



Control Number: 44708



Item Number: 2

Addendum StartPage: 0

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

2015 JUN 16 PM 2:04

OF TEXAS

FILING CLEAR

STAFF'S MOTION FOR ISSUANCE OF A DEFAULT ORDER OF REVOCATION

NOW COMES, the Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Motion for Issuance of a Default Order of Revocation (Motion for Default Order).

I. INTRODUCTION

For each of the reasons discussed below, a Default Order should be issued granting all relief sought in Staff's Petition to Revoke Falcon Club Utility Company, Inc.'s (Falcon Club) Certificate of Public Convenience and Necessity (CCN) and Notice of Opportunity for a Hearing (Petition and Notice of Opportunity for a Hearing), filed on May 5, 2015. In support of this Petition for Default Order, the Staff respectfully shows the following:

I. JURISDICTION AND LEGAL AUTHORITY

The contested case provisions of the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.051 (West 2007 & Supp. 2014) (APA), entitle a party to an opportunity for a hearing after reasonable notice of not less than 10 days, and to respond to and present evidence and argument on each issue involved in the case. Pursuant to 16 TAC § 22.183, if a hearing is not requested within 30 days after service of notice of an opportunity for hearing a default occurs.¹ Upon default, the presiding officer may issue a default order, disposing of the proceeding without a hearing, on an informal basis.² In addition, factual allegations in the Petition and Notice of Opportunity for a Hearing may be deemed admitted and the relief sought may be granted by default.³

A default order requires adequate proof that the notice of the opportunity for a hearing was sent by certified mail to the party's last known address in the Commission's records or the

¹ 16 TAC § 22.183.

² APA § 2001.051 and 16 TAC § 22.183.

³ Id.

2

registered agent for process for the party on file with the Secretary of State. There must also be proof that the notice of the opportunity for a hearing included a disclosure in at least twelve-point bold face type that the factual allegations may be deemed admitted and relief sought granted if the party fails to timely request a hearing.

III. FACTUAL ALLEGATIONS

On May 5, 2015, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Falcon Club's CCN. The Petition and Notice of Opportunity for Hearing included the required disclosure in fourteen point bolded and underlined font.⁴ The Petition and Notice of Opportunity for Hearing was mailed by certified mail, return receipt requested, to Falcon Clubs's owner's last known address in the Commission's records⁵:

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

Staff also mailed by certified mail, return receipt requested, the Petition and Notice of Opportunity for a Hearing 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 provided a copy of the Petition and Notice of Opportunity for a Hearing by certified mail, return receipt requested, to the current receiver appointed to Falcon Club:

Ruben Arias
2115 South Fork Ave.
Amarillo, Texas 79118

Falcon Club has not requested a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.

⁴ See attached Petition and Notice of Opportunity for Hearing (Attachment 1).

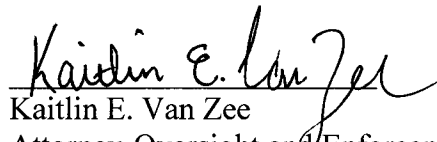
⁵ See Affidavit from Athena Leyton (Attachment 2) and return receipts from the certified mail label (Attachment 3).

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Staff respectfully requests that all relief sought in the Petition and Notice of Opportunity be granted and all facts alleged be deemed admitted by the issuance of a default final order, with no further notice to Falcon Club, revoking Falcon Club's CCN No. 13084.

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

A handwritten signature in black ink, reading "Kaitlin E. Van Zee". The signature is written in a cursive style with a horizontal line underneath the name.

Kaitlin E. Van Zee
Attorney-Oversight and Enforcement Division
State Bar No. 24080099
(512) 936-7065
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on June 16, 2015, pursuant to 16 TAC § 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:

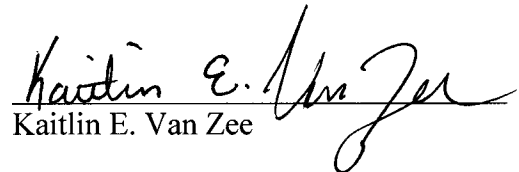
Paul Gillette
Texas State Penitentiary
Wynne Unit Requested
810 FM 2821
Huntsville, Texas 77349

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

Attachment 1

Petition of Notice and Opportunity for a Hearing

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:
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).

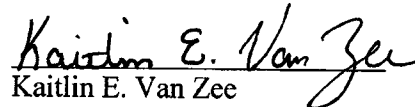
¹⁵ *Id.* at § 2001.054

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
Attorney, Oversight and Enforcement Division
State Bar No. 24080099
(512) 936-7065 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

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:

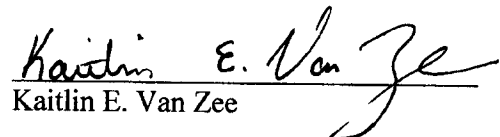
Paul Gillette
Texas State Penitentiary
Wynne Unit Requested
810 FM 2821
Huntsville, Texas 77349

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

Attachment 2

Affidavit for Athena Leyton

DOCKET NO. 44708

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

AFFIDAVIT OF ATHENA LEYTON, COMMISSION PARALEGAL

STATE OF TEXAS §
 §
 §

BEFORE ME, the undersigned authority, on this day personally appeared Athena Leyton, and being by me duly sworn, upon oath declared that the statements and capacity acted in are true and correct.

“My name is Athena Leyton. I am the paralegal in the Oversight & Enforcement Division of the Public Utility Commission of Texas. I am over the age of twenty-one and I am competent to make this Affidavit. In accordance with 16 TAC § 22.183(b), I mailed, by certified mail, return receipt requested, a copy of Staff’s Petition to Revoke Falcon Club Utility Company, Inc.’s (Falcon Club) Certificate of Public Convenience and Necessity and Notice of Opportunity for a Hearing (Petition and Notice of Opportunity for a Hearing) on May 5, 2015, to the last known address of Falcon Club’s owner’s last known address in the Commission’s records:

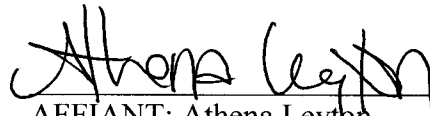
Paul Gillette
Texas State Penitentiary
Wynne Unit Requested
810 FM 2821
Huntsville, Texas 77349

I also mailed by certified mail a copy of the Petition and Notice of Opportunity for a Hearing on May 5, 2015, to the attorney who represented Mr. Gillette in the receivership proceedings:

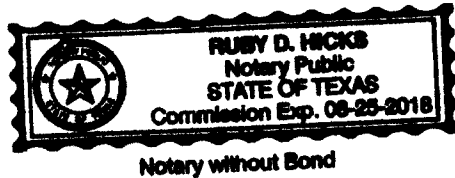
Jeremi Young
112 W 8th Ave., Suite 900-D
Amarillo, Texas 79101

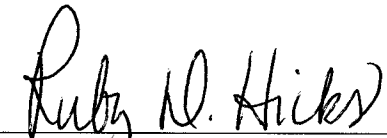
In addition, I provided a copy of the Petition and Notice of Opportunity for a Hearing by certified mail, return receipt requested, to the current receiver appointed to Falcon Club:

Ruben Arias
2115 South Fork Ave.
Amarillo, Texas 79118


AFFIANT: Athena Leyton

SWORN TO AND SUBSCRIBED BEFORE ME this 15th day of June 2015.




Notary Public for the State of Texas

Attachment 3

Receipts from the Certified Mail Label

File Copy Only.

Texas Procurement And Support Service

Tracking 9171999991703062341677

From:

Name: Athena Leyton
Department: Oversight & Enforcement
Phone: 512-936-7401
Remark1: Falcon Point
Remark2:
Remark3:
Reference: Falcon Point

To:

Ship To 1: Paul Gillette
Ship To 2: Texas State Penitentiary - Wynne Unit Re
Address: 810 FM 2821

Huntsville, TX 77349
Country: US

Special Instructions:

Requested Date: 5/5/2015 12:55:28 PM

To print this form:

- 1) Click the Print button. (Print two copies, one to attach to your package and one to keep for your records.)
- 2) Place the form in a waybill pouch or attach it to your shipment so that the barcode portion of the page can be read and scanned.

Form (1 of 1)

petition to revoke



Date: June 15, 2015

athena leyton:

The following is in response to your June 15, 2015 request for delivery information on your Certified Mail™ item number 9171999991703062341677. The delivery record shows that this item was delivered on May 15, 2015 at 11:01 am in ROSHARON, TX 77583. The scanned image of the recipient information is provided below.

Signature of Recipient :

A handwritten signature in black ink, appearing to read "Carol Darrington".

Address of Recipient :

A handwritten address in black ink, appearing to read "59 DARRINGTON".

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service

File Copy Only.

Texas Procurement And Support Service

Tracking 9171999991703062341660

From:

Name: Athena Leyton
Department Oversight & Enforcement
Phone: 512-936-7401
Remark1. falcon point
Remark2.
Remark3.
Reference: falcon point

To:

Ship To 1: Jeremi Young
Ship To 2
Address: 112 W 8th Ave., Suite 900-D

Amarillo, TX 79101
Country: US

Special Instructions:

Requested Date: 5/5/2015 12:56:37 PM

To print this form:

- 1) Click the Print button. (Print two copies, one to attach to your package and one to keep for your records.)
- 2) Place the form in a waybill pouch or attach it to your shipment so that the barcode portion of the page can be read and scanned.

[Print](#) | [Close](#)

Form (1 of 1)



Date: June 15, 2015

athena leyton:

The following is in response to your June 15, 2015 request for delivery information on your Certified Mail™ item number 9171999991703062341660. The delivery record shows that this item was delivered on May 11, 2015 at 10:11 am in AMARILLO, TX 79101. The scanned image of the recipient information is provided below.

Signature of Recipient :

A handwritten signature in black ink that reads "Stephen Bell". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Address of Recipient :

1001 S HURVISON #200
Amarillo TX 79101

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service

File Copy Only.

Texas Procurement And Support Service

Tracking 9171999991703062341653

From:

Name: Athena Leyton
Department: Oversight & Enforcement
Phone: 512-936-7401
Remark1: falcon point
Remark2:
Remark3:
Reference: falcon point

To:

Ship To 1: Ruben Arias
Ship To 2:
Address: 2115 South Fork Ave.

Amarillo, TX 79118
Country: US

Special Instructions:

Requested Date: 5/5/2015 12:57:34 PM

To print this form:

- 1) Click the Print button. (Print two copies, one to attach to your package and one to keep for your records.)
- 2) Place the form in a waybill pouch or attach it to your shipment so that the barcode portion of the page can be read and scanned.

[Print](#) [Close](#)

Form (1 of 1)



Date: June 15, 2015

athena leyton:

The following is in response to your June 15, 2015 request for delivery information on your Certified Mail™ item number 9171999991703062341653. The delivery record shows that this item was delivered on May 9, 2015 at 10:47 am in AMARILLO, TX 79118. The scanned image of the recipient information is provided below.

Signature of Recipient :

EPHES TOL

Address of Recipient :

2115 So Fork

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,
United States Postal Service

Attachment 4

Proposed Default Order

DOCKET NO. 44708

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

PROPOSED DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke the Certificate of Public Convenience and Necessity (CCN) of Falcon Club Utility Company, Inc. (Falcon Club) regarding Falcon Club's violations of the Texas Water Code and Commission rules. Commission Staff and Falcon Club are the only parties to this proceeding. Commission Staff's petition is granted and Falcon Club's CCN is revoked.

I. Background

Falcon Club is a retail public utility that operated under CCN No. 13084. In 2011, the owner and operator of Falcon Club, Paul Gillette was incarcerated 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 "abandoned" and Mr. Gillette failed to ensure that the utility was providing continuous and adequate service to its customers.¹ Mr. Arias' receivership was extended in September 2014 to April 2, 2015 and again in March 2015 to May 31, 2015. On May 31, 2015, Mr. Arias ceased

¹ *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).

operation of Falcon Club. All customers of Falcon Club were aware of the expiration of the receivership and Falcon Club's inability to provide service after May 31, 2015.²

On May 5, 2015, Staff filed a petition (Petition) to revoke Falcon Club's CCN pursuant to Tex. Water Code Ann. § 13.254 (West Supp. 2014) and 16 TAC § 24.113. Staff alleged that Falcon Club was in violation of Tex. Water Code Ann. § 13.250 (West Supp. 2014) and 16 TAC § 24.114 because Falcon Club is incapable of providing continuous and adequate service.

Commission Staff's Petition also included the Notice of Opportunity for a Hearing and, pursuant to 16 TAC § 22.183, notified Falcon Club in 14 point, bolded font that the factual allegations in the petition could be deemed admitted and the relief sought granted by default if Falcon Club failed to request a hearing within 30 days after service of the Petition and Notice of Opportunity for a Hearing. Falcon Club did not request a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing was provided.

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

II. Findings of Fact

1. Falcon Club is a retail public utility that operated under CCN No. 13084.
2. Falcon Club is incapable of providing service and failed to provide continuous and adequate service in the area covered by CCN No. 13084.
3. Falcon Club 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 in a September 19, 2011 Agreed Order appointing a receiver, *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).
4. Specifically, Falcon Club failed to meet the performance requirements for a CCN holder in Tex. Water Code Ann. § 13.250 (West Supp. 2014) and 16 TAC § 24.114.
5. On May 5, 2015, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Falcon Club's CCN.

² 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 in

6. The Petition and Notice of Opportunity for Hearing included the required disclosure in at least twelve-point, bold-face type.
7. The Petition and Notice of Opportunity for Hearing was sent by certified mail to the owner of Falcon Club's last known address in the Commission's records, the attorney who represented him in the receivership process, and the last known address of the receiver appointed by the Travis County District Court.
8. More than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.
9. Falcon Club has not requested a hearing on the merits.

III. Conclusions of Law

1. 16 TAC § 24.3(10) defines a CCN "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.
2. 16 TAC § 24.3(41) 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."
3. Tex. Water Code Ann. § 13.250 (West Supp. 2014) and 16 TAC § 24.114 require a retail public utility that possesses a CCN to provide "continuous and adequate service."
4. 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 Tex. Water Code Ann. § 13.250 (West Supp. 2014) and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to Tex. Water Code Ann. § 13.254 (West Supp. 2014).
5. A presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.056(4) (West 2008) (APA) and 16 TAC § 22.183 if the defaulting party fails to request a hearing within 30 days of the notice of an opportunity for a hearing.

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

IV. Ordering Paragraphs

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

1. Commission Staff's Petition for revocation of the CCN held by Falcon Club is granted.
2. Falcon Club's CCN No. 13084 is revoked.
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 on the _____ day of July, 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET MANAGEMENT