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DOCKET NO. 42933

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APPLICATION OF MANVILLE §
WATER SUPPLY CORPORATION §
AND LAKESIDE WATER CONTROL §
IMPROVEMENT DISTRICT 2B FOR §
APPROVAL OF A SERVICE §
AGREEMENT IN TRAVIS COUNTY §
(37794-C) §

OF

TEXAS

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 6 AND SUPPLEMENTAL
RECOMMENDATION ON THE APPLICATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 6 and Supplemental Recommendation on the Application. In support of its Response, Staff states the following:

I. BACKGROUND

On November 18, 2013, Lakeside Water Control Improvement District 2B (Lakeside WCID 2B) 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 2B, Registration No. P1275, 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 2B 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

¹ Tex. Water Code Ann. § 13.242(a).

² A district is a political subdivision and is, thus, "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.

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 2B to either Tiemann or Lakeside WCID 2B. 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 2B. On September 11, 2013, Lakeside WCID 2B 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

³ Tex. Water Code Ann. § 13.242(b).

⁴ *Id.*; Tex. Water Code Ann. § 13.248; 16 Tex. Admin. Code § 24. 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 2B for Approval of a Service Agreement in Travis County at 33 (Nov. 18, 2013).

⁷ *Id.* at 95.

⁸ *Id.* at 97.

of Pflugerville assigned its right to obtain the water CCN service area that overlaps with Lakeside WCID 2B to Lakeside WCID 2B.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. 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.

On March 20, 2015, Staff filed its Response to Order No. 4 and Request for Additional Information, requesting that the Applicants amend the application to provide the information required by applications for the types of relief requested.¹¹ On May 7, 2015, the ALJ issued Order No. 5 directing the Applicants to amend the application and file draft notices by May 22, 2015. Also in Order No. 5, the ALJ directed Staff to file a supplemental recommendation on the application by June 30, 2015. On June 30, 2015, Staff filed its Response to Order No. 5 and Supplemental Recommendation in which Staff recommended that the Applicants clarify the intent of the application and that multiple deficiencies remained. On July 10, 2015, the ALJ issued Order No. 6 finding that application remained incomplete and deficient, directing Lakeside WCID 2B to amend the application to cure the deficiencies by July 31, 2015, and order Staff to file a

⁹ *Id.* at 98.

¹⁰ *Id.* at 104.

¹¹ On March 23, 2015, Staff filed an Amended Response to Order No. 4 and Request for Additional Information to amend the proposed procedural schedule to reflect the dates agreed upon by the parties.

supplemental recommendation on administrative completeness of the amended application and notice by September 1, 2015. This Response is timely filed.

II. STAFF'S SUPPLEMENTAL RECOMMENDATION ON THE APPLICATION

On July 31, 2015, Lakeside WCID 2B submitted additional mapping documents and notice information in response to Order No. 6. Based on this supplemental information, Staff understands that Lakeside WCID 2B intends to: obtain a water and sewer CCN; decertify portions of the City of Pflugerville's sewer CCN No. 20678; decertify portions of Manville WSC's water CCN No. 11144; and does not intend to provide service within the City of Pflugerville's corporate boundaries. As shown in the memo (Attachment A) of Mary Lupo and Tracy Harbour in the Commission's Water Utilities Division, Staff has reviewed the additional mapping documents and notice information provided by Lakeside WCID 2B and recommends that the mapping information remains deficient.

In order to resolve the mapping deficiencies, Staff recommends that the Applicants file a large scale (detailed) map delineating the proposed water and sewer service area for Lakeside WCID 2B with enough detail to accurately locate the service areas in the vicinity of surrounding roads, streets and highways. The proposed service areas requested for Lakeside WCID 2B must be clearly marked and labeled on the map differently than the surrounding Lakeside tracts, which are not associated with this docket. Additionally, Staff recommends that the Applicants file revised digital data only delineating the proposed service area for Lakeside WCID 2B after removing the overlap with the City of Pflugerville's corporate boundaries. This digital data should include the projection or coordinate system on a text file used to create the digital data and should be submitted on a data disk (CD) as a single polygon in a shapefile format, which corresponds to the same proposed water and sewer service area as shown on the large scale map. Finally, in order to aid Staff in its technical review of the application, Staff recommends that the Applicants file documentation signed by the City of Pflugerville agreeing to decertify a portion of their sewer CCN No. 20678 and documentation signed by the Lower Colorado River Authority (LCRA) allowing Lakeside WCID 2B to provide retail water and sewer service within LCRA's district boundaries.

In order to allow Staff to perform its review of the application, Staff requests that the Applicants cure the identified deficiencies by submitting the information requested above. Staff recommends that the Applicants be given until **October 1, 2015** to provide the requested

information. Staff proposes to file a supplemental recommendation on the application by **November 2, 2015**.

III. CONCLUSION

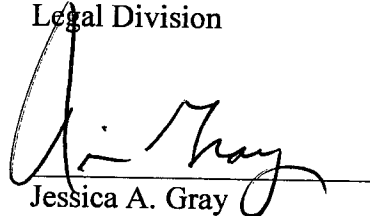
For the reasons stated above, Staff recommends that the application remains deficient. Staff respectfully requests that the Applicants amend the application by providing the requested information by **October 1, 2015**. Staff proposes to file a supplemental recommendation on the application by **November 2, 2015**. Staff respectfully requests that an order be issued reflecting this Response.

Date: September 1, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Karen Hubbard
Managing Attorney
Legal Division

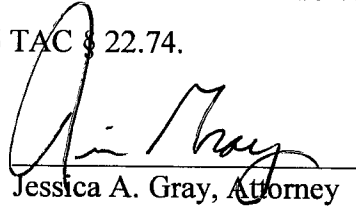


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on September 1, 2015 in accordance with 16 TAC § 22.74.


Jessica A. Gray, Attorney

ATTACHMENT A

Memorandum

TO: Jessica Gray, Attorney
Legal Division

FROM: Mary Lupo, Financial Analyst
Tracy Harbour, GIS Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Water Utilities Division

DATE: August 25, 2015

RE: **Docket No. 42933:** *Application of Manville Water Supply Corporation and Lakeside Water Control and Improvement District 2B for Approval of a Service Agreement in Travis, County (37794-C)*

On November 18, 2013, Lakeside Water Control Improvement District 2B (Lakeside WCID 2B) and Manville Water Supply Corporation (Manville WSC) filed a Contract Service Agreement with the Texas Commission on Environmental Quality (TCEQ) pursuant to Texas Water Code, Section 13.248. On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview.

In response to Commission's Order No. 5, on May 22, 2015, Lakeside WCID 2B (Applicant) filed an amended application to obtain new water and sewer CCNs in Travis County. The application is being reviewed pursuant to Texas Water Code (TWC) §§ 13.242- 13.250 and 16 Tex. Admin. Code (TAC) §§ 24.101-24.107. On July 31, 2015, the Applicant further amended the application in response to Order No. 6 by filing supplemental mapping and notice documents to correct the deficiencies identified by Staff.

As confirmed in writing on July 31, 2015, in a meeting on July 15, 2015, and by phone conference on July 24, 2015, the Applicant's intent for this application is described below:

- To obtain a water and sewer CCN;
- To decertify portions of the City of Pflugerville's sewer CCN No. 20678;
- To decertify portions of Manville WSC's water CCN No. 11144; and
- Does not intend to provide service within the City of Pflugerville's corporate boundaries.

The Applicant's filed mapping information remains deficient; therefore, Staff recommends that the application be deemed insufficient for filing and found administratively incomplete.

Mapping Content

In order to continue processing the application, the Applicant must submit the following to resolve the mapping deficiencies:

- A large scale (detailed) map delineating the proposed water and sewer service area for Lakeside WCID 2B with enough detail to accurately locate the service areas in the vicinity of surrounding roads, streets and highways. The proposed service areas requested for Lakeside WCID 2B must be clearly marked and labeled on the map differently than the surrounding Lakeside tracts, which are not associated with this docket.
- Proposed digital data only delineating the proposed service area for Lakeside WCID 2B after removing the overlap with the City of Pflugerville's corporate boundaries.

- a. Include the projection (PRJ) or coordinate system on a text file used to create the digital data.
- b. Provide the digital data on a data disk (CD) as a single polygon in a shapefile (SHP) format, which corresponds to the same proposed water and sewer service area as shown on the large scale map.

Technical Review

The items listed below will be addressed during Staff's technical review of the application. Failure to provide the requested information may delay processing of the application:

The Applicant must submit the following documentation to achieve the requested intent:

- c. Documentation signed by the City of Pflugerville agreeing to decertify a portion of their sewer CCN No. 20678; and
- d. Documentation signed by the LCRA allowing Lakeside WCID 2B to provide retail water and sewer service within LCRA's district boundaries.