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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 OCT 18 PM 4: 24

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 18, 2007

Ms. LaDonna Castanuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2007-0865-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin and Marsha Water Supply Corporation.

Dear Ms. Castanuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items to be filed as backup material for the November 7, 2007 agenda on a request for an order approving a contract designating service areas between the City of Austin and Marsha Water Supply Corporation ("Marsha WSC").

1. Proposed Order;
2. Agenda Executive Summary;
3. Request for a Commission order approving the Texas Water Code §13.248 agreement filed by City of Austin for transfer of water service area between the City of Austin and Marsha WSC ;
4. Texas Water Code §13.248 Agreement between Austin and Marsha WSC;
5. Maps of the area covered by the Agreement; and
6. Certificates of Convenience and Necessity.

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October 18, 2007
Page 2

Please do not hesitate to contact me at (512) 239-0144 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,



Pinar Dogru, Staff Attorney
Environmental Law Division

Enclosures

cc: mailing list

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission On Environmental Quality **DATE:** October 18, 2007
THRU: LaDonna Castañuela, Chief Clerk
FROM: Environmental Law Division
SUBJECT: Consideration of a request for a Commission order approving a contract designating service areas between City of Austin ("Austin") and Marsha Water Supply Corporation ("Marsha WSC").

DESCRIPTION OF APPLICATION

Applicant: The City of Austin
Regulated Activity: Retail water utility service
Type of Application: Request for a Commission Order approving a contract
Commission Action: Hearing regarding approval of the contract
Authority: Texas Water Code §13.248 and 30 Texas Administrative Code § 291.117

FACTUAL BACKGROUND

The City of Austin, Texas, water certificate of convenience and necessity ("CCN") No. 11322, and Marsha WSC, water CCN No. 12166, provide retail water service in Travis County, Texas. On April 24, 2006, by written correspondence, Austin and Marsha WSC agreed to an arrangement under Section 13.248 of the Water Code, whereby Marsha WSC would allow Austin to continue providing water service to designated addresses as retail customers of Austin. The addresses consist of those customers within the Marsha WSC's CCN and Austin's ETJ, yet have historically been provided water service from Austin.

Under the Agreement, Marsha WSC would transfer to Austin approximately 5 acres, including 10 land parcels, of service area that are within Austin's ETJ.

LEGAL AUTHORITY

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 having obtained from the Commission a CCN.¹ A municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries, but that are within the CCN of another retail public utility, without first obtaining written consent from that retail public utility.³

The TWC and TCEQ 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

The request to approve a 13.248 agreement is not subject to the notice provisions of 30 Texas Administrative Code § 291.106, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to TWC § 13.248 with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the Staff's recommendation:

1. Request for a Commission order approving the following agreement: Texas Water Code 13.248 agreement filed by Austin on June 23, 2006 (Application No. 35405-C).
2. Agreement between the City of Austin and Marsha WSC executed by written correspondence on April 24, 2006.
3. Map of the service area subject to the 13.248 agreement submitted by the City of Austin; and

¹ TEX. [WATER] CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under TWC § 13.002(19), but is not a "utility" under § 13.002(23). Therefore, the TWC § 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ § 13.242(b).

⁴ § 13.248; *see also* 30 TEX. ADMIN. CODE § 291.117 (West 2006). TWC § 13.248 states that, "[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 § 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.

4. Financial, Managerial, and Technical analysis of the City of Austin and Marsha Water Supply Corporation to operate in their respective affected areas.

STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Austin, Staff supports the request for a Commission order approving a contract designating service areas between the City of Austin and Marsha Water Supply Corporation. Staff has confirmed that the parties are retail public utilities with active water CCNs and that the areas the parties are seeking to transfer are either certificated or dually certificated to one or both parties receiving the CCN. Further, staff is satisfied that the City of Austin possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred.

STAFF CONTACTS

Pinar Dogru, Environmental Law Division (239-0144)

Lisa Fuentes, Water Supply Division (239-6117)

Docket No. 2007-0865-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin ("Austin"), water certificate of convenience and necessity ("CCN") No. 11322, and Marsha Water Supply Corporation ("Marsha WSC"), water CCN No.12166, in Travis County, Texas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, Marsha WSC would transfer to Austin approximately 5 acres, including 10 land parcels, of service area that are within Austin's extraterritorial jurisdiction. (Pinar Dogru, Lisa Fuentes)

AN ORDER approving contracts designating service areas between the City of Austin and Marsha Water Supply Corporation in Travis County, Texas pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-0865-UCR.

A request for a Commission order approving the contract designating service areas between the City of Austin ("Austin"), water certificate of convenience and necessity ("CCN") No. 11322 and Marsha Water Supply Corporation ("Marsha WSC"), water CCN No. 12166 in Travis County, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section (§) 13.248 of the Texas Water Code and Title 30, § 291.117 of the Texas Administrative Code.

On April 24, 2006, by written correspondence, Austin and Marsha WSC agreed to an arrangement under §13.248 of the Water Code, whereby Marsha WSC would allow Austin to continue providing water service to designated addresses as retail customers of Austin. The addresses consist of those customers within Marsha WSC's CCN and Austin's ETJ, yet have historically been provided water service from Austin. Under the Agreement, Marsha WSC would transfer to Austin approximately 5 acres, including 10 land parcels, of service area that are within Austin's ETJ.

Under the TWC §13.248, contracts between retail public utilities that designate areas 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.

The Commission held a hearing regarding approval of Agreements between Austin and Marsha WSC at the November 7, 2007 agenda and found that the request had merit.

Austin and Marsha WSC are each capable of rendering continuous and adequate water service to the customers in their respective areas covered by the Agreement. The CCN transfer contemplated in the aforementioned Agreement is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Agreement transferring a portion of Marsha WSC's CCN to Austin and designating that retail water service shall continue to be provided by the City of Austin in the designated area, is hereby approved.
2. CCN No. 11322 held by the City of Austin and CCN No. 12166 held by Marsha WSC in Travis County, are hereby amended in accordance with the Agreement.
3. The Executive Director is directed to redraw the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Travis County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

**Request for a Commission Order
Approving a TWC § 13.248 agreement**



City of Austin

Austin Water Utility, P. O. Box 1088, Austin, Texas 78767 512-972-0444

June 22, 2006

REC'D

JUN 26

TEXAS COMMISSION

ENVIRONMENTAL QUALITY

RECEIVED
\$100
JUN 23 2006
A-087-6
UTILITIES & DISTRICTS SECTION

600135198
101208672

Michelle Abrams
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality
P O Box 13087
Austin, TX 78711-3087

RE: Marsha WSC IH 35 Proposed CCN Release

Dear Ms Abrams,

The Austin Water Utility ("AWU") is requesting a transfer of certificate of convenience and necessity ("CCN") pursuant to section 13.248 of the Texas Water Code for a portion of the Marsha Water Supply Corporation ("Marsha") CCN No. 12166 to the AWU CCN No. 11322.

Enclosed you will find the required attachments.

- Letter agreement between AWU and Marsha;
- Map reflecting the area to be transferred, the City's ETJ and corporate limits;
- Large scale CCN map;
- Financial Statement;
- Digital Data;
- Required application fee.

If additional information is required or should you have any questions, please notify me by email at lisa.martinez@ci.austin.tx.us or by phone at 972-0444.

Sincerely,

Lisa M. Martinez, CPM
Contract Administrator
Wholesale Services
Austin Water Utility
City of Austin

RECEIVED

JUN 22 2006

TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

Enclosures

Agreement



City of Austin

Austin Water Utility, P.O. Box 1088, Austin, TX 78767 512-972-00444

35405-C

April 24, 2006

Myra Salas, President
Marsha Water Supply Corporation
15704 Brenda Street
Austin, TX 78728

Dear Ms. Salas:

Pursuant to our phone conversation on Friday, April 14, 2006, the Austin Water Utility determined that there are addresses that have historically been provided water service from the City of Austin ("Austin"), but are located within Marsha Water Supply Corporation's ("Marsha") certificate of convenience and necessity ("CCN"). I have attached a spreadsheet listing the addresses being by served by Austin and a proposed map of the CCN area to be transferred to Austin. All of the CCN being transferred to Austin is entirely within its ETJ.

As I understand, section 13.248 of the Texas Water Code allows utilities to make arrangements to designate the service provider within a utility's CCN. I understood from our phone conversation that Marsha was previously aware of this situation and is willing to continue to allow Austin to provide water service to these addresses as retail customers of Austin. Because agreements such as those allowed by section 13.248 should be memorialized in writing, if you concur, please sign below and send me a copy of this letter.

I greatly appreciate your cooperation in this matter and hope that we can continue to strengthen the working relationship between our two entities. If you have any further concerns, please call me at 972-0444. Thank you.

Sincerely,

Lisa M. Martinez, CPM
Wholesale Services
Austin Water Utility

Concurrence:

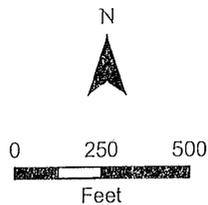
Myra Salas, President
Marsha Water Supply Corporation

Marsha WSC IH35 CCN Transfer

<i>Physical Address</i>	<i>Business Name</i>	<i>Mailing Address</i>
15700 IH35	Brown's Rental	15700 IH35 North Austin, TX 78728-3905
15416 IH35 (Ginger Street on TCAD)	Purcell Tire Company	P O Box 100 Potosi, MO 63664-0100
15432 IH35 (Ginger Street on TCAD)	Centex Rental	2900 Cuero Cv Round Rock, TX 78681-2316
15406 IH35	Floor Centers of Texas	503 Farley Dr. Austin, TX 78753-3112
15412 IH35	Sub Sonic Audio & Security (Extreme Sounds)	503 Farley Dr. Austin, TX 78753-3112
15324 IH35	Affordable Portable	408 W. 6th Street Cameron, TX 76520-2505
15316 IH35	XXX Adult Superstore	P O Box 150097 Austin, TX 78715-0097
15300 IH35	Austin Auto Assistance	Trustees Griffis Family Living Trust 5612 Lomita Verde Cir Austin, TX 78749-4200
15310 IH35 (1704 Quida Dr. on TCAD)	Richter Electric	P O Box 709 Pflugerville, TX 78691-0709
15232 IH35	Diesel Tech	15232 N IH35 Austin, TX 78728-5709



-  Area to be transferred to City of Austin
-  Marsha WSC
-  City of Austin 2 Mile ETJ
-  City of Austin Full-purpose City Limit
-  City of Austin Limited-purpose City Limit



City of Austin
Austin Water Utility



April 18, 2006

Marsha WSC IH-35 Water CCN Transfer

Produced by Systems Analysis Division

This map has been produced by the City of Austin for its needs and purposes and is not warranted for any other use. No warranty is made by the City regarding its accuracy or completeness.

11-2-465-1

**Financial, Managerial, and Technical
Analysis**

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** August 20, 2007
Thru: Lisa Fuentes/Tammy Benter
From: Dan Smith *DS*
Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Austin (Austin), Certificate of Convenience and Necessity (CCN) No. 11322, to Transfer a Portion of CCN No. 12166 from Marsha Water Supply Corporation (WSC) in Travis County; Application No. 35405-C
CN: 600135198 RN: 101208072

In my opinion, Austin has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for transfer.

Signed: *Dan Smith* Date: August 20, 2007

I have reviewed available records of the City of Austin, including a copy of the Texas Municipal Report. It shows that for the fiscal year ended September 30, 2005, the debt service coverage ratio for water and wastewater operations improved from 1.55:1 to 1.73:1, meaning they have increased their reserve and ability to secure additional bond funding. Moody's upgraded the water and wastewater revenue bonds in November, 2005 from A2 to A1, and Standard and Poor's rating continues to be A. This information provides support for a determination of adequate financial capability to provide service to the requested area of five acres, significantly less than a "material" impact to either entity.

Map

