

Control Number: 43121



Item Number: 9

Addendum StartPage: 0

RECEIVED

REQUEST BY EDE AND RANDY
BULLOCK FOR DETERMINATION
OF RCH WATER SUPPLY
CORPORATION'S COMPLIANCE
WITH TEXAS WATER CODE
SEC. 13.004 (37766-I)

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PUBLIC UTILITY COMMISSION
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PUBLIC UTILITY COMMISSION
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OF TEXAS

RCH WATER SUPPLY CORPORATION RESPONSE TO ORDER NO. 1

TO THE PUBLIC UTILITY COMMISSION:

The RCH Water Supply Corporation ("RCH") was served with Order No. 1 in the above-styled case requesting RCH's response to a Petition by Randy Bullock (Petitioner) pursuant to TWC § 13.004 and 10 Tex. Admin. Code § 24.35.

I. INTRODUCTION AND BACKGROUND

RCH is a water supply corporation operating pursuant to Texas Water Code Chapter 67. Public Utility Commission ("PUC") has limited jurisdiction over water supply corporations. The PUC may invoke jurisdiction over a water supply corporation if the *PUC finds* that the water supply corporation:

- (1) is failing to conduct annual or special meetings in compliance with Section 67.007; or
- (2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).¹

PUC Rule § 24.35 recognizes its limited jurisdiction and determined that its jurisdiction ends if the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC §67.007 and has

¹ See TWC § 13.004 (a). It should be noted that PUC Rule 24.35 closely tracks the cited statute.

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operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).²

III. ARGUMENTS AND AUTHORITIES

In order for the PUC to invoke jurisdiction over RCH, the PUC has the burden to establish that RCH is not operating as a water supply corporation. The burden of proof is not on RCH. Thus, it is incumbent on the PUC to establish that RCH is not operating as water supply corporation.

Pursuant to TWC §13.002 (24), a water supply corporation is:

a nonprofit corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

Attached as Exhibit 1, incorporated herein for all purposes, is the most recent Article of Amendment of RCH. RCH directs you to the following provisions:

- Article VII provides for membership-ownership and control.

Attached as Exhibit 2, incorporated herein for all purposes, are the most recent Bylaws of RCH. RCH directs you to the following provisions:

- Article X provides that the corporation shall be managed as a non-profit corporation.
- Articles XIII, XX, and XXI provide for the provision of water for compensation.
- Articles VII, VIII, IX, X, XII, XIV, and XXI provides that the corporation is member owned and controlled.

² 16 Tex. Admin. Code § 24.35 (b)(3).

As demonstrated in Exhibits 1 and 2, RCH operates as a “water supply or sewer service corporation” within the definition of TWC §13.002 (24).

Pursuant to TWC §13.002 (11), a “member” is:

a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

Article VII of the RCH Articles of Incorporation, Exhibit 1 provides that a member shall be a record owner of a fee simple title to property in an area served by RCH or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from RCH. Article VII further establishes that a person is entitled to only one vote regardless of the number of memberships the person owns.

Article XIV of RCH’s Bylaws, Exhibit 2, provides that members are entitled to only one vote regardless of the number of memberships held or owned. The Bylaws state as follows:

Section 3. Voting Rights. A person may own more than one Membership but each Member shall be entitled to only one vote regardless of the number of Memberships owned.³

Thus, RCH is without question a “water supply or sewer service corporation” within the definition of TWC §13.002 (24) which provides services to its members as defined in TWC §13.002 (11).

Next, we must determine if RCH has conducted annual or special meetings in compliance with TWC §67.007 within the last twenty-four months.⁴ TWC §67.007(a) provides that an annual meeting of the membership must be held annually between January 1 and May 1.

³ *Id.*

⁴ 16 Tex. Admin. Code § 24.35 (b)(3).

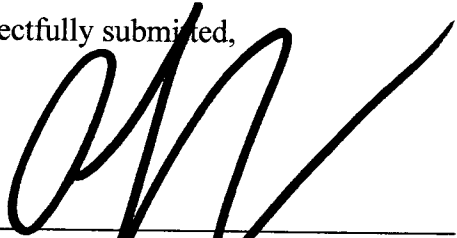
Attached as Exhibit 3 are the meeting minutes of the two most recent minutes of the RCH annual meeting of the membership. As the minutes of the 2015 Annual Meeting of the Membership will not be approved until 2016, the minutes attached in Exhibit 2 are the meeting minutes for the 2013 and 2014 Annual Meetings. However, Board President Jackie Pullen by affidavit contained in Exhibit 4, attached hereto and incorporated herein for all purposes, states the annual meeting of the membership did occur in 2015 as required by TWC § 67.007.

It should be noted that RCH provides this information despite not having seen one shred of credible evidence from Petitioner or the PUC that RCH is not a water supply corporation. All evidence provided to date has been hearsay, conjecture, and, most significantly, unverified.

III. CONCLUSION

RCH has demonstrated that PUC cannot exercise jurisdiction pursuant to TWC §13.004 and 10 Tex. Admin. Code § 24.35. As such, RCH prays for entry of an order dismissing the docket and all charges lobbied against RCH.

Respectfully submitted,



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ATTORNEY FOR RCH WATER SUPPLY
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2015, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

Katherine Lengieza Gross
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
Telephone: (512) 936-7277
Facsimile: (512) 936-7268
Representing the Public Utility
Commission of Texas

Randy and Ede Bullock
P.O. Box 2303
Rockwall, Texas 75087



Arturo D. Rodriguez, Jr.

**ARTICLES OF AMENDMENT
OF
RCH WATER SUPPLY CORPORATION**

I, the undersigned officer for RCH WATER SUPPLY CORPORATION, do hereby certify that the following changes to RCH Water Supply Corporation's Articles of Incorporation were adopted by the Corporation's members. I submit the following Articles of Amendment on behalf of the RCH Water Supply Corporation. Articles III, VII, and XI of the Articles of Incorporation for the RCH Water Supply Corporation shall read as follows:

ARTICLE III

The period of its duration is perpetual.

ARTICLE VII

The Corporation's members shall be a record owner of a fee simple title to property in an area served by the Corporation or a person or entity who is granted membership in the Corporation and who either currently receives or will be eligible to receive water service from the Corporation. All customers of the Corporation must be members of the Corporation unless exempt or prohibited by law.

All officers and directors of the Corporation must be members of the Corporation.

A person or entity is entitled to only one vote regardless of the number of members a person or entity owns.

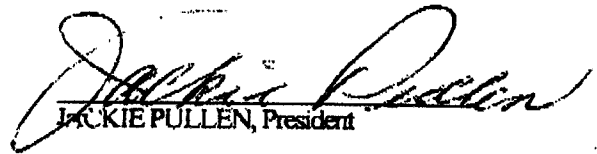
ARTICLE XI

The Corporation is and shall continue to be a Corporation without capital stock, and membership in the Corporation shall be deemed a personal estate and shall be transferable only on the books of the Corporation only in the manner as the bylaws may prescribe. Notwithstanding the personalty characterization of memberships, memberships may be conditioned upon or tied to ownership in real property in the area served. Membership in the Corporation may be sold as determined by the Board of Directors. A fee is not required to sell memberships in the corporation.

The above amendments were adopted by a vote at a special meeting of the members held on August 26, 2009, in which a quorum was present and the amendments approved by at least a 2/3 affirmative vote of the members.

Any repeal or modification of this Article of Amendment shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

DATED the 26 day of Aug. 2007


JACKIE PULLEN, President

**BY-LAWS
OF
RCH WATER SUPPLY CORPORATION**

By-Laws of RCH Water Supply Corporation having been presented to the Board of Directors of said Corporation and duly adopted are as follows:

ARTICLE I

The President of the Corporation shall preside at all members' and directors' meetings. He may, and upon demand of one-third (1/3) of the members or directors, call a special meeting of the members or directors. He shall perform all other duties that usually pertain to the office or are delegated to him by the Board of Directors.

ARTICLE II

The Vice-President shall, in case of the absence or disability of the President, perform the duties of the President.

ARTICLE III

The Secretary-Treasurer shall have the custody of all the monies and securities of the Corporation. He shall keep regular books and shall keep minutes of all meetings of members and directors. All monies of the Corporation shall be deposited by him in such depository as shall be selected by the directors. Checks must be signed by him and the President, or Vice-President in absence of the President. He shall have custody of the seal of the Corporation and affix it as directed hereby or by resolution passed by the Board of Directors or members.

ARTICLE IV

Regular meetings of the Board of Directors shall be held at such time and place as the Board may determine. No notice to the Directors of such regular meetings shall be required, and it shall be the duty of each Director to attend the same without notice. A majority of the Board of Directors shall constitute a quorum.

ARTICLE V

Special meetings of the directors may be called by the President or by at least two directors, provided that notice is submitted to the President, provided notice is given to the directors and the agenda of items to consider is posted in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code. Notice of each meeting shall be provided at the time the agenda for the meeting is posted. Special meetings of the members may also be held upon petition of the members upon giving five days notice directed to the President and signed by 1/3 of the members.

ARTICLE VI

Each incorporator shall be a member of the Board of Directors who are to serve as Directors until the first annual meeting of the shareholders or until their successors are elected and qualified. Upon the death or resignation of a member of the Board of Directors, a successor shall be elected by a majority vote of the Directors remaining, to serve out the remaining portion of the term thus vacated. The number of directors may be increased from time to time by a charter amendment, but there shall never be more than twenty-one members of said board. The directors shall serve without pay but may be compensated for actual expenses by a majority vote. A majority of the Board of Directors shall be engaged in farming.

ARTICLE VII

There shall be a regular meeting of the members annually between January 1 and May 1 of each year to transact all business that may be properly brought before it. The Secretary-Treasurer shall give at least fifteen days' written notice of the annual members' meeting. A special meeting of the members may be called by the President or Board of Directors by addressing and mailing to each registered member at his address last known to the Corporation, written notice of the time, place, and purpose of the meeting thereof, at least fifteen days prior to the convening thereof. A special meeting of the members may also be called by one-third of the members in the same manner as above provided. All such special meetings may be held at a time by unanimous consent of the members at the annual meeting of the members, a majority of members, present in person or represented by proxy, shall constitute a quorum to transact the business of the Corporation.

ARTICLE VIII

Each member of the Corporation shall be entitled to one vote in the conduct of the affairs of the Corporation. A member own more than one membership, but each member shall only be entitled to one vote in any event.

ARTICLE IX

Upon the issuance of the Charter and annually thereafter on the first Tuesday in January, the Board of Directors shall elect a President, Vice-President, and Secretary-Treasurer. The position of the Secretary-Treasurer shall be placed under a fidelity bond in the amount equal to the largest amount of funds to be handled by him at any time. The amount of said bond shall be set from time to time by the Board of Directors, but shall not be less than \$100.00.

ARTICLE X

The business of the Corporation shall be handled under the Direction of the Board of Directors, who may hire a manager. The affairs of the Corporation shall be managed on a non-profit basis. The Corporation shall insure with a reputable insurance company such of its properties and in such amounts as required by the State Director of the Farmers Home Administration.

ARTICLE XI

The Board of Directors shall select, as depository for the funds of the Corporation, a National Bank within the State of Texas, and shall require such bond of depository as the Board deems necessary for the protection of said Corporation.

ARTICLE XII

All officers and directors of the Corporation must be members of the Corporation.

ARTICLE XIII

All customers will be billed for water charges as provided in the Corporation's tariff or service regulations.

ARTICLE XIV

Section 1: Eligibility of Members

Any person, including any legal entity owning or having a real property right to property served or which may be served by the Corporation, shall have the right to become a Member of the Corporation upon payment of the Membership fee hereinafter provided and upon compliance with the Corporation's conditions for water service as provided for in its published charges, rates and conditions for service. Membership shall not be denied because of the applicant's race, color, creed, citizenship, or national origin. It is the intent of the Corporation to provide service on a nondiscriminatory basis to all persons desiring service to the extent that the capabilities of the system will reasonably permit.

Section 2: Membership Fee

1. The Membership fee shall be a one time charge set by the Board of Directors which shall be transferable. Payment of the Membership fee or transfer of the Membership shall entitle an applicant to qualify for one connection to the water system, or shall entitle a transferee of Membership to continue to qualify for service to an existing connection to the system by meeting the conditions for water service as provided in the Corporation's published rates, charges, and conditions for service. The Board of Directors may allow for a membership fee to be free for those persons eligible for membership on the date this provision is adopted.

2. The Membership fee may be revised by the Board of Directors as the Board may determine. In no event, however, shall the Membership fee exceed an amount equal to the sum of twelve (12) monthly minimum water rates.

Section 3: Voting Rights

A person may own more than one Membership but each Member shall be entitled to only one vote regardless of the number of Memberships owned.

Section 4: Transfer of Membership

1. Except as herein provided, Membership in the Corporation shall be deemed personal property, and a person or entity who is a Member of the Corporation may not sell or transfer that Membership to another person or entity except: (1) by will to a transferee who is a person related to the testator with the second degree by consanguinity; (2) by transfer without compensation to a transferee who is a person related to the owner of the Membership within the second degree of consanguinity; or (3) by transfer without compensation or by sale to the Corporation.

2. Subsection 1. of this section does not apply to a person or entity that transfers the Membership to another person or entity as part of the conveyance of real estate from which the Membership arose.

3. The transfer of a Membership under this section does not entitle the transferee to water service unless the full Membership fee is currently held by the Corporation and each condition for water service is met as provided in the Corporation's published rates, charges, and conditions for service.
4. The Corporation may cancel a person's or entity's Membership if the person or entity fails to meet the conditions for water service as prescribed by the Corporation's published rates, charges, and conditions for service, or fails to comply with any other conditions placed on the receipt of water service under the Membership authorized under Subsection 3. of this section. The Corporation may, consistent with the limitations prescribed by Subsection 1. of this section and as provided in the Corporation's tariff, reassign a canceled Membership to any person or entity that has legal title to the real estate from which the canceled Membership arose and for which water service is requested, subject to compliance with the conditions for water service prescribed by the Corporation's published rates, charges, and conditions for service.
5. Notwithstanding anything to the contrary hereinabove provided, the consideration for the transfer of any Membership in the Corporation shall never exceed the amount of the original cost of such Membership. No gain or profit shall ever be realized from the sale or transfer of a Membership.
6. In the event that a member should notify the Corporation to discontinue his water service, his obligation to pay the minimum monthly charge shall continue until he transfers his certificate of membership to a person who has been approved by the Corporation.

Section 5: Determination of Membership

Where necessary for determining those Members entitled to vote at any Membership meeting or any adjournment thereof, or where necessary to make a determination of Members for any other proper purpose, ownership of Memberships shall be deemed to be vested in the record owners of Memberships as evidenced by the Membership transfer book on the 15th day of the month preceding the month in which the action requiring such determination is to be taken.

Section 6: Termination of Membership

All Members shall be billed, disconnected, or reconnected, and otherwise shall receive water service in accordance with the written policies of the Corporation, including the tariff of the Corporation. In the event a Member should surrender his/her Membership certificate properly endorsed to the Secretary-Treasurer of the Corporation, the water service shall be disconnected current month, the charge for water used during the current month, and any unpaid amounts due the Corporation for water service or special assessments.

Section 7: Membership Certificates

The Board of Directors may provide for the issuance of certificates evidencing Membership in the Corporation, which shall be in such form as may be determined by the Board of Directors and held for safekeeping in the account files of its Members. Such certificates shall be signed by the Secretary-Treasurer or President or Vice President. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Corporation. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued upon such terms and conditions as the Board of Directors may determine. Upon termination of Membership, the Member shall sign his/her Membership certificate for surrender to the Corporation for transfer and/or cancellation of his/her Membership.

Section 8: Assessments

1. If at the end of the fiscal year, or in the event of emergency repairs, the Board of Directors determines the total amount derived from the collection of water charges to be insufficient for the payment of all cost incident to the operation of the Corporation's water system during the fiscal year in which such charges are collected, the Board may make and levy an assessment against each Member of the Corporation as the Board may determine, so that the sum of such assessments and the amount collected from water and other charges is sufficient to fully pay all cost of operations, maintenance, replacement and repayment of indebtedness for the year's operation, or the emergency repairs.

2. In the event a Member should surrender his/her Membership certificate properly endorsed to the Secretary-Treasurer of the Corporation, the obligation to pay such assessments shall be limited to assessments made and levied prior to the date of surrender of the Membership certificate.

ARTICLE XV

[Reserved for expansion.]

ARTICLE XVI

The books and accounts of the Corporation shall be audited by a person competent to perform such audit at least once each year. The reports prepared by such person shall be submitted to the members at the Annual Meeting of such members.

ARTICLE XVII

The Directors of the Corporation shall establish and maintain, so long as the Corporation is indebted to the Government, in a National Bank within the State of Texas, a reserve fund account separate and a part from other fund accounts of the Corporation. There shall be deposited in such fund the sum of \$_____ per month from the revenues of the Corporation. Such deposits provided, however, that after any withdrawals, such deposits shall be resumed until the amount accumulated in the fund is restored to \$_____.

Withdrawals from this fund shall be made only for emergency repairs, obsolescence of equipment, and for making up any deficiencies in revenue for loan payments. One of the objects of this reserve fund is to assure, during the periods of non-water deliveries or water shortages, the availability of funds equal to the difference between collection from water rights and collections that would have been made had the members been able to purchase the quantity of water used normally.

The Directors shall invest all sums in this fund not required to be expended within the year in which the sums are deposited in bonds or other evidence of indebtedness of the United States of America or they shall deposit said sums at interest in to an interest bearing account. Securities so purchased shall be deemed at all times to be a part of the reserve fund account.

ARTICLE XVIII

These bylaws may be amended by a majority of the members at any Annual Meeting of the Members.

ARTICLE XIX

[Reserved for expansion.]

ARTICLE XX

In carrying out the purpose of this Corporation, water shall be used for general farm use and domestic purposes.

ARTICLE XXI

The Certificate of Membership shall entitle the member to one (1) connection to the water main of the Corporation.

ARTICLE XXII

The fiscal year of the Corporation shall be from January 1st to December 31st.

ARTICLE XXIII

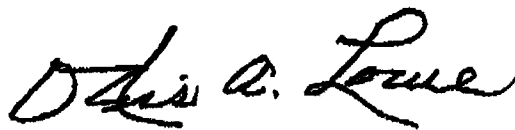
The seal of the Corporation shall consist of a circle within which shall be inscribed RCH WATER SUPPLY CORPORATION.

ARTICLE XXIV

Should it become necessary that the Corporation be voluntarily dissolved a plan providing for the distribution of its assets shall be adopted which is not inconsistent with the provision of the Texas Non-Profit Corporation Act, and which shall contain, among other required provisions, a provision that the remaining assets of the Corporation shall be distributed only for tax-exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1986 [26 U.S.C. § 501(c)(3)].

The above BYLAWS and REGULATIONS were unanimously adopted by the Board of Directors of the RCH WATER SUPPLY, at the annual members meeting on the 26th day of January 2000, and amended at a special meeting of the members on the 26th day of August, 2009.

DATED the 26 day of Aug, 2009.



Secretary-Treasurer

RCH WATER SUPPLY CORPORATION

PO Box 2034
5763 SH Hwy 205
Rockwall, Texas 75032
Rchwater.com
972.722.3203
972.722.0333 fax

The annual meeting was called to order by Jackie Pullen on March 27, 2013. Stockholders were welcomed. The minutes from the previous year were read. Improvements to the water system included laying 3,570 feet of 8" water line and 219,152,000 gallons of water sold. The financial statements were reviewed. Proxies were counted with 323 stockholders present or represented by proxy. Election of directors was made with Gary Lovell and Lowell English being elected. A motion was made to adjourn.

RCH WATER SUPPLY CORPORATION

PO Box 2034
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972.722.3203
972.722.0333 fax

MINUTES

The RCH Water Supply Corporation met for its annual meeting on April 16, 2014 at 2:00PM at their office at 5763 SH 205 South, Rockwall, Texas 75032. President Jackie Pullen called the meeting to order and welcomed members for attending.

The minutes were read by Secretary Odis Lowe. Warren Hodges made a motion to accept the minutes as read, seconded by Lowell English. Motion passed. Odis Lowe gave a brief history of the RCH WSC.

Robin Baley provided financial information. A motion was made by Warren Hodges, seconded by Gary Lovell to accept the financial statement as provided. Motion passed.

Dwight Lindop gave maintenance updates for the year with 218,970 ,000 gallons used and 76 new water meters set for 2014.

A motioned to amend the Articled of Incorporation to read perpetual life was made by Lowell English, seconded by Gary Lovell. Motion passed. Director Gary Lovell canvassed the ballots. Odis Lowe received 307 votes and was re-elected to the Board of Directors

A motion was made by Warren Hodges to adjourn the meeting, seconded by Lowell English. Meeting adjourned.

RCH WSC will provide reasonable accommodations for persons attending meetings. Please contact the RCH WSC office at (972) 772-0120 no later than 48 hours prior to a meeting if you require special assistance.

PUC DOCKET NO. 43121

REQUEST BY EDE AND RANDY
BULLOCK FOR DETERMINATION
OF RCH WATER SUPPLY
CORPORATION'S COMPLIANCE
WITH TEXAS WATER CODE
SEC. 13.004 (37766-I)

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PUBLIC UTILITY COMMISSION

OF TEXAS

AFFIDAVIT OF JACK PULLEN

STATE OF TEXAS

§
§
§

COUNTY OF ROCKWALL

BEFORE ME, the undersigned authority, personally appeared Jack Pullen, known to me to be the person who subscribed her name below, who, being by me first duly sworn did depose on her oath as follows:

1. I am over 18 years of age, have not been convicted of a crime, and I am of sound mind. I serve as the President of the RCH Water Supply Corporation (hereinafter "RCH") and personally acquainted with the facts herein stated.
2. RCH held its annual meeting of the members between January 1 and May 1 in 2014 and 2015.
3. The annual meetings of the members were on 4/16, 2014, and 4/29, 2015.
4. Written notice of the annual meeting of the members was provided by the Board Secretary.
5. A quorum was present for the annual meetings of the members described in paragraph 3 above.

Further affiant sayeth not."


Mr. Jack Pullen

Subscribed to and sworn to before me, the undersigned authority on this the 23 day of September 2015.





Notary Public in and for
The State of Texas

Exhibit 4