



Control Number: 42934



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DOCKET NO. 42934

RECEIVED

APPLICATION OF MANVILLE
WATER SUPPLY CORPORATION
AND LAKESIDE WATER CONTROL
IMPROVEMENT DISTRICT 2C FOR
APPROVAL OF A SERVICE
AGREEMENT IN TRAVIS COUNTY
(37795-C)

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**COMMISSION STAFF'S AMENDED RESPONSE TO ORDER NO. 5 AND
SUPPLEMENTAL RECOMMENDATION ON THE APPLICATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Amended Response to Order No. 5 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 2C (Lakeside WCID 2C) 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 2C, Registration No. P1333, 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 2C 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, 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.

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 2C to either Tiemann or Lakeside WCID 2C. 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 2C. On September 11, 2013, Lakeside WCID 2C 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 2C for Approval of a Service Agreement in Travis County at 53 (Nov. 18, 2013).

⁷ *Id.* at 102.

⁸ *Id.* at 104.

of Pflugerville assigned its right to obtain the water CCN service area that overlaps with Lakeside WCID 2C to Lakeside WCID 2C.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. This Response is timely filed.

II. STAFF'S SUPPLEMENTAL RECOMMENDATION ON THE APPLICATION

On May 22, 2015, Lakeside WCID 2C submitted additional information and draft notices in response to Order No. 5. In their response to Order No. 5, the Applicants amended the original application to include a request for a new *sewer* CCN to Lakeside WCID 2C for the same service area to be included in its new water CCN. Lakeside WCID 2C indicated that the requested sewer

⁹ *Id.* at 105.

¹⁰ *Id.* at 111.

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.

service area is currently uncertificated.¹² As amended, Staff understands the application to request four specific types of relief: (1) the transfer of certificated *water* service area from Manville WSC to Lakeside WCID 2C; (2) the amendment of Manville's *water* CCN No. 11144; (3) the granting of a new *water* CCN to Lakeside WCID 2C; and (4) the granting of a new *sewer* CCN to Lakeside WCID 2C.

As shown in the memo (Attachment A) of Mary Lupo and Tracy Harbour in the Commission's Water Utilities Division, Staff has reviewed the amended application and notices provided by the Applicants and recommends that the application remains deficient. Specifically, Staff recommends that the mapping information remains deficient. Specifically, an overlap of the proposed sewer service area coincides with the City of Pflugerville's sewer CCN No. 20678. Staff recommends that the Applicant clarify whether it intends to: 1) seek dual certification with the area of overlap; (2) decertify the portion of overlap pertaining to the City of Pflugerville's sewer CCN No. 20678; or 3) whether the overlap with the City of Pflugerville's sewer CCN No. 20678 was unintentional and, thus, the mapping should be revised. Additionally, Staff recommends that the notice information provided by the Applicants remains insufficient because the list of neighboring utilities, districts and any other entities providing the same type of service to be provided by Lakeside WCID 2C is insufficient. Staff recommends that the Applicant expand the list to include all entities within a five-mile boundary from each proposed service area. Staff also recommends that the Applicants provide responses to Question 5.A.iii., 5.A.iv., and 5.A.v., of the application regarding the date of the last inspection for the water and sewer systems and inspection reports for the water and sewer systems. For each system deficiency listed in the TCEQ inspection report letter, Staff recommends that the Applicant attach a brief explanation listing the actions taken or being taken to correct the listed deficiencies, including the proposed completion date.

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 **July 31, 2015** to provide the requested information. Staff proposes to file a supplemental recommendation on the application by **September 1, 2015**.

¹² Application at Attachment A.

III. CONCLUSION

For the reasons stated above, Staff recommends that the mapping information and notice information remain deficient. Staff respectfully requests that the Applicants amend the application by providing the requested information by **July 31, 2015**. Staff proposes to file a supplemental recommendation on the application by **September 1, 2015**. Staff respectfully requests that an order be issued reflecting this Response.

Date: June 30, 2015

Respectfully Submitted,

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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 June 30, 2015 in accordance with 16 TAC § 22.74.

Jessica Gray
Jessica A. Gray, Attorney

W/ permission
Ann B

ATTACHMENT A

Public Utility Commission of Texas

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: June 22, 2015

RE: Docket No. 42934: Application of Manville Water Supply Corporation and Lakeside Water Control and Improvement District 2C for Approval of a Service Agreement in Travis, County (37795-C)

On November 18, 2013, Applicant filed a Contract Service Agreement with the Texas Commission on Environmental Quality (TCEQ) pursuant to Texas Water Code, Section 13.248, from Manville Water Supply Corporation (WSC), Certificate of Convenience and Necessity (CCN) No. 11144, and Lakeside Water Control and Improvement District (WCID) 2C, P1333, in Travis County. 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 Water Control and Improvement District No. 2C (Applicant) filed an application to obtain a new water and sewer CCN 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. Order number 5 requested staff to review the proposed CCN application for administrative completeness by June 30, 2015.

Based on a review of the Applicant's May 22, 2015 filing, I found it is deficient in the required mapping information; therefore, Staff recommends that the application be deemed insufficient for filing and found administratively incomplete. Staff further recommends the Applicant address the deficiencies noted below.

Mapping Content

1. An overlap exists with the City of Pflugerville's sewer CCN No. 20678. The Applicant should clarify if it intends to seek dual certification with the area of overlap or decertify the portion of overlap, or whether the overlap was unintentional, in which case the mapping information must be revised.
2. The list of neighboring utilities, districts and any other entities providing the same type of service provided in the application is insufficient. The Applicant should expand the list to include entities within a 5-mile boundary from each proposed service area.

Area of Concern

The item 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:

1. Question 5, A., iii., iv., and v., of the application ask for date of the last inspection for the water and sewer systems, inspection reports for the water and sewer systems, and for each system deficiency listed in the TCEQ inspection report letter; attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion date.