



Control Number: 42931



Item Number: 4

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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

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 2, STATUS UPDATE, AND
REQUEST FOR EXTENSION OF DEADLINE**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Staff's Response to Order No. 2, Status Update, and Request for Extension of Deadline. 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) filed an application with the Texas Commission on Environmental Quality (TCEQ) to approve an agreement to transfer a portion of a Certificate of Convenience and Necessity (CCN) pursuant to TEX. WATER CODE ANN. § 13.248. The approval of such an agreement would result in amending the current CCN for Manville WSC and the issuance of a new CCN for Lakeside WCID 1 which, as explained in more detail below, currently provides service without a CCN. On March 19, 2014, the TCEQ accepted the application for filing. Lakeside WCID 1, Registration No. P1211, and Manville WSC, water CCN No. 11144, provide retail water service in Travis County, Texas.

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 is

¹ TEX. WATER CODE ANN. § 13.242(a).

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 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

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.

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.

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

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. This Response is timely filed.

II. STATUS UPDATE

In the application, the parties request that the certification to a portion of land currently within Manville's CCN be transferred to Lakeside WCID 1. Currently, Manville WSC is singly certified to a portion of land consisting of approximately 166.19 acres. This portion of land to be transferred under the 1996 and 2013 Agreements is currently located within Lakeside WCID 1. Under the 1996 and 2013 Agreements, Manville WSC will transfer its certification to this portion of land to Lakeside WCID 1, making this portion singly certified to Lakeside WCID 1.

Additionally, Lakeside WCID 1 requests that the CCN certificate for the portion of land to be transferred under the 1996 and 2013 Agreements be transferred to Lakeside WCID 1. Lakeside WCID 1 is not required to hold a CCN¹¹; however, if Lakeside WCID 1 obtains the CCN for the area to be transferred under the Agreements, Lakeside WCID 1 must meet the requirements of a CCN holder pursuant to Commission rules and the Texas Water Code.¹²

III. REQUEST FOR EXTENSION OF DEADLINE

Due to the recent transfer of water and sewer utility cases to the Commission, good cause exists for Staff to request additional time to review the application before submitting its final

⁹ *Id.* at 128.

¹⁰ *Id.* at 134.

¹¹ TEX. WATER CODE ANN. § 13.242(a).

¹² TEX. WATER CODE ANN. § 13.250 and Title 16, TEX. ADMIN. CODE § 24.114.

recommendation. Therefore, Staff respectfully requests that the ALJ extend the deadline for Staff to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule until Friday, January 23, 2015.

IV. CONCLUSION

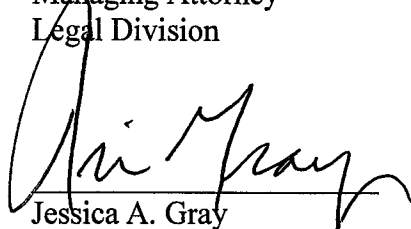
Staff respectfully requests that the ALJ extend the deadline for Staff to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule until Friday, January 23, 2015.

Date: December 15, 2014

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read 'Jessica Gray', is written over a horizontal line.

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DOCKET NO. 42931

CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on December 15, 2014 in accordance with F.U.C. Procedural Rule 22.74.



Jessica A. Gray, Attorney