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DOCKET NO. 46128

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APPLICATION OF HAYS §
CONSOLIDATED INDEPENDENT §
SCHOOL DISTRICT TO REVOKE §
SWEETWATER UTILITY LLC'S SEWER §
CERTIFICATE OF CONVENIENCE AND §
NECESSITY IN HAYS COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

**ORDER NO. 4
RETYLING DOCKET AND
NOTICE OF OPPORTUNITY FOR A HEARING**

This Order restyles this docket and provides Sweetwater Utilities LLC notice of an opportunity for a hearing.

I. RETYLING DOCKET

This docket is restyled above to recognize that Hays Consolidated Independent School District seeks complete revocation of Sweetwater's sewer certificate of convenience and necessity (CCN) number 20887, not partial decertification or revocation.

**II. SWEETWATER IS ENTITLED TO
NOTICE OF AN OPPORTUNITY FOR A HEARING**

The Commission may revoke or amend a CCN at any time after notice and an opportunity for a hearing.¹ If a hearing is not requested within thirty days after service of notice of an opportunity for a hearing, a default occurs.² Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing.³

The only input from the certificate holder in this proceeding is a copy of a 2008 letter written by Mr. Dwight L. Zemp, as President and Owner of Sweetwater, to Mr. Tim Terrill with Walton Texas, LP.⁴ The letter was an exhibit attached to Hays' petition and is in regards to another

¹ Texas Water Code § 13.254(a); Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.051 (West 2016) (APA).

² 16 Tex. Admin. Code § 22.183(a)(TAC).

³ APA § 2001.056(4) and 16 TAC § 22.183(b).

⁴ Petition for Decertification of CCN No. 20887; Sweetwater Utilities, LLC, Exhibit 8 (Jul. 5, 2016).

matter.⁵ The letter states that Sweetwater had discontinued operations in central Texas and did not object to cancellation or transfer of CCN No. 20887.⁶ The letter states that Mr. Terrill was free to provide the letter to the Texas Commission on Environmental Quality (TCEQ) in connection with any application to transfer or cancel the CCN.⁷

The letter provided by Hays is not sufficient to demonstrate Sweetwater's participation or consent in this proceeding. In addition, although Hays served a copy of its petition on Sweetwater and on Sweetwater's registered agent by certified mail, return receipt requested and at the addresses still maintained by the Texas Secretary of State (SoS), the petition did not provide Sweetwater notice of an opportunity for a hearing. Therefore, before a default order can be issued, the Commission must provide Sweetwater notice of an opportunity for a hearing.

III. NOTICE OF OPPORTUNITY FOR A HEARING

16 TAC § 22.54 requires Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the APA. 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."⁸ In order to proceed on a default basis, 16 TAC § 22.183 requires Commission 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 SoS; or (c) to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, the Commission will provide a copy of this Order by certified mail, return receipt requested to Sweetwater's last known address in the Commission's records:

Sweetwater Utility LLC
P.O. Box 2167
Kyle, Texas 78640-1806

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ APA § 2001.054.

Even though Sweetwater has forfeited its existence with the Texas SoS, the Commission will also provide a copy of this Order by certified mail, return receipt requested, to the address for Sweetwater that is still on file with the Texas SoS:

Sweetwater Utility LLC
c/o Dwight L. Zemp
220 Malibu St.
Castle Rock, Colorado 80109

Even though Sweetwater has forfeited its existence with the Texas SoS, the Commission will also provide a copy of this Order by certified mail, return receipt requested, to the address for Sweetwater's registered agent for process on file with the Texas SoS:

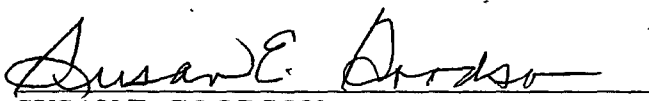
Sweetwater Utility LLC
c/o C T Corporation System
350 N. St. Paul St.
Dallas, Texas 75201

Pursuant to 16 TAC § 22.183, the Commission hereby notifies Sweetwater that the factual allegations in the petition filed by Hays on July 5, 2016 could be deemed admitted and the relief sought therein granted by default if Sweetwater fails to request a hearing within 30 days after service of this Order. The purposes of a hearing on the merits is to consider revocation Sweetwater's sewer CCN No. 20887.

The factual allegations listed in Hays' July 4, 2016 petition in this proceeding could be deemed admitted and the relief sought by Hays in this proceeding could be granted by default if Sweetwater fails to timely request a hearing.

SIGNED AT AUSTIN, TEXAS the 21ST day of February 2017.

PUBLIC UTILITY COMMISSION OF TEXAS


SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE