



Control Number: 44948



Item Number: 4

Addendum StartPage: 0

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Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



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Public Utility Commission of Texas
PUBLIC UTILITY COMMISSION
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TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Irene Montelongo
Director, Docket Management

RE: **Open Meeting of November 19, 2015**
Docket No. 44948 – *Petition to Revoke Farrar Water Supply Corporation's Certificate of Public Convenience and Necessity Pursuant to Tex. Water Code Ann. § 13.254 and 16 TAC § 24.113*

DATE: October 22, 2015

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, November 19, 2015, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Default Order on or before Tuesday, November 10, 2015.

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

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PETITION TO REVOKE FARRAR §
 WATER SUPPLY CORPORATION'S §
 CERTIFICATE OF PUBLIC §
 CONVENIENCE AND NECESSITY §
 PURSUANT TO TEX. WATER CODE §
 ANN. § 13.254 AND 16 TAC § 24.113 §

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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 Farrar Water Supply Corporation (Farrar) regarding Farrar's violations of the Texas Water Code and Commission rules (Petition). Commission Staff's Petition is granted and Farrar's CCN is revoked.

I. Background

Farrar is comprised of one public water system.¹ A public water system is defined as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances," such as "collection, treatment, storage, and distribution facilities," which has "at least 15 service connections or serve[s] at least 25 individuals at least 60 days out of the year."² A January 21, 2015, Default Order at the Texas Commission on Environmental Quality (TCEQ) identified Rocky Wadlington as the owner and operator of the public water system (PWS) associated with Farrar and Farrar's CCN. Additionally, TCEQ's Drinking Water Watch database lists Mr. Wadlington as the administrative contact for Farrar.³

TCEQ successfully pursued four enforcement actions against Mr. Wadlington and the PWS associated with Farrar. All four enforcement actions were for violations of the Texas Health and Safety Code.⁴ Three enforcement actions resulted in default orders, one issued in 2012 and two issued in March of 2015. The fourth enforcement action was settled, and the settlement agreement

¹ See Affidavit of Patricia Garcia (Attachment 5 to Commission Staff's Petition).

² 30 Tex. Admin. Code § 290.38(66) (West 2008 & Supp. 2014) (TAC).

³ See http://dww.tceq.state.tx.us/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=4320&tinwsys_st_code=TX&wsnumber=TX1470007%20%20%20DWWState=TX

⁴ Tex. Health & Safety Code Ann. §§ 341.01-.092.

was approved in 2013. Violations date back to 2006 with the last violation occurring in March 2014.⁵

On August 28, 2014, Mr. Wadlington, representing Farrar, attempted to sell all of Farrar's property, including the water system, to Simply Aquatics.⁶ A sale of any water system required to possess a CCN is void unless done in accordance with Texas Water Code § 13.301. After the attempted sale, Simply Aquatics assumed operation of the facility on September 1, 2014. Simply Aquatics attempted to cure past violations but was unable to collect rates sufficient to invest in repairs.

In order to file a rate increase, Simply Aquatics began paperwork to file an application for approval of a sale.⁷ Simply Aquatics could not contact Mr. Wadlington, which prevented Simply Aquatics from completing the required application and necessitated their discontinuing operations. In the absence of a completed application, Mr. Wadlington is the holder of CCN No. 12429, despite his sale of all the assets of Farrar.

On July 16, 2015, Commission Staff filed a petition to revoke Farrar's CCN pursuant to Tex. Water Code Ann. § 13.254 (West 2007 and Supp. 2014) (TAC) and 16 TAC § 24.113. Commission Staff alleged that Farrar was been abandoned by Mr. Wadlington and is incapable of providing continuous and adequate service. In a separate proceeding, *Petition for an Emergency Order Appointing a Temporary Manager to Farrar Water Supply Corporation Pursuant to Tex. Water Code Ann. § 13.4132 and 16 TAC § 24.142*, Docket 44949, Emergency Order (Jul. 30, 2015) and Order Affirming Emergency Order (Aug. 17, 2015), the Commission appointed a temporary manager to operate Farrar until another utility is formed or takes over operation of the PWS associated with Farrar's CCN.

Commission Staff's Petition included notice of opportunity for hearing and, pursuant to 16 TAC § 22.183, notified Farrar in 14-point, bolded font that the factual allegations in the Petition could be deemed admitted and the relief sought granted by default if Farrar failed to request a

⁵ TCEQ Dockets 2011-1230-PWS-E, 2012-1590-PWS-E, 2013-0347-MLM-E, and 2014-0360-PWS-E (Attachment 3 to Commission Staff's Petition).

⁶ See the Purchase Agreement (Attachment 4 to Commission Staff's Petition).

⁷ TWC § 13.301(g) permits the utility commission to approve a sale even if the applicant failed to file the application prior to the sale, as required by TWC § 13.301(a), if the Commission determines that the proposed transaction serves the public interest.

hearing within 30 days after service of the Petition and notice of opportunity for a hearing. Farrar 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. Farrar is a retail public utility owned and previously operated by Mr. Rocky Wadlington.
2. Mr. Wadlington d/b/a Farrar Water Supply Corporation was granted Certificate of Convenience and Necessity (CCN) No. 12429 by TCEQ. Farrar is comprised of one PWS.
3. TCEQ successfully pursued four enforcement actions against Mr. Wadlington and the PWS associated with Farrar.
4. All four enforcement actions were for violations of the Texas Health and Safety Code.
5. Violations date back to 2006 with the last violation occurring in March 2014.
6. Both enforcement actions finalized in 2015 resulted in default orders. In one of those, TCEQ Docket No. 2013-0347-MLM-E, Mr. Wadlington received notice three times, signing for the notice all three times, and failed to respond.
7. On August 28, 2014, Mr. Wadlington, representing Farrar, attempted to sell all of Farrar's property, including the water system, to Simply Aquatics.
8. Simply Aquatics assumed operation of the facility on September 1, 2014.
9. Simply Aquatics attempted to cure past violations, but was unable to collect rates sufficient to invest in repairs.
10. In order to file a rate increase, Simply Aquatics needed to obtain the CCN for Farrar's service area by transfer; however, Simply Aquatics could not contact Mr. Wadlington and never received his portion of the application for a sale, transfer, or merger.
11. Simply Aquatics notified Commission Staff on July 10, 2015, that they could not continue operating Farrar and providing continuous and adequate service.
12. In the absence of a completed application for sale transfer, or merger, Mr. Wadlington is the holder of CCN No. 12429.

13. On July 30, 2015, in Docket No. 44949, the Commission concluded that Farrar is incapable of managing and operating as a utility in a way that ensures continuous and adequate service in the area covered by CCN No. 12429.
14. On July 30, 2014, in Docket No. 44949, the Commission issued an emergency order appointing Matthew Douglas Martin as temporary manager of Farrar to ensure the continued operation of the utility and the provision of continuous and adequate services to customers.
15. The Commission affirmed its emergency order, after notice and hearing, on August 18, 2015.
16. On July 17, 2015, Commission Staff filed the Petition and provided notice of opportunity for hearing seeking revocation of Farrar's CCN No. 12429.
17. The Petition included the required disclosure in at least 12-point, bold-face type.
18. The Petition was sent by certified mail to the owner of Farrar's last known address in the Commission's records and the address used in TCEQ proceedings.
19. More than 30 days have passed since service of the Petition.
20. Farrar did not request a hearing on the merits.

III. Conclusions of Law

1. 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.
2. 16 TAC § 24.3(73) defines a water and sewer 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. TWC § 13.250 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 TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254.
5. Farrar failed to meet the performance requirements for a CCN holder in TWC § 13.250 and 16 TAC § 24.114.
6. Farrar is incapable of providing continuous and adequate service in the area covered by CCN No. 12429.
7. Issuance of a default order against Farrar in this Petition is appropriate because Farrar failed to request a hearing within 30 days of service of notice of an opportunity for a hearing, as provided in 16 TAC § 22.183(a).
8. 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 is granted.
2. Farrar's CCN No. 12429 is revoked.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of November 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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