area encompassing four proposed subdivisions: Westridge Oaks, Spencer Land, Fleming Farms, and Independence Trail. On September 20, 2019, Crystal Clear supplemented the application with a request for a

¹ Application at 17–20.

² *Id.*

³ *Application of the City of San Marcos to Amend a Sewer Certificate of Convenience and Necessity in Hays, Guadalupe, Comal, and Caldwell Counties*, Docket No. 48571 (pending), MCLB Land, LLC's Opt Out (Nov. 6, 2018).

name change on its sewer CCN. In Order No. 2 filed on October 4, 2019, the Commission administrative law judge (ALJ) restyled the docket to reflect the request for a name change.

In an amendment filed on December 2, 2019, Crystal Clear withdrew its request for the Spencer Land and Westridge Oaks subdivisions and updated the application's maps for the Fleming Farms and Independence Trail subdivisions. On December 20, 2019, Commission Staff recommended that the application be found administratively complete, and in Order No. 4 filed on January 3, 2020, the Commission ALJ found the application administratively complete. On February 5, 2020, Crystal Clear filed proof of notice in Comal, Hays, and Guadalupe counties, and in Order No. 7 filed on February 21, 2020, the Commission ALJ found the notice sufficient.

Interventions and Referral to SOAH

On January 24, 2020, the City of San Marcos filed a motion to intervene and requested a hearing. The City of San Marcos stated that it provides sewer service within two miles of the requested area.⁴ No party objected to the City's intervention.

On February 5, 2020, Carson Select Investments, LP filed a motion to intervene. Carson stated that its property adjacent to the Independence Trail tract may be impacted by Crystal Clear's proposed on-site wastewater treatment plant.⁵ Crystal Clear's application for a permit to authorize the proposed wastewater treatment plant is pending before the Texas Commission on Environmental Quality (TCEQ).⁶ No party objected to Carson's intervention in this proceeding.

On February 11, 2020, MCLB Land filed a motion to intervene. MCLB Land stated that it owns the Independence Trail tract and intends to receive service from Crystal Clear once the subdivision is built.⁷ No party objected to MCLB Land's intervention.

In Orders 5, 6 and 8 filed on February 6, February 14, and April 27, 2020, the Commission ALJ granted the motions to intervene of the City of San Marcos, Carson, and MCLB Land.

⁴ City of San Marcos's Motion to Intervene (Jan. 24, 2020) at 2.

⁵ Carson Select Investments, LP's Motion to Intervene (Feb. 5, 2020) at 2.

⁶ TCEQ Docket No. 2020-0411-MWD, *Application by Crystal Clear Special Utility District and MCLB Land, LLC for New TPDES Permit No. WQ0015266002* (pending).

⁷ MCLB Land, LLC's Motion to Intervene (Feb. 11, 2020) at 2.

On May 27, 2020, the City of San Marcos reiterated its January 24 request for a hearing, and Carson filed its own request for a hearing. On June 3, 2020, Crystal Clear and MCLB Land filed a joint response to the hearing requests, arguing that neither the City of San Marcos nor Carson have a justiciable interest in the proceeding despite having intervened without objection from any party. The City's and Carson's requests for a hearing were not given a ruling. On June 16, 2020, the Commission referred this case to the State Office of Administrative Hearings (SOAH). In SOAH Order No. 1, the SOAH ALJ ordered the parties to confer and agree to a procedural schedule by July 6, 2020. On July 6, 2020, Crystal Clear filed an agreed procedural schedule with a hearing set for January 11–12, 2021.

In the Commission's referral order, Crystal Clear was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by June 29, 2020. Each party timely filed a list of issues.

II. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁸ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Applicant

1. Does Crystal Clear possess the financial, managerial, and technical capability to provide continuous and adequate service as required by Texas Water Code (TWC) § 13.241 and 16 Texas Administrative Code (TAC) § 24.227(a)?
2. Does Crystal Clear possess a TCEQ-approved system that is capable of meeting TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the Texas Water Code in accordance with TWC § 13.241(c) and 16 TAC § 24.227(a)(2)(A)?

⁸ Tex. Gov't Code § 2003.049(e).

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 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 § 24.235(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 withdrawal of the Spencer Land and Westridge Oaks tracts from the initially requested area?

Requested Area

7. Does the requested 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 sewer 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's service boundaries?
9. 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(a)(4)? 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 areas 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

- 10. Is the requested sewer CCN amendment necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d)?
- 11. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(e) weigh in favor of granting Crystal Clear a CCN amendment to include the requested area? In answering this issue, please address the Fleming Farms and Independence Trail tracts separately when applicable, and please address the following sub-issues:
 - a. Is the requested area currently receiving adequate sewer service in accordance with TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?
 - b. Does the requested 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 area requested sewer service?
 - (1) If so, where are they or where will they be located?
 - (2) If so, were the requests for sewer service for the entire requested area?
 - ii. Are there economic needs for additional sewer service in the requested area?
 - iii. Are there environmental needs for additional sewer service in the requested 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 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 area on the following:
 - i. Crystal Clear,
 - ii. landowners in the requested area, and
 - iii. any retail public utility already providing sewer service within two miles of the boundary of the requested area?
- d. Taking into consideration the current and projected density and land use of the area, does Crystal Clear have the ability to provide adequate service, including meeting the standards of the TCEQ and the Commission, in accordance with TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4)?
- e. What is the feasibility of obtaining sewer service in the requested 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 sewer 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 area? If not, are additional facilities needed to ensure that Crystal Clear can provide continuous and adequate service to the requested area?
 - ii. Is Crystal Clear planning to build facilities for the requested 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 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 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 in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)? If applicable, is Crystal Clear's debt-to-equity ratio adequate?
 - h. How, if at all, would environmental integrity be affected by granting Crystal Clear a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
 - i. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from granting the amendment in accordance with TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?
 - j. How, if at all, would the land in the requested area be affected by granting Crystal Clear a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?
- 12. 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?
 - 13. 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)?
14. 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 area, what effect will the amendment have on future access to water service for landowners in the added service area?
15. 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?
16. 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?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

III. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should

be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of July 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER