



Control Number: 45276



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DOCKET NO. **45276**

PETITION TO REVOKE SAN JACINTO §  
UTILITY, INCORPORATED'S §  
CERTIFICATE OF PUBLIC §  
CONVENIENCE AND NECESSITY §  
PURSUANT TO TEX. WATER CODE §  
ANN. § 13.254 AND 16 TAC § 24.113 §

PUBLIC UTILITY COMMISSION

OF TEXAS

2015 OCT 23 AM 10:20  
PUBLIC UTILITY COMMISSION  
FILED CLERK

**COMMISSION STAFF'S PETITION TO REVOKE**  
**SAN JACINTO UTILITY, INCORPORATED'S**  
**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND**  
**NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas (Commission) files this Petition to Revoke San Jacinto Utility, Incorporated's Certificate of Public Convenience and Necessity (Petition) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

**I. INTRODUCTION**

For the reasons discussed below, the sewer system Certificate of Public Convenience and Necessity (CCN) No. 20606 for San Jacinto Utility, Incorporated (San Jacinto Utility) should be revoked. From 1997 until sometime before May 2008, San Jacinto Utility was operated by a receiver appointed after the original owner passed away. Subsequently, the receiver left the state of Texas without the permission of the court to cease operating the utility. No new receiver was appointed and the Texas Commission on Environmental Quality (TCEQ) was unsuccessful in appointing a temporary manager to operate the utility. Due to the poor condition of the San Jacinto Utility wastewater treatment plant (WWTP), all former property owners served by San Jacinto Utility each installed an onsite sewage facility and were disconnected from the San Jacinto Utility system by June 2011. Subsequently, the San Jacinto Utility WWTP was dismantled.

In the event San Jacinto Utility fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to San Jacinto Utility, granting all relief sought in this Petition. In support of this Petition, Staff respectfully shows the following:

## II. JURISDICTION AND LEGAL AUTHORITY

The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.<sup>1</sup> Pursuant to TEX. WATER CODE ANN. § 13.242 (West Supp. 2014) (TWC), a “sewer service corporation may not in any way render . . . sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension.”<sup>2</sup> 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.”<sup>3</sup> A retail public utility is “[a]ny 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.”<sup>4</sup> A retail public utility that possesses a CCN is required to provide “continuous and adequate service.”<sup>5</sup>

A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.<sup>6</sup> 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.”<sup>7</sup>

Pursuant to the contested case provisions of the Administrative Procedure Act,<sup>8</sup> 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.<sup>9</sup> If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a

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<sup>1</sup> TEX. WATER CODE ANN. § 13.041 (West Supp. 2014) (TWC). See also, House Bill 1600 and Senate Bill 567 83<sup>rd</sup> Legislature, Regular Session, which transferred the functions relating to the economic regulation of water and sewer utilities from the Texas Commission on Environmental Quality to the Public Utility Commission effective September 1, 2014.

<sup>2</sup> TWC § 13.242.

<sup>3</sup> 16 Tex. Admin.Code § 24.3(10) (TAC).

<sup>4</sup> TWC § 13.002(19) and 16 TAC § 24.3(41).

<sup>5</sup> TWC § 13.250(a) and 16 TAC § 24.114.

<sup>6</sup> TWC § 13.254 and 16 TAC 24.113.

<sup>7</sup> *Id.*

<sup>8</sup> Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

<sup>9</sup> APA §§ 2001.051-.178.

default occurs.<sup>10</sup> Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.<sup>11</sup>

### **III. FACTUAL ALLEGATIONS**

On August 28, 1991, San Jacinto Utility was granted CCN No. 20606.<sup>12</sup> The original owner of San Jacinto Utility passed away in 1997. At that time, the utility was placed into a receivership and Mr. David Lucas was appointed as receiver. On or before May 2008, Mr. Lucas left the state of Texas and abandoned the San Jacinto Utility. Mr. Lucas did not receive permission from the court to abandon the utility as receiver, nor did he arrange for another party to operate the utility. The Office of the Attorney General determined that a new receiver could not be appointed because the utility had been under receivership for too long. Efforts to appoint a temporary manager by the TCEQ failed because of the extremely poor condition of the WWTP and the lack of a discharge permit for the WWTP. In June 2009, the Johnson County Public Works notified all property owners that the WWTP needed to be shut down due to its extremely poor condition. By June 2011, all former property owners served by San Jacinto Utility had each installed an onsite sewage facility and were disconnected from the San Jacinto Utility system. The San Jacinto Utility WWTP was then dismantled. The utility has ceased to operate.

### **IV. RECOMMENDATION FOR REVOCATION**

The Commission should revoke San Jacinto Utility's CCN No. 20606 because San Jacinto Utility and the facilities it used to provide continuous and adequate service no longer exist. As discussed previously, the receiver appointed to operate the utility left the state of Texas sometime prior to May 2008 without arranging for anyone else to operate the utility. The receiver thereby abandoned the utility. Since the abandonment, all property owners formerly served by the San Jacinto Utility installed their own onsite sewage facilities. Furthermore, the San Jacinto Utility WWTP was dismantled and filled in by the end of 2011. Thus, San Jacinto Utility is no longer capable of providing continuous and adequate service and is incapable of ever again providing continuous and adequate sewer service.<sup>13</sup> For the above stated reasons, Staff recommends revocation of CCN No. 20606 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.113(a)(1).

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<sup>10</sup> 16 TAC § 22.183.

<sup>11</sup> APA § 2001.056(4) and 16 TAC § 22.183.

<sup>12</sup> CCN No. 20606 covers an area approximately sixteen miles northeast of the town of Cleburne, Texas (*see* Attachments 1 and 2).

<sup>13</sup> *See* TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

## V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC § 22.54 requires Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.<sup>14</sup> 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.”<sup>15</sup> In order to proceed on a default basis, 16 TAC § 22.183 requires Staff to provide notice by certified mail, return receipt requested: (a) to a certificate holder's last known address in the Commission's records; (b) to the person's registered agent for process on file with the Secretary of State; or (3) to an address for the party identified after reasonable investigation if the first two options are not applicable.

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

San Jacinto Utility Incorporated  
5908 Stone Meadow Ln  
Fort Worth, TX 76179

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address used in TCEQ proceedings:

San Jacinto Utility Incorporated  
1101 Ridge Road #208  
Rockwall, TX 75087

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Ken Dejarnett  
Route 2, Box 30-W  
Rockwall, TX 75087

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the director of San Jacinto Utility on file with the Secretary of State:

William W Tenison  
PO Box 2220  
McKinney, TX 75070

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<sup>14</sup> APA §§ 2001.001-.902.

<sup>15</sup> *Id.* at § 2001.054

Pursuant to 16 TAC § 22.183, Staff hereby notifies San Jacinto Utility that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if San Jacinto Utility 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 San Jacinto Utility's CCN No. 20606.

**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.**

#### VI. REQUEST

Staff respectfully requests that the Commission grant Staff's request to revoke San Jacinto Utility's CCN No. 20606. In the event that San Jacinto Utility fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to San Jacinto Utility, revoking CCN No. 20606.

Respectfully Submitted,



Joshua W. Walters  
Attorney - Oversight and Enforcement Division  
State Bar No. 24081198  
(512) 936-7385  
(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 October 23, 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 San Jacinto Utility, Incorporated (San Jacinto Utility) in the Commission's records, to addresses used in the Texas Commission on Environmental Quality (TCEQ) proceedings, to the address for the registered agent for process on file with the Secretary of State, and to the address for the director of San Jacinto Utility on file with the Secretary of State:

San Jacinto Utility's owner's Last Known Address in Commission Records:

San Jacinto Utility Incorporated  
5908 Stone Meadow Ln  
Fort Worth, TX 76179

Address used in TCEQ Proceedings:

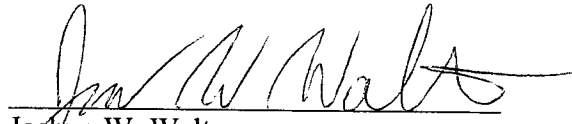
San Jacinto Utility Incorporated  
1101 Ridge Road #208  
Rockwall, TX 75087

Address for the registered agent for process on file with the Secretary of State:

Ken Dejarnett  
Route 2, Box 30-W  
Rockwall, TX 75087

Address for the director of San Jacinto Utility on file with the Secretary of State:

William W Tenison  
PO Box 2220  
McKinney, TX 75070

  
Joshua W. Walters  
Attorney - Oversight and Enforcement Division  
State Bar No. 24081198  
(512) 936-7385  
(512) 936-7208 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

# Attachment 1

Certificate of Convenience and Necessity No. 20606



# TEXAS WATER COMMISSION



## CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Sewer Service Under V.T.C.A., Water Code  
and Texas Water Commission Substantive Rules

**Certificate No. 20606**

### I. Certificate Holder:

Name: San Jacinto Utility, Inc.

Address: 1101 Ridge Road #208  
Rockwall, Texas 75087

### II. General Description and Location of Service Area:

The area covered by this certificate is generally located approximately 16 miles northeast of downtown Cleburne, Texas, and  $\frac{1}{4}$  mile northeast of the intersection of Farm to Market Road 917 and Farm to Market Road 2738. The service area is generally bounded on the west by a tributary of Walnut Creek and on the south by Farm to Market Road 917 in Johnson County, Texas.

### III. Certificate Maps:

The certificate holder is authorized to provide sewer service in the area identified on the Commission's official service area map, WRS-127, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8987-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: AUG 28 1991

ATTEST:

Maria A. Vazquez  
For the Commission

# Attachment 2

Map of Certificate of Convenience and Necessity No. 20606

