



Control Number: 48746



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DOCKET NO. 48746

**APPLICATION OF THE CITY OF
MARSHALL TO AMEND ITS
WATER CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN HARRISON COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and in response to Order No. 13, files this Recommendation on Final Disposition. In support, Staff shows the following:

I. BACKGROUND

On October 9, 2018, the City of Marshall (Marshall) filed an application to amend its water Certificate of Convenience and Necessity (CCN) No. 11064 in Harrison County, Texas pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 .

On May 18, 2020, the administrative law judge (ALJ) issued Order No. 13, which required Staff to submit a final recommendation on the application by June 21, 2020. This pleading is therefore timely filed.¹

II. FINAL RECOMMENDATION

After review, and as supported by the attached memorandum of Kathryn Eiland, Financial Analyst with the Commission’s Rate Regulation Division, Staff recommends approval of the application. Staff’s review indicates that Marshall meets all of the applicable statutory requirements of TWC Chapter 13 and the Commission’s Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Staff further recommends that approving

¹ June 21, 2020 is a Sunday. The Commission is not open for business on Sunday; therefore the deadline is June 22, 2020 under 16 TAC § 22.4(a).

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this application to amend water CCN No. 11064 is necessary for the service, accommodation, convenience and safety of the public.

In accordance with this recommendation, the corresponding map (Attachment B) and certificate (Attachment C) consented to by Marshall are attached. On or before July 5, 2020, the parties will jointly file proposed findings of fact and conclusions of law.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that Marshall's application be approved.

Dated: June 22, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Eleanor D'Ambrosio
Managing Attorney

/s/ John Harrison

John Harrison
State Bar No. 24097806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7277
(512) 936-7268 (facsimile)
John.Harrison@puc.texas.gov

DOCKET NO. 48746

CERTIFICATE OF SERVICE

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on June 22, 2020, in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ John Harrison
John Harrison

Public Utility Commission of Texas

Memorandum

TO: John Harrison, Attorney
Legal Division

FROM: Kathryn Eiland, Financial Analyst
Rate Regulation Division

DATE: June 22, 2020

RE: **Docket 48746**, *Application of the City of Marshall to Amend its Water Certificate of Convenience and Necessity in Harrison County*

On October 9, 2018, the City of Marshall (Marshall) filed an application with the Public Utility Commission of Texas (Commission) to amend its water Certificate of Convenience and Necessity (CCN) No. 11064 in Harrison County, Texas pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Marshall initially requested to amend its water CCN with an area containing approximately 15,157 acres. Based on the mapping information submitted on April 15, 2020, Marshall requested to modify the requested area to 11,858 acres, which includes 1,320 existing customers. A majority of the requested area is within the city limits or extraterritorial jurisdiction (ETJ). The small portion of the requested area that is outside the city limits and ETJ has customers currently being served by Marshall.

Criteria Considered

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider specific criteria when granting or amending a water or sewer CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

Marshall has a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS Identification No. 1020002. The PWS treats surface water from Cypress Creek via a raw water purchase agreement with Northeast Texas Municipal Utility District (MUD). The PWS has an adequate raw water supply as supported by the raw water contract included with the application.¹ The public water system also has the capacity to serve Marshall's existing connections, which are located in Marshall's existing and requested CCN area. The PWS is operating in compliance with TCEQ requirements and has licensed operators on staff.

¹ Application at Attachment C (Oct. 9, 2018).

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.

There is a need for service as Marshall is currently providing service to 1,320 existing customers in the requested area.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail public utility servicing the proximate area.

Marshall will benefit by adding the requested area and the additional connections, which is it already serving. No other retail public utility is currently serving the requested area. Additionally, landowners within the requested area will continue to benefit from a safe and reliable water source and service.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.

Marshall provides service to 1,320 current customers in the requested area. The application does not indicate that additional connections will be added as a result of the CCN amendment; therefore there are no additional facilities necessary and the adequacy of service should be unchanged by the CCN amendment. Marshall has adequate production, storage, and distribution system in place to provide service to the requested area.

TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.

Marshall provides service to 1,320 current customers and has adequate production, storage, and distribution system in place to provide service to the requested area. The construction of a physically separate water system is not required to serve the area.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

Marshall provides service to 1,320 current customers in the requested area. A majority of the requested area is within Marshall's city limits and ETJ.

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service.

Marshall's comprehensive annual financial report (CAFR) contain an unqualified auditor's opinion from Knuckols, Duvall, Hallum & Co., which stated that the financial statements present fairly, in all material respects, the financial position of Marshall as of December, 2017.² The audit and the related opinion indicate the transparency of Marshall, and speak to Marshall's management capabilities.

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. Marshall's CAFR reflects a debt to equity (net

² *Id.* at Attachment KE-1.

assets) ratio of 0.32, calculated by dividing 2017 long-term notes payable of \$25,710,361³ by net assets of \$80,128,097,⁴ which meets the leverage test of less than one. Furthermore, the audit reflects sufficient unrestricted cash available as a cushion for two years of debt service. Cash and pooled investments, including restricted cash for debt service, totals \$7,953,211⁵ and is less than two years of debt service (\$6,726,675⁶), which meets the requirement.

16 TAC § 24.11(e)(3) refers to the operations test, which requires that the owner or operator demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Marshall submitted a budget for 2019, which reflects an excess of revenues over expenditures of \$362, including debt service and transfers to the general fund of \$3,898,329.⁷ Based on Marshall's 2017 CAFR, specifically the Proprietary Funds Statement of Revenues, Expenses, and Changes in Fund Net Position, the City had \$2,789,290⁸ in operating income in the Water and Sewer Fund in 2017. Thus, there are no shortages to cover.

TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

Staff does not recommend that Marshall be required to provide a bond or other financial assurance to ensure continuous and adequate service.

TWC §§ 13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

The customers' water rates will not be affected by the transaction because the requested area is already being served by Marshall.

Staff recommends that Marshall meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Staff also recommends that approving this application to amend water CCN No. 11064 is necessary for the service, accommodation, convenience and safety of the public.

Marshall consented to the attached map and certificate on June 3, 2020.

³ *Id.* at Bates No. 000004.

⁴ *Id.*

⁵ *Id.* at Bates No. 000008.

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Public Utility Commission Of Texas

By These Presents Be It Known To All That

City of Marshall

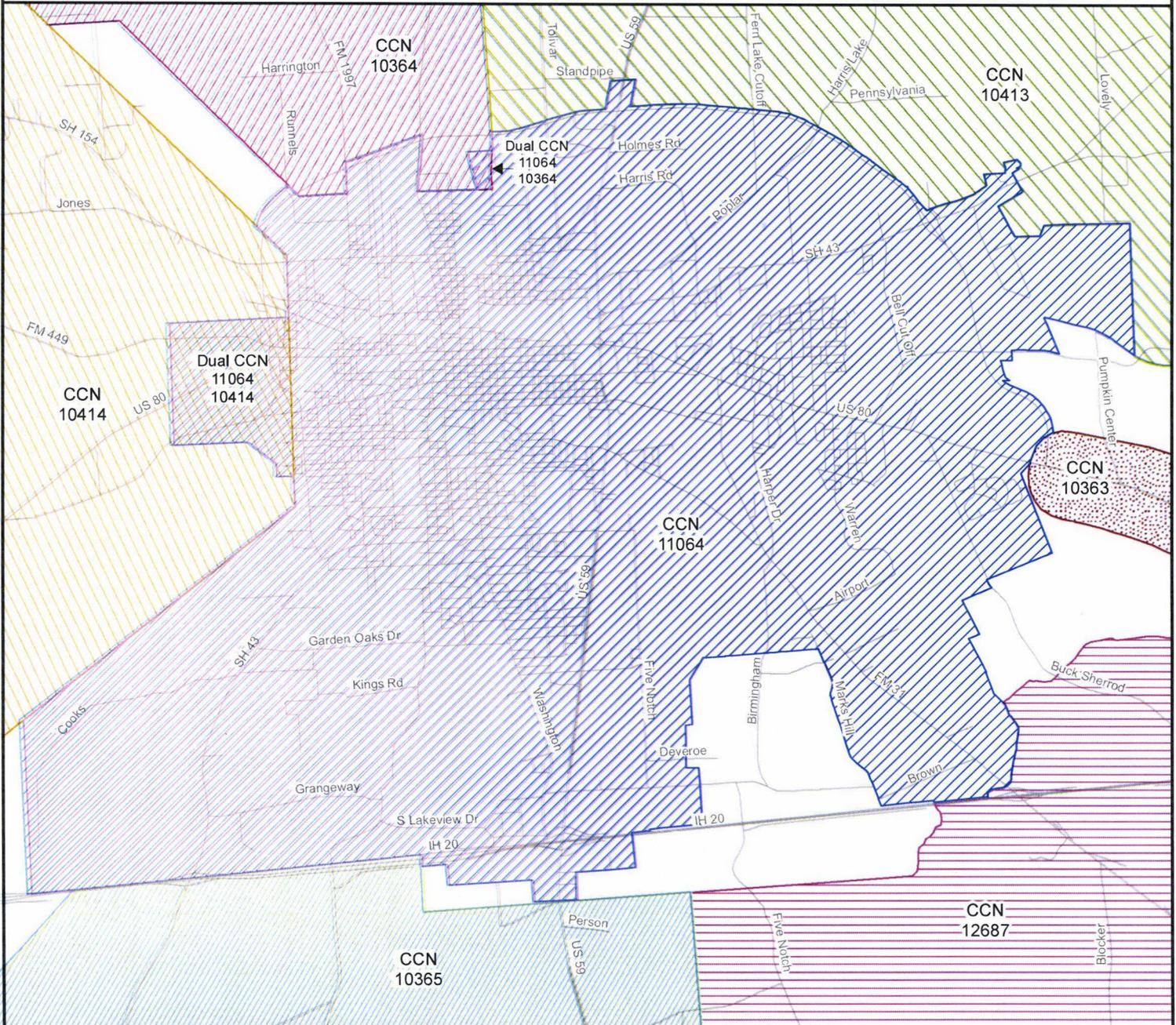
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Marshall is entitled to this

Certificate of Convenience and Necessity No. 11064

to provide continuous and adequate water utility service to that service area or those service areas in Harrison County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48746 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Marshall, 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, this _____ day of _____ 2019.

City of Marshall
 Water CCN No. 11064
 PUC Docket No. 48746
 Amended CCN No. 11064 in Harrison County



Water CCN

- 11064 - City of Marshall
- 10414 - Talley WSC
- 10364 - Cypress Valley WSC
- 10413 - Leigh WSC
- 10363 - City of Scottsville
- 12687 - Blocker-Crossroads WSC
- 10365 - Gill WSC

