



Control Number: 44708



Item Number: 3

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**

**OF TEXAS**

2015 JUN 23 PM 4:48  
FILING CLERK

**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.

**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 45-year sentence at the 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.<sup>1</sup> 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

<sup>1</sup> *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).

3

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.<sup>2</sup>

On May 5, 2015, Commission Staff filed a petition (Petition) to revoke Falcon Club's CCN pursuant to Tex. Water Code Ann. § 13.254 (West 2008 & Supp. 2014) (TWC) and 16 Tex. Admin. Code § 24.113 (TAC). Commission Staff alleged that Falcon Club was in violation of TWC § 13.250 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:

### **I. 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).

---

<sup>2</sup> 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 provided them with contacts at each agency should they have questions. The Commission's letter included notification that Commission Staff would be seeking revocation of Falcon Club's CCN. *See* Commission Staff's Petition, Attachment 1, in Docket No. 44708.

4. Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities.
5. Falcon Club failed to meet the performance requirements for a CCN holder in TWC § 13.250 and 16 TAC § 24.114.
6. On May 5, 2015, Commission Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Falcon Club's CCN.
7. The Petition and Notice of Opportunity for Hearing included the required disclosure in at least 12-point, bold-face type.
8. 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.
9. More than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.
10. Falcon Club has not requested a hearing on the merits.

## **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. 16 TAC § 24.3(10) 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."
3. 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."
4. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a CCN to provide "continuous and adequate service."

5. 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.
6. Pursuant to 16 TAC § 22.1(b), the proceedings under the Texas Water Code are governed by the Commission's procedural rules.
7. 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 & Supp. 2014) 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.
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. 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 the 23<sup>rd</sup> day June 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

  
IRENE MONTELONGO  
DIRECTOR, DOCKET MANAGEMENT