



## Filing Receipt

**Received - 2022-02-22 12:16:44 PM**

**Control Number - 52551**

**ItemNumber - 16**

**DOCKET NO. 52551**

<b>JOINT PETITION OF BLACKLAND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER SUPPLY CORPORATION</b>	<b>§</b>	
<b>AND THE CITY OF ROCKWALL FOR</b>	<b>§</b>	<b>OF TEXAS</b>
<b>APPROVAL OF SERVICE-AREA</b>	<b>§</b>	
<b>CONTRACT UNDER TEXAS WATER</b>	<b>§</b>	
<b>CODE § 13.248 AND TO AMEND</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY UNDER TEXAS</b>	<b>§</b>	
<b>WATER CODE § 13.245(a) IN</b>	<b>§</b>	
<b>ROCKWALL COUNTY</b>	<b>§</b>	

**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION ON  
ADMINISTRATIVE COMPLETENESS AND NOTICE**

On September 10, 2021, Blackland Water Supply Corporation (Blackland WSC) and the City of Rockwall (Rockwall) (collectively, Petitioners) filed a petition requesting approval of a service area agreement entered into between Blackland WSC and Rockwall under Texas Water Code (TWC) § 13.248; for amendment of Blackland WSC's retail water service area under water Certificate of Convenience and Necessity (CCN) No. 11305, under to TWC § 13.255(a); and for decertification of a portion of Blackland WSC's certificated service area under TWC § 13.254(a) based on agreements between Blackland WSC and developers. Petitioners also requested that the results of an accepted mediated settlement agreement from Texas Commission on Environmental Quality (TCEQ) Docket No. 2004-1736-UCR be accurately reflected in documentation and mapping related to Blackland WSC's CCN No. 11305. Petitioners asserted that Rockwall does not hold and does not want to hold a water or wastewater CCN. Petitioners filed supplemental information on November 10, 2021 and November 17, 2021.

On January 14, 2022, the administrative law judge (ALJ) filed Order No. 3, requiring Petitioners to file an amended petition that accurately states the relief they seek by January 21, 2022, and setting a deadline of February 21, 2022 for the Staff (Staff) of the Public Utility Commission (Commission) to file comments on the administrative completeness of the amended petition, the sufficiency of notice, and to propose a procedural schedule, if appropriate. Since February 21, 2022 is a holiday, the deadline moves to the next day the Commission is open for business, Tuesday, February 22, 2022.<sup>1</sup> Therefore, this pleading is timely filed.

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<sup>1</sup> 16 TAC § 22.4(a).

## I. ADMINISTRATIVE COMPLETENESS

On January 21, 2022, Petitioners filed an amended joint petition, requesting amendment of Blackland's retail water service area under CCN No. 11305 under TWC § 13.255(a) and seeking decertification of a portion of Blackland's retail water service area under CCN No. 11305 under TWC § 13.254(a).<sup>2</sup> Staff has reviewed the amended petition, and, as detailed below and in the attached memorandum from Patricia Garcia of the Commission's Infrastructure Division, recommends that the amended petition is administratively complete for purposes of processing the petition under TWC §§13.254(a) and 13.255.

TWC § 13.255(a) provides that if:

an area is incorporated or annexed by a municipality . . . the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. . . The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. . . The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

Each of the agreements from Exhibits B-1, B-2, and B-4 were made between Rockwall and Blackland WSC and involved only areas that had been incorporated or annexed by Rockwall at the time of agreement execution.<sup>3</sup> Blackland WSC is a retail public utility that provides retail water service under water CCN No. 11305, and Rockwall is a municipality within Rockwall County that provides retail water and wastewater service inside Rockwall's corporate limits.<sup>4</sup> Even though the agreements from Exhibits B-1, B-2, and B-4 were entered into over the course of several decades, TWC § 13.255(a) does not specify any timeframe during which the executed agreement must be

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<sup>2</sup> See First Amended Joint Petition of the City of Rockwall and Blackland Water Supply Corporation to Amend a Certificate of Convenience and Necessity Under Texas Water Code § 13.255 and to Decertify a Portion of Blackland WSC's Service Area Under Texas Water Code § 13.254(a) (Jan. 21, 2022) (Amended Joint Petition).

<sup>3</sup> Amended Joint Petition at 4-6.

<sup>4</sup> *Id.* at 1.

filed with the Commission; the statute simply requires that the agreement be filed and that the Commission incorporate the terms of such agreement into the CCNs of the parties to the agreement.<sup>5</sup>

TWC § 13.254(a) states that “(t)he utility commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder”. Under the corresponding Commission rule, 16 TAC § 24.245, it is made clear that any such revocation or amendment of a CCN made by the Commission cannot transfer any property, and that notice to current customers and landowners within the requested area is required.<sup>6</sup> As expressed in the amended petition and in the Exhibit B-3 and D-1 agreements, Blackland WSC has provided written consent for the decertification of the areas covered in the agreements and for the respective amendments to Blackland WSC’s CCN No. 11305, and the decertification of the area addressed in Exhibit D-3 was part of a settlement of a TCEQ docket.<sup>7</sup> Further, Petitioners allege that no customers, facilities, or property were transferred pursuant to the agreements in Exhibits B-3 and D-1.<sup>8</sup>

Given the above information, Staff recommends that the amended petition is administratively complete for purposes of processing the petition under TWC §§13.254(a) and 13.255. However, in accordance with its response to Order No. 2, filed on January 14, 2022, Staff continues to agree with the ALJ that severance into two dockets—one involving the agreements reflected in Exhibits B-1, B-2, and B-4 to be processed under TWC § 13.255(a) and the other involving the agreements reflected in Exhibits B-3 and D-1 to be processed under TWC §

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<sup>5</sup> Although Rockwall does not hold a CCN, and is not requesting to obtain a CCN, Staff does not believe that Rockwall is precluded from using TWC § 13.255. The purpose of this statute is to provide a mechanism for a municipality and a retail public utility that holds a CCN to come to a mutual agreement on who can provide water and sewer utility service in an area that is located within the retail public utility’s CCN and has been annexed by the municipality. Even without a CCN, a municipality has the exclusive right to serve within its city limits. Accordingly, the transfer of facilities and the decertification of Blackland WSC’s CCN effected by the agreements in Exhibits B-1, B-2, and B-4 achieves the purpose of TWC § 13.255. Also, the statute states that the agreement may provide for single or dual certification of all or part of the area. There is nothing that requires this as a component of the agreement.

<sup>6</sup> 16 TAC § 24.245(c)(1) and (d)(2).

<sup>7</sup> Amended Joint Petition at 9-10.

<sup>8</sup> *Id.*

13.254(a)–is warranted here.<sup>9</sup> Staff’s recommendation on administrative completeness is not a comment on the merits of the application.

## II. NOTICE

Staff continues to recommend that the notice requirements under TWC §§ 13.254(a) and 13.255 be waived.<sup>10</sup> Petitioners have requested that the agreements reflected in Exhibits B-1, B-2, and B-4 of the amended petition be processed under TWC § 13.255(a).<sup>11</sup> TWC § 13.255(a) does not specify whether notice of an agreement made under the subsection is required. Further, any provisions of TWC § 13.255 relating to notice, hearing, and valuation are inapplicable here, as such provisions only apply in situations where an agreement could not be executed between the municipality and the retail public utility.<sup>12</sup> Therefore, Staff recommends that the notice requirements of TWC § 13.255 be waived for the agreements reflected in Exhibits B-1, B-2, and B-4 of the amended petition.

Petitioners have also requested that the agreements from Exhibits B-3 and D-1 of the amended petition be processed under TWC § 13.254(a), which states that, “[t]he utility commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder”. Under the corresponding Commission rule, 16 TAC § 24.245, it is made clear that any such revocation or amendment of a CCN made by the Commission cannot transfer any property, and that notice to current customers and landowners within the requested area is required.<sup>13</sup> Petitioners allege that no customers, facilities, or property were transferred pursuant to the agreements in Exhibits B-3 and D-1.<sup>14</sup> Further, Petitioners state that Rockwall has been providing continuous and adequate

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<sup>9</sup> Commission Staff’s Response to Order No. 2 at 2 (Jan. 14, 2022).

<sup>10</sup> Commission Staff’s Recommendation on Administrative Completeness and Proposed Notice and Addressing Other Procedural Matters at 3-4 (Oct. 11, 2021).

<sup>11</sup> Amended Joint Petition at 4.

<sup>12</sup> TWC § 13.255(b)-(m); *see also*, 16 TAC § 24.259(c) (requiring a written notice of a municipality’s intent to serve an annexed or incorporated area that is within a retail public utility’s CCN).

<sup>13</sup> 16 TAC § 24.245(c)(1) and (d)(2).

<sup>14</sup> Amended Joint Petition at 9-10.

retail water service to the areas subject to the agreements in Exhibits B-3 and D-1.<sup>15</sup> Accordingly, Staff respectfully recommends that even though “notice and hearing” are a prerequisite to decertification under TWC § 13.254(a), such prerequisites should not be required here.

### **III. PROCEDURAL SCHEDULE**

Staff respectfully declines to propose a procedural schedule for further processing at this time. Staff intends to propose a subsequent procedural schedule following an order addressing whether this docket will be severed into two separate dockets.

### **IV. CONCLUSION**

For the reasons stated above, Staff respectfully requests an order regarding severance of this docket. Should the ALJ order that this docket remains unsevered, Staff recommends that the amended petition be found administratively complete for further processing under TWC §§ 13.254(a) and 13.255 and that the notice requirements under these statutes be waived.

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<sup>15</sup> *Id.* at 11-12.

Dated: February 22, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52551**

**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 February 22, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Jenna Keller  
Jenna Keller

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Jenna Keller, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** February 21, 2022

**RE:** Docket No. 52551 – *Joint Petition of Blackland Water Supply Corporation and the City of Rockwall for Approval of Service-Area Contract Under Texas Water Code § 13.248 and to Amend Certificate of Convenience and Necessity Under Texas Water Code § 13.254(a) in Rockwall County*

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On September 10, 2021, Blackland Water Supply Corporation (Blackland WSC) and the City of Rockwall (Rockwall) (collectively, Petitioners) filed a petition for approval of a service area contract under Texas Water Code (TWC) § 13.248 and to amend Blackland WSC's water certificate of convenience and necessity (CCN) No. 11305 under TWC § 13.254(a) in Rockwall County, Texas.

On October 11, 2021, Commission Staff recommended the agreements filed by the Petitioners be processed under TWC §§ 13.254(a) and 13.255. On January 21, 2022, the Petitioners filed an amended joint petition requesting decertification of two separate portions of Blackland WSC's CCN area and approval of contracts under TWC §§ 13.254(a) and 13.255 to complete the decertification of each area.

The Petitioners filed several agreements requesting that Rockwall be permitted to continue to provide retail water utility service to customer connections that are located within Rockwall's city limits. Rockwall does not have a CCN number, is not required to have one, and does not want a CCN number assigned to it.

Specifically, Blackland WSC and Rockwall entered into contractual agreements which permit Rockwall to provide water services within the agreed upon water certificated service areas. The petition was submitted in order to remove the requested areas from Blackland WSC's CCN area. The requested area includes approximately 1,530 acres of bounded area and approximately 3 miles of Facilities +200' CCN. Approximately 881 acres are to be decertified under 13.255. Approximately 649 acres and 3 miles are to be decertified under 13.254(a). The Petitioners have requested that notice be waived.



The petition proposes the subtraction of approximately 1,530 acres of bounded area and approximately 3 miles of Facilities +200' CCN from CCN No. 11305.

Based on the mapping review by Gary Horton, Infrastructure Division, and my technical review of the additional information filed by the Petitioners on September 14, 2021 and January 21, 2022, I recommend that the amended petition be deemed sufficient for filing and found administratively complete.