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Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

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Public Utility Commission of Texas

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Stephanie Frazzell *Sf*
Administrative Law Judge

RE: **Open Meeting of March 3, 2016**
Docket No. 44669 – *Petition by City of Houston to Cancel Bellewood Water Supply Corporation's Certificate of Convenience and Necessity in Harris County*

DATE: January 28, 2016

Enclosed is a copy of the Proposed Default Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, March 3, 2016, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, February 24, 2016.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 44669

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PETITION BY CITY OF HOUSTON §
TO CANCEL BELLEWOOD WATER §
SUPPLY CORPORATION'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN HARRIS §
COUNTY §

PUBLIC UTILITY COMMISSION
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PROPOSED DEFAULT ORDER

This Order addresses the petition, as amended, of the City of Houston (Houston or Petitioner) to cancel Bellewood Water Supply Corporation's (Bellewood WSC's) water certificate of convenience and necessity (CCN) No. 12476 in Harris County (Petition). Commission Staff recommended approval of the Petition by default order. Houston's Petition is granted and Bellewood WSC's CCN No. 12476 is cancelled.

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

I. Findings of Fact

Procedural History, Description and Background

1. On April 22, 2015, Houston filed a Petition seeking to cancel Bellewood WSC's water CCN No. 12476.
2. Bellewood WSC, a retail public utility, operated under CCN No. 12476.
3. Bellewood WSC is a defunct corporation that forfeited its corporate charter in 2009.
4. TCEQ wrote to Houston in 2009 stating it would cancel CCN No. 12476 but did not do so.
5. Petitioner has been receiving annual Notice of Violations relating to Bellewood WSC's expired CCN since 2009.
6. Petitioner has no ownership interest in Bellewood WSC, but began providing water service to 35 existing connections in 2009.
7. On April 24, 2015, the Commission issued Order No. 1, requiring comments on administrative completeness and notice, and requesting procedural schedule.
8. On May 22, 2015, Commission Staff recommended that the Petition be found administratively incomplete as it did not adequately list the neighboring utility service

providers providing the same type of service within two miles of Bellewood WSC's CCN service area and did not include proposed methods and forms of notice.

9. On May 27, 2015, the Commission issued Order No. 2, finding the Petition incomplete and deficient and providing Petitioner the opportunity to cure.
10. On July 29, 2015, Houston amended the Petition to include a revised list of the neighboring utility service providers providing the same type of service within two miles of Bellewood WSC's CCN service area and proposed notice forms. Commission Staff's proposal to give notice under
11. On September 4, 2015, Commission Staff filed a recommendation of approval regarding the sufficiency of the amended Petition and notice to neighboring utilities and affected customers. Staff also proposed to provide notice pursuant to 16 TAC § 22.54, § 2001.054 of the Admin. Procedure Act, and 16 TAC § 22.183 as required for license revocation proceedings.
12. On September 8, 2015, the Commission issued Order No. 6 finding the Petition, as amended, administratively complete and approving the proposed notice to neighboring utilities and affected customers as modified by Commission Staff. Commission Staff's proposal to give notice under 16 TAC § 22.183 relating to license revocations was also approved.

Notice

13. Notice of the Petition was published in the *Texas Register* on May 8, 2015.
14. On September 10, 2015, Commission Staff sent, by certified mail, the approved Notice of Opportunity for a Hearing, as well as a copy of the Petition, as amended, and a copy of Commission Staff's response to Order No. 5 (collectively, Notice Materials) to Bellewood WSC's last known address in the Commission's records, to Bellewood WSC's registered agent for process on file with the Texas Secretary of State, and all additional addresses found by Commission Staff.
15. On September 25, 2015, Commission Staff filed an affidavit providing proof of notice served on Bellewood WSC in accordance with the approved methods of service.

16. On September 28, 2015, Applicant submitted affidavits attesting to notice mailed September 18, 2015 and published notice in the *Houston Chronicle* on September 16 and 23, 2015.

Default Disposition

17. The Notice of Opportunity for Hearing included the required disclosure in at least 12-point, bold-face type.
18. More than 30 days have passed since service of notice.
19. Bellewood WSC did not request a hearing.

II. Conclusions of Law

1. The Commission has jurisdiction over the subject matter of this proceeding pursuant to TWC §§ 13.041(a), 13.250, and 13.254.
2. Bellewood WSC operated as a retail public utility as defined under 16 TAC § 24.3(58).
3. 16 TAC § 24.3(15) defines a CCN as "a permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer service to a specified geographic area."
4. 16 TAC § 24.3(58) defines a retail public utility as "any person corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both for compensation."
5. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a CCN to provide "continuous and adequate service."
6. If the Commission finds that a retail public utility that possesses a CCN "has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate" in violation of TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.113.
7. Bellewood WSC failed to meet the performance requirements for a CCN holder set forth in TWC § 13.250 and 16 TAC § 24.114.

8. Pursuant to 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

III. Ordering Paragraphs

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

1. Houston's Petition, as amended, is granted.
2. Bellewood WSC's CCN No. 12476 is cancelled.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of March 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER