

Control Number: 42931



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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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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 3, AND REQUEST FOR
SUPPLEMENTAL INFORMATION TO CLARIFY THE APPLICATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 3, and Request for Supplemental Information to Clarify the Application. 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. This Response is timely filed.

II. STAFF'S REQUEST FOR SUPPLEMENTAL INFORMATION TO CLARIFY THE APPLICATION

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. While the application is not fully clear as to what relief the Applicants request through the application, it is Staff's understanding that the Applicants request that a portion of Manville WSC's service area be transferred to Lakeside WCID 1 pursuant to TEX. WATER CODE ANN. § 13.301, that Manville WSC's CCN be amended to reflect this transfer pursuant to TEX. WATER CODE ANN. Chapter 13, Subchapter G, and Lakeside WCID 1 obtain a new CCN¹¹ for the portion of service area to be transferred under the 1996 and 2013 Agreements pursuant to TEX. WATER CODE ANN. Chapter 13, Subchapter G. Currently, Manville WSC is singly certified to a portion of land consisting of approximately 166.19 acres. This portion of service area to be transferred under the 1996 and 2013 Agreements is currently located within Lakeside WCID 1. Pursuant to the 1996 and 2013 Agreements, Manville WSC will transfer this portion of its service area to Lakeside WCID 1, making this portion singly certified to Lakeside WCID 1.

Staff interprets the application as a request for three types of relief: (1) that a portion of Manville WSC's service area be **transferred** to Lakeside WCID 1 in accordance with TEX.

¹¹ Lakeside WCID 1 is not required to hold a CCN pursuant to TEX. WATER CODE ANN. §§ 13.242(a); 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 TEX. WATER CODE ANN. § 13.250 and Title 16, TEX. ADMIN. CODE § 24.114.

WATER CODE ANN. § 13.301; (2) that Manville WSC's CCN be **amended** 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 under the 1996 and 2013 Agreements in accordance with TEX. WATER CODE ANN. Chapter 13, Subchapter G. However, because the application does not appear to fully state the relief requested and does not appear to fully cite to specific statutory authority or Commission rules in support of thereof,¹² Staff recommends that the Applicants be ordered to file a response clarifying the full extent of the relief sought in this proceeding. Staff requests that the Applicants be ordered to file a response affirming or denying Staff's interpretation of the relief sought in the application, as listed above. Staff further recommends that, if the Applicants disagree with Staff's interpretation of the application, the Applicants should provide a detailed statement explaining the relief requested and specifying under which specific rules and statutes the relief is being requested.

III. PROPOSED PROCEDURAL SCHEDULE

In support of its request for clarifying information, Staff proposes the following procedural schedule:

Deadline for Applicants to file supplemental information to clarify the relief requested in this proceeding.	February 23, 2015
Deadline for Staff to file a supplemental recommendation on the application.	March 20, 2015

IV. CONCLUSION

Staff interprets the application as a request for three types of relief: (1) that a portion of Manville WSC's service area be transferred to Lakeside WCID 1; (2) that Manville WSC's CCN be amended to reflect this transfer; and (3) that Lakeside WCID 1 obtain a new CCN for the portion of service area to be transferred under the 1996 and 2013 Agreements. Staff respectfully requests that the Applicants be ordered to file supplemental information clarifying the full extent of the relief sought in this proceeding and affirming or denying Staff's interpretation of the application. Additionally, Staff requests that, if the Applicants disagree with Staff's

¹² P.U.C. PROC. R. 22.73(1) and (5) require applications to include a statement of the jurisdiction of the commission over the parties and the subject matter and include a concise statement of the relief, action, or order desired by the pleading party.

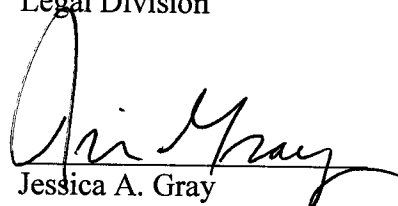
interpretation of the application, the Applicants be ordered to provide a detailed statement explaining the relief requested and specifying under which rules and statutes the relief is being requested. Staff respectfully requests that an order be issued reflecting Staff's recommendation in this Response.

Date: January 23, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

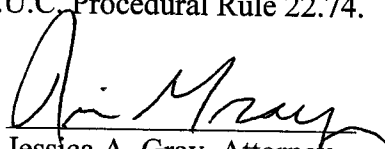
A handwritten signature in black ink, appearing to read "Jessica A. Gray", is written over a horizontal line.

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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 January 23, 2015 in accordance with P.U.C. Procedural Rule 22.74.


Jessica A. Gray, Attorney