



## Filing Receipt

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**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 RECOMMENDATION ON ADMINISTRATIVE  
COMPLETENESS AND PROPOSED NOTICE AND ADDRESSING OTHER  
PROCEDURAL MATTERS**

On September 10, 2021, Blackland Water Supply Corporation (Blackland WSC) and the City of Rockwall (Rockwall) (collectively, Petitioners) filed a petition for amendment of Blackland WSC’s retail water service area under water Certificate of Convenience and Necessity (CCN) No. 11305, pursuant to Texas Water Code (TWC) § 13.255(a); for approval of a service area agreement entered into between Blackland WSC and Rockwall under TWC § 13.248; 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 are requesting 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 assert that Rockwall does not hold and does not want to hold a water or wastewater CCN.

On September 15, 2021, the administrative law judge (ALJ) filed Order No. 1, establishing a deadline of October 11, 2021 for the Staff of the Public Utility Commission of Texas (Staff) to file comments regarding the administrative completeness of the petition and sufficiency of notice, and addressing potential issues specified by the ALJ and any other concerns Staff might have about the petition. Therefore, this pleading is timely filed.

**I. RESPONSE TO ISSUES LISTED IN ORDER NO. I.**

In Order No. 1, the ALJ identified and listed five specific concerns with the petition, requiring that Staff address each concern in this filing. Each concern is briefly summarized and addressed in the following paragraphs.

First, the ALJ directed Staff to address whether the proceeding should be severed into multiple proceedings corresponding with each agreement in the petition, as analyzing all of the agreements in one docket could potentially create confusion. Staff has created a table summarizing necessary information from each agreement in the petition, which is shown below:

<b>Exhibit</b>	<b>Year Executed</b>	<b>Type of Agreement</b>	<b>Facilities Transferred?</b>	<b>Acreage Transferred</b>
B-1, "Water System Purchase Contract"	1989	TWC § 13.255(a)	yes	151.16 acres (two tracts)
B-2, "Agreement to Transfer Portions of Retail Water Service Area"	2007	TWC § 13.255(a)	no	499.32 acres (four tracts)
B-3, Mediated Settlement from TCEQ Docket No. 2004-1736-UCR	2005	settlement agreement	no	857 acres
B-4, "Agreement to Transfer Portions of Retail Water Service Area and Certain Water Distribution Facilities"	2012	TWC §§ 13.248 and 13.255(a)	yes	41.523 (plus some additional connections)
D-1, "Agreement Concerning Retail Water Utility Service Areas"	2016	developer agreement	no	does not state acreage

As shown in the table above, the Exhibit B-1 and B-2 agreements were executed pursuant to TWC § 13.255(a), and the Exhibit B-4 agreement was executed pursuant to TWC §§ 13.255(a) and 13.248. Staff recommends that the Exhibit B-1, B-2, and B-4 agreements can all be processed in this docket under TWC § 13.255(a). As explained in more detail below, Staff further recommends that the remaining agreements from Exhibits B-3 and D-1 can be processed in this docket under TWC § 13.254(a).

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 allegedly involved only areas that had been incorporated or annexed by Rockwall at the time of agreement execution.<sup>1</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>2</sup>

Further, 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 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>3</sup> TWC § 13.255(a) also does not specify whether notice of an agreement made under the subsection is required. Any provisions of TWC § 13.255 relating to notice, hearing, and valuation are inapplicable, as such provisions only apply in situations where an agreement could not be executed between the municipality and the retail public utility.<sup>4</sup>

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<sup>1</sup> Joint Petition of Blackland Water Supply Corporation and Rockwall 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 at 1-2 (Sept. 10, 2021) (Petition).

<sup>2</sup> *Id.*

<sup>3</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>4</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).

Therefore, Staff believes that the agreements from Exhibits B-1, B-2, and B-4 can all be processed in this docket under TWC § 13.255(a), so long as Rockwall can provide documentation demonstrating that the service area within Blackland WSC's CCN was annexed by Rockwall,<sup>5</sup> and that any notice requirement should be waived because Blackland WSC has agreed to the requested decertifications.

Staff also believes that the remaining agreements from Exhibits B-3 and D-1 can be processed in this docket under TWC § 13.254(a), which states that, "The 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 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. Further, Petitioners allege that no customers, facilities, or property were transferred pursuant to the agreements in Exhibits B-3 and D-1.<sup>7</sup>

Accordingly, Staff recommends that even though "notice and hearing" are a prerequisite to decertification under TWC § 13.254(a), such prerequisites may not be required here, since it is alleged that no customers were transferred under the agreements in Exhibit B-3 and D-1 and that Blackland WSC has been paid and has accepted as adequate and just compensation the monetary compensation and other consideration required under the agreements.<sup>8</sup>

Second, the ALJ directed Staff to address whether this proceeding should be an enforcement action brought by Commission Staff as opposed to a petition filed by Petitioners. Staff agrees with the ALJ that since Blackland WSC holds water CCN No. 11305, it is legally obligated to provide continuous and adequate water service within the entirety of its certificated

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<sup>5</sup> See 16 TAC § 24.259(a) (stating that the requested area must have been incorporated or annexed by a municipality).

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

<sup>7</sup> See Petition at 3-4.

<sup>8</sup> *Id.* at 4.

service area under TWC § 13.250, and that Blackland has ceased providing service to a large portion of that certificated service area over the past few decades. Petitioners allege, though, that Rockwall has been providing, and will continue providing, such continuous and adequate service to the areas ceded by Blackland WSC.<sup>9</sup> As such, there is no evidence that Blackland's discontinuation of service left any customers without service or caused other issues. Since Rockwall has allegedly been providing continuous and adequate retail water service to the areas addressed in the agreements, and the agreements can be processed in this docket as laid out above, Staff recommends that an enforcement is not necessary. It appears that Blackland WSC's most egregious violation was its failure to timely obtain regulatory approval of the CCN amendments contemplated in the agreements, and therefore, Staff recommends that Blackland WSC and Rockwall be more proactive with seeking regulatory approval of agreements in the future.

Third, the ALJ directed Staff to address whether the relief requested by Petitioners can be granted under the statutes relied upon by Petitioners. The ALJ presents an example detailing how relief requested by Petitioners under TWC § 13.248 and 16 TAC § 24.253 would be inappropriate due to the envisioned prospective application of the statute and corresponding rule, among other reasons. Staff agrees that Petitioners cannot be granted relief under TWC § 13.248, which is why Staff did not rely on TWC § 13.248 in its recommendation on how each agreement in the docket can be processed. It is Staff's position that the agreements can be processed under TWC §§ 13.254(a) and 13.255 as presented in detail above, and to the extent that the petition does not include all information required for processing in accordance with Staff's recommendation, Staff requests that Petitioners supplement the petition appropriately.

Fourth, the ALJ presented a concern related to Petitioners' request for relief under TWC § 13.248 and simultaneous claim that this statute is not applicable. As discussed above, it is Staff's position that TWC § 13.248 should not be used to process any of the agreements presented in the petition. Accordingly, Staff respectfully declines to address the merits of this concern.

Fifth, the ALJ directed Staff to address the seemingly contradictory nature of Petitioners' assertions regarding the notice that should be required in this docket, given the statutes and rules relied upon by Petitioners. Staff's positions on the notice requirements associated with the statutes

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<sup>9</sup> *Id.* at 3-5.

and rules under which Staff recommends each agreement in the petition be processed are detailed above.

Given the above assessment of issues, it is Staff's recommendation that the Exhibit B-1, B-2, and B-4 agreements be processed under TWC § 13.255(a), and to the extent that the Exhibit B-3 and D-1 agreements have not previously been processed by the Commission or TCEQ,<sup>10</sup> that they be processed under TWC § 13.254(a). To the extent that the ALJ agrees with Staff's recommendation, Staff respectfully requests that an order be filed directing Petitioners to amend the petition appropriately.

## **II. ADMINISTRATIVE COMPLETENESS AND NOTICE**

Staff has reviewed the application, and as detailed in the attached memorandum from Patricia Garcia of the Commission's Infrastructure Division, recommends that it be found administratively incomplete at this time. Staff further recommends that Petitioners be given a deadline of November 10, 2021 to file supplemental information to address the deficiencies and that Staff be given a deadline of December 10, 2021 to file a supplemental recommendation on administrative completeness. Staff notes that, as discussed in Section I above, the method of appropriate notice in this docket is under consideration. Petitioners should not issue notice until the appropriate method of service is specified, and until the petition is found administratively complete.

## **III. PROCEDURAL SCHEDULE**

In accordance with Staff's deficiency recommendation, Staff does not propose a procedural schedule for further processing of the docket at this time. Staff intends to propose a procedural schedule alongside a subsequent recommendation that the petition be found administratively complete.

## **IV. REQUEST TO RESTYLE THE DOCKET**

If the ALJ agrees with Staff's recommendations regarding the appropriate processing of this petition, Staff requests that the docket be restyled as *Joint Petition of the City of Rockwall and*

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<sup>10</sup> It is not clear why TCEQ did not incorporate the decertification addressed in the mediated settlement agreement in Docket No. 2004-1736-UCR into Blackland WSC's CCN map at the time that settlement was approved.

*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) in Rockwall County.*

**V. CONCLUSION**

For the reasons detailed above, Staff recommends further processing of the petition under TWC §§ 13.254(a) and 13.255, that the notice requirements under these statutes be waived, that the petition be found administratively incomplete, and that Petitioners be ordered to file supplemental information to cure the deficiencies in the petition by November 10, 2021. Staff respectfully requests the entry of an order consistent with these recommendations.

Dated: October 11, 2021

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 October 11, 2021, 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:** October 11, 2021

**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.

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 and is not required to have one.

Specifically, Blackland WSC and Rockwall entered into contractual agreements that permit Rockwall to provide water services within the agreed upon service areas that are located in the portions of Blackland WSC's CCN that overlap with Rockwall's city limits. The petition was submitted in order to remove the requested areas from Blackland WSC's CCN area.

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, I recommend that the petition be deemed administratively incomplete and not accepted for filing due to the deficiencies detailed below:

### **Petition Content:**

The petition appears to be requesting approval of decertification of Blackland WSC's CCN under TWC §§ 13.248, 13.254(a), and 13.255. Staff recommends that the most appropriate way to process this petition is under TWC §§ 13.255 and 13.254(a). Because they do not involve the transfer of customers or facilities, the agreement between Blackland WSC and a developer (Exhibit D-1) and the mediated settlement agreement resulting from TCEQ Docket

No. 2004-1736-UCR. (Exhibit B-3) can be processed as CCN amendments to decertify service area under TWC § 13.254(a). The remaining agreements can be processed under TWC § 13.255.

For the agreements that will be processed under TWC § 13.255, Petitioners must submit evidence, such as city ordinances, demonstrating that the areas subject to these agreements were annexed by Rockwall.

**Mapping Content:**

The maps submitted on September 10, 2021 are deficient. A portion of the requested area that is identified as Phase VI-C, is actually certificated to R C H Water Supply Corporation (E C H) under CCN No. 10087. This area must be removed from the requested area or Petitioners must submit written documentation from R C H consenting the decertification of his area.

In addition, Blackland WSC's facilities line plus 200 feet CCN overlaps with the requested area in two places, but the agreements do not appear to specifically address the decertification of this CCN area. Further, Staff requests clarification about whether Blackland WSC intends to decertify the remaining facilities line plus 200 feet CCN.

Petitioners must submit the following items to resolve the mapping deficiencies:

- A general location map identifying only the requested area, in reference to the nearest county boundary, city, or town.
- A detailed map identifying only the requested area, in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads.
- Digital mapping data for the requested area, as a single polygon record, in shapefile (SHP) format, georeferenced in either NAD83 Texas Statewide Mapping System (Meters) or NAD83 Texas State Plane Coordinate System (US Feet); **OR** metes and bounds survey sealed or embossed by either a licensed state surveyor or a registered professional land surveyor.

Staff recommends that the digital mapping data clearly indicate which polygons correspond to each agreement. While the original data includes some notations, it is not entirely clear which areas are addressed in each agreement.

Staff will need at least 30 days to review the documentation, maps, and digital data provided by the Petitioners and draft a recommendation.