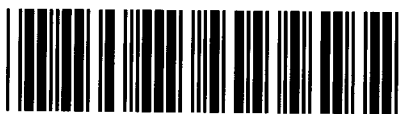




Control Number: 42931



Item Number: 10

Addendum StartPage: 0

DOCKET NO. 42931

**APPLICATION OF MANVILLE
WATER SUPPLY CORPORATION
AND LAKESIDE WATER CONTROL
IMPROVEMENT DISTRICT 1 FOR
APPROVAL OF A SERVICE
AGREEMENT IN TRAVIS COUNTY
(37792-C)**

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**PUBLIC UTILITY COMMISSION
OF
TEXAS**

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 4, AND REQUEST FOR
ADDITIONAL INFORMATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 4, and Request for Additional Information. In support of its Response, Staff states the following:

I. BACKGROUND

On November 18, 2013, Lakeside Water Control Improvement District 1 (Lakeside WCID 1) and Manville Water Supply Corporation (Manville WSC) (collectively, Applicants) filed an application with the Texas Commission on Environmental Quality (TCEQ) for approval of agreements pursuant to TEX. WATER CODE ANN. § 13.248. Lakeside WCID 1, Registration No. P1211, and Manville WSC, water Certificate of Convenience and Necessity (CCN) No. 11144, provide retail water service in Travis County, Texas. On March 19, 2014, the TCEQ accepted the application for filing.

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.¹ Conversely, a district such as Lakeside WCID 1 is not required to obtain a CCN to provide retail water or sewer service.² However, a district may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

¹ TEX. WATER CODE ANN. § 13.242(a).

² A district is a political subdivision and is, thus, a "retail public utility" under section 13.002(19) of the Texas Water Code; but, it is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water or sewer utility service does not apply to a district.

The Texas Water Code and Commission rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴ A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.⁵

On October 7, 1996, Manville WSC entered into an Agreement for Providing Wholesale Water Service ("1996 Agreement")⁶ with Tiemann Land & Cattle Development, Inc. ("Tiemann") providing that at some point in the future, at a time to be determined by Tiemann, Manville would transfer the portion of its water CCN No. 11144 that overlaps with Lakeside WCID 1 to either Tiemann or Lakeside WCID 1. On September 29, 2011, Tiemann and the City of Pflugerville entered into a Sixth Amendment to the 1996 Agreement,⁷ in which Tiemann agreed to transfer to the City of Pflugerville its right to obtain the water CCN service area that overlaps with Lakeside WCID 1. On September 11, 2013, Lakeside WCID 1 and Manville WSC entered into a Water Utility Service Area Agreement ("2013 Agreement")⁸ regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the 2013 Agreement, the City of Pflugerville assigned its right to obtain the water CCN service area that overlaps with Lakeside WCID 1 to Lakeside WCID 1.⁹ Tiemann approved the form of the 2013 Agreement.¹⁰

³ TEX. WATER CODE ANN. § 13.242(b).

⁴ *Id.*; TEX. WATER CODE ANN. § 13.248; 16 TEX. ADMIN. CODE § 24.117. Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

⁵ TEX. WATER CODE ANN. § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

⁶ Application of Manville Water Supply Corporation and Lakeside Water Control Improvement District 1 for Approval of a Service Agreement in Travis County at 77 (Nov. 18, 2013).

⁷ *Id.* at 125.

⁸ *Id.* at 127.

⁹ *Id.* at 128.

¹⁰ *Id.* at 134.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. On November 5, 2014, the Administrative Law Judge (ALJ) issued Order No. 2 requiring Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by December 15, 2014. On December 15, 2014, Staff filed its Response to Order No. 2 and requested an extension of the deadline to file a recommendation. On December 18, 2014, the ALJ issued Order No. 3 granting the request and directing Staff to file a recommendation on the need for a hearing or on final disposition of the application or propose a procedural schedule by January 23, 2015. On January 23, 2015, Staff filed its Response to Order No. 3 and Request for Supplemental Information to Clarify the Application. On January 29, 2015, the ALJ issued Order No. 4 requiring the Applicants to supplement and clarify the application by February 23, 2015 and directing Staff to file a supplemental recommendation on the application by March 20, 2015. This Response is timely filed.

II. STAFF'S REQUEST FOR ADDITIONAL INFORMATION

In response to Order No. 4, Manville WSC provided clarifying information on February 19, 2015 and Lakeside WCID 1 provided clarifying information on February 23, 2015. The Applicants both agreed with Staff's interpretation as to the three type of relief requested in the application, noting that the intended results of the application are: (1) to transfer a portion of Manville WSC's service area to Lakeside WCID 1 in accordance with TEX. WATER CODE ANN. § 13.301; (2) to amend Manville WSC's CCN to reflect this transfer in accordance with TEX. WATER CODE ANN. Chapter 13, Subchapter G; and (3) that Lakeside WCID 1 obtain a new CCN for the portion of service area to be transferred.¹¹

The Applicants filed the pending application pursuant to TEX. WATER CODE ANN. § 13.248, which pertains to Commission approval of contracts between retail public utilities that designate areas to be served and customers to be served. Because TEX. WATER CODE ANN. § 13.248 does not specify what information is required to process these types of applications, Staff

¹¹ Response of Manville Water Supply Corporation to Order No. 4 Requiring Supplemental Information at 2 (Feb. 19, 2015); Lakeside Water Control and Improvement District No. 1's Response to Order No. 4 at 3 (Feb. 23, 2015).

must look to the Commission's rules and application forms for the requested relief in order to determine what information an applicant must provide. In this application, the Applicants request the transfer of service area, amendment of Manville WSC's CCN service area, and grant of a new water CCN to Lakeside WCID 1. When reviewing the applications, Staff intends to review each request separately according to the statute and rule requirements for each type of relief requested. However, the Applicants have not included adequate information to request a new CCN pursuant to TEX. WATER CODE ANN. § 13.241 and 16 TAC §§ 24.102 and 24.105. TEX. WATER CODE ANN. § 13.241 and 16 TAC §§ 24.102 and 24.105 list the factors that the Commission must consider when granting a new CCN and information that must be included in the application. In order for Staff to begin its review of the request for a new water CCN, Staff requests that the Applicants amend the application to include all information required by TEX. WATER CODE ANN. § 13.241 and 16 TAC §§ 24.102 and 24.105.

TEX. WATER CODE ANN. § 13.248 does not specify notice procedures and the TCEQ did not require the issuance of notice for applications filed pursuant to TEX. WATER CODE ANN. § 13.248. Because the Applicants essentially request the same results through this application as if they had requested a transfer, amendment, and new CCN through individual applications, Staff requests that the Applicants provide draft notices as required for these individual types of relief pursuant to TEX. WATER CODE ANN. §§ 13.241, 13.242, and 13.246 and 16 TAC §§ 24.102 and 24.106. Staff recommends that the Applicants provide the following draft notices for this application: (1) published notice of the application;¹² (2) mailed notice of the application to affected parties, cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within *five* miles of the requested service area boundaries;¹³ (3) mailed notice to any city with extraterritorial jurisdiction

¹² TEX. WATER CODE ANN. § 13.246; 16 TAC §§ 24.106(c).

¹³ Applications for an *amendment* of a CCN require notice to be mailed to entities within two miles of the requested service area while applications for a *new* CCN require notice to be mailed to entities within five miles of the requested service area. Because both a CCN amendment and a new CCN are requested in this application, the Applicants should follow the five-mile requirement when providing notice. 16 TAC § 24.106(b)(1). *See also* 16 TAC §§ 24.106(b)(2).

that overlaps the proposed service area boundaries;¹⁴ and (4) mailed notice to counties and groundwater districts included in the proposed area.¹⁵

In order to allow Staff to perform its review of the application, Staff requests that the Applicants amend the application in order to provide all information required to be included in the Commission's application to obtain or amend a water or sewer CCN applications to Staff. Additionally, Staff requests that the Applicants provide draft notices of the application in the forms required for the three types of relief requested.

III. PROPOSED PROCEDURAL SCHEDULE

In support of its request for additional information to amend the application, Staff proposes the following procedural schedule:

| | |
|--|----------------|
| Deadline for Applicants to amend the application and file draft notices for Commission review. | April 24, 2015 |
| Deadline for Staff to file a supplemental recommendation on the application. | May 29, 2015 |

IV. CONCLUSION

For the reasons stated above, Staff requests that the Applicants amend the application in order to provide all information required to be included in the Commission's application to obtain or amend a water or sewer CCN applications to Staff. Additionally, Staff requests that the Applicants provide draft notices of the application in the forms required for the types of relief requested. Staff respectfully requests that the Applicants amend the application and provide draft notices by **April 24, 2015**. Staff proposes to file a supplemental recommendation on the application by **May 29, 2015**. Staff respectfully requests that an order be issued reflecting this Response.

Date: March 20, 2015

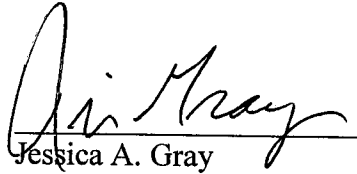
¹⁴ 16 TAC §§ 24.106(b)(1) and (2).

¹⁵ TEX. WATER CODE ANN. § 13.246(a); 16 TAC §§ 24.106(b)(1) and (2).

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

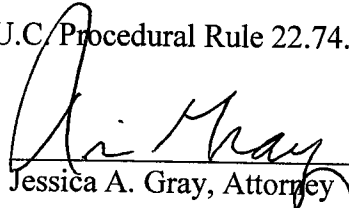


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on March 20, 2015 in accordance with P.U.C. Procedural Rule 22.74.



Jessica A. Gray, Attorney