



Control Number: 46092



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PUBLIC UTILITY COMMISSION
CLERK

Greg Abbott
Governor

Public Utility Commission of Texas

June 22, 2016

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Mr. Felipe Posada
Key Road Subdivision Water Supply
4091 Key Road
Bloomington, Texas 77951

RE: PUC Docket No. **46092**, Notice of Violation by Key Road Subdivision
Water Supply of Texas Water Code § 13.242 and 16 Texas Administrative Code
§ 24.101, Related to Certificate Required.

Dear Mr. Posada:

The purpose of this Notice of Violation (NOV) is to notify you pursuant to 16 Tex. Admin. Code § 22.246 (TAC) that the Staff of the Public Utility Commission of Texas (Commission) is recommending assessment of administrative penalties against Key Road Subdivision Water Supply (Key Road). The NOV is based on Key Road's failure to comply with Texas Water Code § 13.242¹ (TWC), as well as 16 TAC § 24.101.

I. INTRODUCTION

The Commission may impose an administrative penalty against a person, affiliated interest, or entity subject to the jurisdiction of the Commission or the Texas Commission on Environmental Quality (TCEQ) who violates TWC or a rule or order adopted under TWC.² The penalty for a violation may be in an amount not to exceed \$5,000 per day, but each day a violation continues may be considered a separate violation. Section 13.4151 of TWC lists several factors upon which the penalty must be based, including the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions; the history and extent of previous violations; the degree of culpability; the demonstrated good faith including actions taken by the person to correct the cause of the violation; any economic benefit gained through the violation; the amount necessary to deter future violations; and any other matter that justice may require.³

¹ Texas Water Code Ann. § 13.242 (West 2008 and Supp. 2014) (TWC).

² TWC § 13.4151(a).

³ TWC § 13.4151(b).



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II. APPLICABLE LAW

TWC § 13.242 states that a utility “may not in any way render retail water or sewer utility service directly or indirectly to the public” without having obtained a certificate of convenience and necessity (CCN).

III. STATEMENT OF FACTS

Key Road has provided retail water service directly to the public since 2006 without first obtaining a CCN. Key Road has approximately 16 connections. Since its inception, Key Road has not submitted an application for a CCN to either the TCEQ or the Commission.

IV. STATEMENT OF THE AMOUNT OF THE RECOMMENDED PENALTY

Pursuant to the attached Report on Violations, I recommend assessing an administrative penalty against Key Road in the amount of \$50,000 and issuing an order requiring Key Road to submit a CCN application and abide by the requirements described in the attached Report on Violations. This recommendation is based upon consideration of each of the factors set forth in TWC § 13.4151 as described in the attached Report on Violations.

V. STATEMENT RELATING TO KEY ROAD'S RIGHTS

Persons alleged to have committed a violation or continuing violation have a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty. Options available pursuant to Commission rule to resolve this matter include paying the penalty, requesting a settlement conference, and requesting a contested case hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.⁴

If you have any questions about the issues raised in this NOV, please do not hesitate to contact Taylor Kilroy, Attorney, Enforcement Division, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Mr. Kilroy may also be reached at the following phone number or email address to discuss or arrange for discussions on this matter: (512) 936-7127 or taylor.kilroy@puc.texas.gov.

Sincerely,



Brian H. Lloyd
Executive Director
Public Utility Commission of Texas

⁴ See Attachment 2, 16 TAC § 22.246

Public Utility Commission of Texas

Memorandum

To: Brian H. Lloyd
Executive Director

From: Harold Kohl
Enforcement Analyst
Oversight and Enforcement Division

Date: May 9, 2016

Re: **Report on Violations** by Key Road Subdivision Water Supply for violation of Texas Water Code § 13.242 (TWC), as well as 16 TAC § 24.101 and recommendation for administrative penalties pursuant to TWC § 13.4151.

I. NOTICE OF VIOLATION SUMMARY

Staff of the Public Utility Commission of Texas (Commission) has determined that Key Road Subdivision Water Supply (Key Road) failed to comply with the requirements of Texas Water Code¹ (TWC), Title 2, Chapter 13, Subchapter G, related to Certificates of Convenience and Necessity and Chapter 24, Subchapter G of the Commission's substantive rules related to Certificates of Convenience and Necessity.

Pursuant to TWC § 13.4151(a), the Commission may impose an administrative penalty against a person, affiliated interest, or entity subject to the jurisdiction of the Commission or the Texas Commission on Environmental Quality (TCEQ) who violates TWC or a rule or order adopted under TWC. Additionally, the Commission may request that the attorney general apply for a court order in the name of the Commission to enjoin or require compliance with a commission order in accordance with TWC § 13.411(a).

II. APPLICABLE LAW

TWC § 13.242 states that a utility "may not in any way render retail water or sewer utility service directly or indirectly to the public" without having obtained a certificate of convenience and necessity (CCN).

¹ TEX. WATER CODE ANN. (West 2008 and Supp. 2014) (TWC).

III. STATEMENT OF FACTS

Key Road has provided retail water service directly to the public since 2006 without first obtaining a CCN. Key Road has approximately 16 connections. Since its inception, Key Road has not submitted an application for a CCN to either the TCEQ or the Commission.

IV. RELIEF SOUGHT

Staff recommends that the Commission issue an order with the following provisions:

- 1) Key Road is a utility pursuant to 16 Tex. Admin. Code § 24.3(72) (TAC) and is therefore required to obtain a CCN pursuant to TWC § 13.242(a) and 16 TAC § 24.101(a);
- 2) Key Road has failed to obtain a CCN and therefore is in violation of TWC § 13.242(a) and 16 TAC § 24.101(a) by providing retail water service directly to the public;
- 3) Key Road shall submit a full and complete CCN application per the application procedures of 16 TAC § 24.105 within 30 days of this order or cease providing retail water service to the public; and
- 4) Key Road shall pay an administrative penalty of \$50,000 for the violations described herein.

V. ADMINISTRATIVE PENALTIES

TWC § 13.4151 provides that the Commission may impose an administrative penalty against a person, affiliated interest, or entity subject to the jurisdiction of the Commission or the TCEQ for a violation of TWC or a Commission rule or order adopted under TWC. The penalty amount may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.²

Penalty Determination

Staff is recommending an administrative penalty of \$50,000.

1. Nature, circumstances, extent, duration, and gravity of the violations

Key Road's failure to apply for a CCN is a serious violation. In failing to apply for a CCN, Key Road undermines the statutory authority of the Commission and hinders its ability to ensure Key Road has the financial, managerial, and technical ability to provide continuous and adequate service to its customers.³ Furthermore, a CCN holder is authorized to serve a specific geographic area. A CCN is necessary to distinguish and delineate service territories to ensure customers who wish to receive retail water service in a particular area actually receive it.

² TWC § 13.4151(a).

³ See 16 TAC §§ 24.102(d) and 24.105(a).

2. History and extent of previous violations

Staff believes that Key Road has been in continuous violation of the CCN requirement since 2006 when it began providing retail water service directly to the public. Moreover, the TCEQ has issued several Notices of Violation to Key Road and has had three separate Default Orders against Key Road for numerous violations of TCEQ rules. Staff believes that Key Road has not paid any amount toward the administrative penalties levied by the three Default Orders.

3. Degree of culpability

This violation was willful and not attributable to mechanical or electrical failures. Moreover, it could have been reasonably anticipated and avoided. Key Road should have been aware that they needed to obtain a CCN. Furthermore, even if Key Road was not aware of the CCN requirement at the time it began providing retail water service directly to the public, Key Road has since ignored multiple attempts by the Commission and the TCEQ to bring it into compliance.

4. Demonstrated good faith

Staff is unaware of any effort Key Road has made to correct this violation. To date, Key Road has yet to submit a CCN application to either the Commission or the TCEQ.

5. Economic benefit gained through the violation

Staff is unaware of any economic benefit directly tied to not obtaining a CCN; however, Key Road has profited by operation of its illegal water system.

6. Amount necessary to deter future violations

Given that Key Road has operated in defiance of the CCN requirement for approximately a decade, a significant penalty is necessary to ensure swift compliance.

7. Any other matters that justice requires

Staff is generally aware that Key Road is a small operation and Staff believes that \$50,000 will be a significant penalty for a utility of its size. O&E believes that the factors discussed above and the recalcitrance that Key Road has shown to both the TCEQ and the Commission demonstrate that justice requires such a penalty in this matter.

VI. CONCLUSION

Key Road has provided and is currently providing retail water service directly to the public in Texas and failed to acquire a CCN before it did so, as required by TWC § 13.242, as well as 16 TAC § 24.101. Key Road is subject to administrative penalties under TWC § 13.4151. Staff recommends that the Commission impose an administrative penalty of \$50,000 and require Key Road to submit a full and complete CCN application within 30 days of issuing the Final Order or cease providing retail water service to the public.