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DOCKET NO. **44708**

PETITION TO REVOKE FALCON §
CLUB UTILITY COMPANY, INC.'S §
CERTIFICATE OF PUBLIC §
CONVENIENCE AND NECESSITY §
PURSUANT TO TEX. WATER CODE §
ANN. § 13.254 AND P.U.C. SUBST. §
R. 24.113 §

PUBLIC UTILITY COMMISSION

OF TEXAS

2015 MAY -5 AM 10:30
FILING CLERK

COMMISSION STAFF'S PETITION TO REVOKE
FALCON CLUB UTILITY COMPANY, INC.'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
AND
NOTICE OF OPPORTUNITY FOR A HEARING

NOW COMES the Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Petition (Petition) to revoke Falcon Club Utility Company, Inc.'s (Falcon Club) Certificate of Public Convenience and Necessity (CCN) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

I. INTRODUCTION

For the reasons discussed below, Falcon Club's CCN No. 13084 should be revoked. In the event Falcon Club fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Falcon Club, granting all relief sought in this Petition. In support of this Petition, the Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

A CCN is defined 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."¹ A retail public utility is "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."² A retail public utility that possesses a CCN is required to provide "continuous and adequate service."³

¹ P.U.C. SUBST. R. 24.3(10)

² P.U.C. SUBST. R. 24.3(41)

³ TEX. WATER CODE ANN. § 13.250 (West Supp. 2014) and P.U.C. SUBST. R. 24.114

A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁴ The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.⁵ As part of this authority, the Commission, "after notice and hearing, may revoke or amend any" CCN if the commission finds that "the certificate holder 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."⁶

Pursuant to the contested case provisions of the Administrative Procedure Act,⁷ a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, where the party may respond to and present evidence and argument on each issue involved in the case. If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.⁸ Upon default, the presiding officer may issue a default order, disposing of the proceeding without a hearing on an informal basis.⁹

III. FACTUAL ALLEGATIONS

Falcon Club is a retail public utility that operated under CCN No. 13084 and currently operates under receivership imposed by the District Court of Travis County, Texas. Falcon Club is owned by Paul Gillette. He was incarcerated in 2011 in Potter County and subsequently convicted of murdering his wife. He is serving a forty-five year sentence at Texas State Penitentiary at Huntsville. Upon learning of his arrest and determining that the system was not being managed or operated in a way to ensure continuous and adequate service, the Texas Commission on Environmental Quality (TCEQ) appointed a temporary manager in 2011 and referred Falcon Club to the Office of Attorney General (OAG) for appointment of a receiver.

On September 19, 2011, the District Court of Travis County approved an agreed order appointing a receiver, Mr. Ruben Arias, for three years. In the September 19, 2011 Order appointing the receiver, the parties, including Mr. Gillette's counsel, agreed that the utility was

⁴ TEX. WATER CODE ANN. § 13.254 (West Supp. 2014).

⁵ TEX. WATER CODE ANN. § 13.041 (West Supp. 2014). See also, House Bill 1600 and Senate Bill 567 83rd Legislature, Regular Session, which transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the P.U.C. effective September 1, 2014.

⁶ TEX. WATER CODE ANN. § 13.254 (West Supp. 2014).

⁷ Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁸ P.U.C. PROC. R. 22.183.

⁹ Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.056(4) (West 2008 & Supp. 2014) (APA) and P.U.C. PROC. R. 22.183.

"abandoned" and Mr. Gillette failed to ensure that the utility was providing continuous and adequate service to its customers.¹⁰ Mr. Arias' receivership was extended in September 2014 to April 2, 2015 and again in March 2015 to May 31, 2015. Mr. Arias made it clear that he will not agree to another extension. No other parties have shown interest in operating Falcon Club as a receiver or owner and therefore, Falcon Club will be unable to provide service after May 31, 2015. Falcon Club's customers are aware of the expiration of the receivership and Falcon Club's inability to provide service after May 31, 2015.¹¹

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Falcon Club's CCN because Falcon Club is only capable of providing continuous and adequate service because it is being operated under receivership. When the receivership expires May 31, 2015, the utility will be incapable of providing service and will fail to provide continuous and adequate service in the area covered by CCN No. 13084.

When the District Court appointed Mr. Arias as receiver of Falcon Club, it acknowledged that the utility was incapable of providing service and failed to provide continuous and adequate service in the area covered by CCN No. 13084. The attorney general is obligated to bring suit for the appointment of a receiver, at the request of the TCEQ or the Commission, when a utility has "abandoned operations of its facilities."¹² The court is required to appoint a receiver if it is necessary "to guarantee continuous and adequate service to the customers of the utility."¹³

The parties, including Mr. Gillette's counsel, agreed in the September 19, 2011 Order that the utility was abandoned and incapable of providing continuous and adequate service. The Court's approval of the order and appointment of a receiver confirms that Falcon Club is incapable of providing continuous and adequate service and that a receiver was necessary to guarantee continuous and adequate service to the customers of the utility. For the above stated reasons, Staff recommends revocation of CCN No. 13084 pursuant to TEX. WATER CODE ANN. § 13.254 and P.U.C. SUBST. R. 24.113.

¹⁰ *State of Texas v. Falcon Club Utility, Inc.*, No. D-1-GV-11-001391, Agreed Order Appointing Receiver (261st Dist. Ct., Travis County, Tex., Sept. 19, 2011).

¹¹ The District Court ordered the Receiver to give notice to the remaining customers that the receivership was expiring and that after May 31, 2015, Falcon Club would no longer be able to supply water. In addition, the TCEQ and Commission sent letters to the remaining customers informing them of the expiration of Falcon Club's receivership and providing them with contacts at each agency should they have questions. The Commission's letter included notification that Staff would be seeking revocation of Falcon Club's CCN. See Attachment 1.

¹² TEX. WATER CODE ANN. § 13.412 (West Supp. 2014).

¹³ The OAG and TCEQ have been unable to find another person interested in assuming the receivership.

V. NOTICE OF OPPORTUNITY FOR HEARING

P.U.C. PROC. R. 22.54 and 22.55 require Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act¹⁴. In license revocation proceedings, it is required that notice be given "by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action."¹⁵. In order to proceed on a default basis, P.U.C. PROC. R. 22.183 requires Staff to provide notice by certified mail, return receipt requested, to a certificate holder's last known address in the Commission's records or to the person's registered agent for process on file with the Secretary of State.

In accordance with these provisions, Staff will provide a copy of this petition by certified mail, return receipt requested, to Falcon Club's owner's last known address in the Commission's records:

Paul Gillette
Texas State Penitentiary
Wynne Unit Requested
810 FM 2821
Huntsville, Texas 77349

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the attorney who represented Mr. Gillette in the receivership proceedings:

Jeremi Young
112 W 8th Ave., Suite 900-D
Amarillo, Texas 79101

In Addition, Staff will provide a copy of this petition by certified mail, return receipt requested, to the current receiver appointed to Falcon Club:

Ruben Arias
2115 South Fork Ave.
Amarillo, Texas 79118

Pursuant to P.U.C. PROC. R. 22.183, Staff hereby notifies Falcon Club that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Falcon Club fails to request a hearing within 30 days after service of the Petition. The purpose of a hearing on the merits is to consider revocation of Falcon Club's CCN No. 13084.

¹⁴ Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

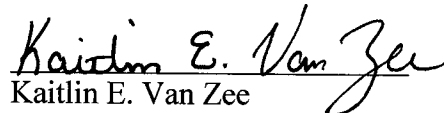
¹⁵ *Id.* at § 2001.054

The factual allegations listed in Staff's Petition and Notice of Opportunity for a Hearing could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Staff respectfully requests that the Commission grant Staff's request to revoke Falcon Club's CCN No. 13084. In the event Falcon Club fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to Falcon Club, revoking CCN No. 13084.

Respectfully Submitted,



Kaitlin E. Van Zee
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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
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CERTIFICATE OF SERVICE

I certify that on May 5, 2015, pursuant to P.U.C. PROC. R. 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Falcon Club Utility Company, Inc. in the Commission's records and to the attorney who represented Mr. Gillette in the receivership proceedings:

Falcon Club's owner's Last Known Address in Commission Records:

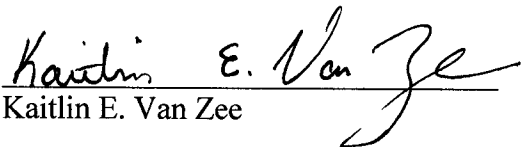
Paul Gillette
Texas State Penitentiary
Wynne Unit Requested
810 FM 2821
Huntsville, Texas 77349

Counsel for Mr. Paul Gillette:

Jeremi Young
112 W 8th Ave., Suite 900-D
Amarillo, Texas 79101

Current Receiver Appointed to Falcon Club

Ruben Arias
2115 South Fork Ave.
Amarillo, Texas 79118


Kaitlin E. Van Zee