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Docket No. 47518

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PUBLIC UTILITY COMMISSION
FILING CLERK

LANDOWNERS' PETITION TO AMEND	\$	PUBLIC UTILITY COMMISSION
MANVILLE WATER SUPPLY CORPORATION'S	\$	
CERTIFICATE OF CONVENIENCE AND NECESSITY	\$	OF TEXAS
IN TRAVIS COUNTY BY EXPEDITED RELEASE	\$	

RESPONSE OF MANVILLE WATER SUPPLY CORPORATION
TO ORDER NO. 4 AND TO LANDOWNERS' ADMINISTRATIVELY
COMPLETE PETITION

Comes now, Manville Water Supply Corporation, Intervenor, (hereinafter "Manville") and files this its Response to Order No. 4 and to Landowners' Administratively Complete Petition, and in support of which would show the following:

I. CCN

Manville is the holder of a Water Certificate of Convenience and Necessity, from which the Landowners herein seek "streamlined" expedited release. Pursuant to the requirements of its Certificate, Manville stands ready to provide continuous and adequate retail service to the entirety of Landowners' property, according to the terms of its tariff and has in fact taken action to make such service available.

II. Background

In an attempt to engage in the advance planning required by its obligation to provide continuous and adequate water service to the entirety of its CCN area and in recognition of the need to remain ahead of the significant growth in that portion of its service area, Manville as early as 2013 initiated plans for service to the Landowners' property, including enhanced infrastructure and a source of wholesale water to be dedicated in large part to the property. Manville entered into a wholesale water supply contract with the specific intent of applying the said water to the properties now seeking release, and installed enhanced infrastructure in part intended to serve those properties.

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III. Prospective Retail Public Utility

Withdrawal from the Manville service area is a matter of right under the Code, the Regulations, and the standards set out in the Chrystal Clear case. However, no substitute or Prospective Retail Public Utility, as defined by the Regulations (24.113) has been identified in this proceeding, and on information and belief, there exists no firm agreement between the Landowners and any Prospective Retail Public Utility to provide retail service to the property. Texas Water Code Section 13.254, Section (a-8) provides that the Commission must find that an alternative provider is capable of providing the requested service, in cases where the certificate holder has made service available through planning, construction of facilities, or contractual obligations to serve the area. Manville has entered into significant planning, construction of facilities and contractual obligations in the form of a wholesale water supply contract. (See IV, below) Given that no alternative provider is identified or under contract to provide service to the removed property, the Commission has no basis for making the requisite finding of capability to serve by an alternative provider.

IV. Compensation Issues

No alternative provider may initiate retail service directly or indirectly in the removed area until compensation for useless or valueless property as determined by the Commission is paid. Absent an agreement between Manville and the as yet unidentified alternative provider, the Regulations (24.113 (n) and (o)), provide that the entry of an order of release triggers an obligation on the part of the alternative provider to file a notice of intent to provide service. This in turn triggers a 90-day hearing process to determine amount of compensation payable to the Manville, based on the property determined by the Commission to have been rendered useless and valueless. Manville claims compensation based on the elements of compensation set forth in Regulation 24.113 (o) (10).

Specifically, in anticipation of service to the properties to be released, Manville negotiated and entered into a wholesale water supply contract with Epcor 130 Project, Inc (formerly Blue Water 130 Project LP). The contract contains a sliding scale of "take or pay" provisions, meaning that Manville must pay for the water even though it has no alternative uses for it, and will not be able to use it except to serve the area sought to be released. Over the contract term of twenty-five (25) years, the "take or pay" contract provisions will cost Manville the projected sum of \$10,577,582.46, all of which is allocable to the released area, for which Manville remains obligated and must be compensated.

Additionally, and also in anticipation of the need to provide continuous and adequate service to the properties sought to be released, Manville expanded and enhanced its infrastructure in the area, in a significant capital improvement project a portion of which will be rendered useless and valueless without service to the properties sought to be released. In this project, completed earlier in

2017, Manville expended \$3,199,987.76 on its Gregg Lane Booster Station, supply storage, and pressure facilities of which 31.64% was allocated specifically to Landowners' properties. Manville is entitled to compensation in the amount of \$987,164.11 for those expenditures.

Manville also claims compensation for the impact on future utility revenues based on the projected build-out of the Landowners' project, legal and professional fees still accruing, the amount of Manville's debt allocable to service to the area to be removed, and related planning, design, and construction costs of facilities allocable to the removed area.

V. 7 USC 1926 b

Manville is indebted to the United States Department of Agriculture – Rural Development in the approximate amount of \$ 2,851,438.13. 7 USC 1926b and the accompanying regulations at 7 CFR Sec. 1782.14 protect indebted utilities from encroachment or loss of service area while an outstanding loan balance to Rural Development exists. The federal judiciary has long given the provision a broad interpretation to protect indebted utilities and the security of federal loans. Manville is well aware of the provision contained in Texas Water Code 13.254 (a-6), to the effect that "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program." Given that the state statutory provision flies in the face of the Supremacy Clause of the United States Constitution (Article VI, Clause 2), and given that Manville has gone to great lengths and to great expense to make service available on request to the Landowners' properties, Manville is entitled to 7 USC 1926b protection, or, in the alternative, reimbursement for the amount of Manville's debt allocable to the area sought to be removed.

Manville prays that its right to compensation be preserved, that a hearing be held on the amount of compensation in the manner set out in law, and for such other and further relief at law or in equity to which it might show itself entitled. Manville reserves the right to seek judicial relief under 7 USC 1926b.

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AFFIDAVIT

STATE OF TEXAS

COUNTY OF TRAVIS

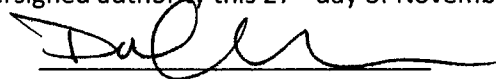
Before me, the undersigned authority, on this day personally appeared Karl H. Moeller, who having been by me duly sworn, stated as follows:

"My name is Karl H. Moeller, attorney of record in this proceeding for Manville Water Supply Corporation. I am general counsel to Manville Water Supply Corporation and have served in that capacity for approximately 20 years. I am of sound mind and capable of making this sworn statement, and have personal knowledge of the facts herein stated. The facts herein contained are true and correct."

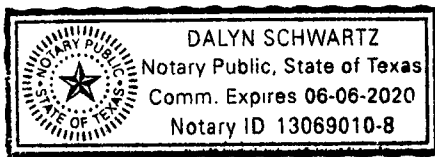


Karl H. Moeller

Sworn to and Subscribed before me the undersigned authority this 27th day of November, 2017,



Notary Public, State of Texas



Certificate of Service

A true copy of the foregoing has been served on all parties of record by fax and first class US Mail, postage prepaid and return receipt requested this 27th day of November, 2017

