



Control Number: 47523



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DOCKET NO. 47523

**REMAND OF TCEQ APPLICATION §
NO. 37683-C (PETITION FROM TEXAS §
GENERAL LAND OFFICE FOR §
EXPEDITED RELEASE FROM §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY (CCN) NO. 10293 §
HELD BY MAXWELL WATER SUPPLY §
CORPORATION IN HAYS COUNTY, §
TEXAS) §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

2013 JAN 16 AM 12:30
PUBLIC UTILITY COMMISSION
FILING CLERK

ORDER

This Order addresses the petition of Maxwell Water Supply Corporation to recertify service area in Hays County by agreement under Texas Water Code (TWC) § 13.248 and 16 Texas Administrative Code (TAC) § 24.117. Commission Staff recommended approval of the application. The application is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Background

On or about August 6, 2013, the Texas Commission on Environmental Quality (TCEQ) received a petition to decertify, on an expedited basis and without hearing, approximately 504 acres of real property owned by the Texas General Land Office (GLO) from Maxwell's service area under certificate of convenience and necessity (CCN) number 10293.¹ Two other landowners filed similar petitions. N.O.B. 216 Holdings, Ltd. requested release of approximately 216 acres² and Yarrington Partners, Ltd. requested release of approximately 201 acres.³ The TCEQ Executive Director issued administrative orders in each proceeding granting the petitions. Maxwell appealed the orders.

¹ *Petition From Texas General Land Office for Expedited Release From Certificate of Convenience and Necessity (CCN) No. 10293 Held by Maxwell Water Supply Corporation in Hays County, Texas*, TCEQ Application No. 37683-C, Order (Aug. 6, 2013).

² *Petition of N.O.B. 216 Holdings, Ltd. for Expedited Release of Property from Maxwell Water Supply Corporation Certified Service Area*, TCEQ Application No. 37680-C, Order (Aug. 2, 2013).

³ *Petition of Yarrington Partners, Ltd. for Expedited Release of Property from Maxwell Water Supply Corporation Certified Service Area*, TCEQ Application No. 37681-C, Order (Aug. 2, 2013).

The interested parties in the three cases, Maxwell, GLO, the City of San Marcos, and Whisper Master Community, L.P., reached a settlement agreement disposing of all three appeals.⁴ During the appeal process, GLO sold its parcel to Whisper, such that Whisper now owns or controls all real property at issue in the three administrative appeals.⁵ The parcels that were decertified are part of a proposed development within the city limits or extra-territorial jurisdiction of the City of San Marcos.⁶ Whisper intends to construct at least 450 single-family residential units on approximately 100 acres of the proposed development.⁷ Maxwell seeks approval of the agreement to recertify the approximately 100 acres back to Maxwell.

The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural history

1. Previously, a portion of Maxwell's service area covered by CCN No. 10293 was decertified by an order granting TCEQ Application No. 37683-C. Maxwell timely appealed the order in TCEQ Application No. 37683-C along with orders in two related cases concerning adjacent properties.
2. The parties in *Maxwell Water Supply Corporation v. TCEQ*, Cause No. D-1-GN-13-003767 in the 201st District Court of Travis County, reached a settlement agreement.
3. On August 17, 2017, Maxwell filed an application to amend its water CCN in Hays County. The application included an agreement resolving the District Court litigation.
4. On August 23, 2017, the Agreed Order for remand from the 201st District Court was filed in this docket.
5. On August 28, 2017, Order No. 1 was issued requiring comments on administrative completeness and notice, requesting a procedural schedule, and addressing other procedural matters.

⁴ Petition on Remand to Recertify Service Area Pursuant to Settlement Agreement (Aug. 17, 2017) (Petition).

⁵ Petition at 5.

⁶ *Id.*

⁷ *Id.*

6. On September 21, 2017, Order No. 2 was issued deeming the application administratively complete and establishing a procedural schedule.
7. On October 19, 2017, Maxwell filed a signed consent form concurring with the revised map and certificate prepared by Commission Staff.
8. On November 3, 2017, Commission Staff recommended approval of the application.
9. The final map and CCN certificate referenced in Finding of Fact No. 6 are attached to this Order.

Notice

10. In accordance with 16 TAC § 24.117(c)(2), the decision to enter into the Contract was discussed at a meeting of the San Marcos City Council and a meeting of Maxwell's board.
11. On August 17, 2017, Maxwell filed as proof of notice the meeting minutes and agendas from the meetings of the San Marcos City Council and Maxwell's board, along with affidavits of notice from each entity.
12. On September 8, 2017, notice of the application was published in the *Texas Register*.

Evidentiary record

13. On November 28, 2017, Order No. 3 was issued admitting evidence into the record of this proceeding.

Description of the application

14. Maxwell holds water CCN No. 10293.
15. The agreement contemplates several conditions that must be met according to a timeline, including the filing of this application requesting recertification of 100 acres from within the decertified area to Maxwell's CCN (the Recertification Area).
16. There are zero current customers in the Recertification Area.
17. Maxwell's public water system currently meets or exceeds TCEQ's minimum standards for treatment, storage, distribution, and capacity.

18. Maxwell currently retains an immediately-available water-capacity surplus of 598 acre-feet.
19. Maxwell is able to provide water service to its entire service area, including both the Recertification Area and those areas adjacent to it.

Informal disposition

20. More than 15 days have passed since the completion of the notice provided in this docket.
21. Maxwell and Commission Staff are the only parties to this proceeding.
22. No issues of fact or law remain disputed by any party.

III. Conclusions of Law

1. The Commission has jurisdiction over these matters under Texas Water Code (TWC) §§ 13.041, 13.241, and 13.248.
2. Maxwell is a non-profit water supply corporation organized under TWC Chapter 67.
3. Public notice of the application was provided in compliance with 16 Texas Administrative Code (TAC) § 24.117(c).
4. The application meets the requirements set forth in TWC § 13.248 and 16 TAC § 24.117.
5. Consistent with the factors in TWC § 13.248, Maxwell is entitled to approval of the contract and to add the Recertification Area to its CCN.
6. Under TWC § 13.257(r), Maxwell is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
7. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

IV. Ordering Paragraphs

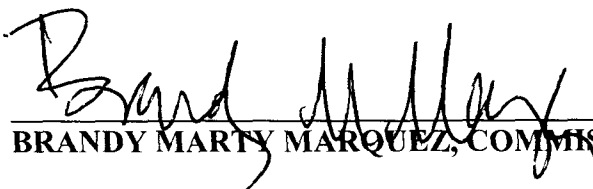
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Maxwell's application is approved.
2. Maxwell's CCN No. 10293 is amended, consistent with this Order.
3. Maxwell shall serve every customer and applicant for service within the areas certified under CCN No. 10293, and such service shall be continuous and adequate.
4. Maxwell shall comply with the recording requirements in TWC § 13.257(r) for the area in Hays County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
5. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 17th day of January 2018.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


BRANDY MARTY MARQUEZ, COMMISSIONER


ARTHUR C. D'ANDREA, COMMISSIONER

Maxwell Water Supply Corporation
Portion of Water CCN No. 10293
PUC Docket No. 47523
13 248 Agreement Amended CCN No 10293 in Hays County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN



10293 - Maxwell WSC

10298 - City of San Marcos

0 350 700
Feet



Map by Koral Patel
Date created September 21, 2017
Project Path: n:\vinalmapping\47523MaxwellWSC.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That Maxwell Water Supply Corporation

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Maxwell Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10293

to provide continuous and adequate water utility service to that service area or those service areas in Hays County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47523 are on file at the Commission offices in Austin, Texas, and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Maxwell Water Supply Corporation, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the 17th day of January 2018.