

Control Number: 46128



Item Number: 19

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Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott

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PUBLIC UTILITY COMMISSION
CLERK

Public Utility Commission of Texas

TO: Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Susan E. Goodson *SEA*
Administrative Law Judge

RE: **Open Meeting of July 28, 2017**
Docket No. 46128 – *Petition of Hays Consolidated Independent School District to Revoke Sweetwater Utility LLC's Sewer Certificate of Convenience and Necessity in Hays County*

DATE: June 28, 2017

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Friday, July 28, 2017, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Thursday, July 20, 2017.

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

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DOCKET NO. 46128

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

PROPOSED ORDER

This Order addresses the petition of Hays Consolidated Independent School District to revoke Sweetwater Utility LLC's sewer certificate of convenience and necessity (CCN) in Hays County. Commission Staff recommended approval of Hays' application. The application is approved and Sweetwater's sewer certificate 20887 is revoked.

I. Background

On July 5, 2016, Hays filed a petition requesting the decertification of Sweetwater's CCN No. 20887.¹ Hays stated that it owns two small tracts of land that total approximately 15 acres, which are located within CCN No. 20887 in Hays County.² Hays intends to develop the property for school purposes and desires to secure centralized wastewater services at an economically reasonable cost from a qualified and reliable provider.³ Hays has determined that its property is located within and/or adjacent to the boundaries of the Parklands Municipal Utility District No. 2.⁴ Hays stated that Parklands can provide the desired wastewater services and Hays intends to apply for wastewater service with Parklands.⁵

Hays stated that Sweetwater does not currently and has never provided wastewater service to the property.⁶ Hays stated that it is not receiving wastewater service from Sweetwater, and has

¹ Petition for Decertification of CCN No. 20887; Sweetwater Utilities, LLC at 1 (Jul. 5, 2016) (Petition).

² *Id.*

³ *Id.* at 2.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.*

never received wastewater service from Sweetwater.⁷ Hays stated that it has not filed an application for service with the utility.⁸ Hays also stated that it has been unable to locate any wastewater facilities or related infrastructure on the ground within any of its property that evidences Sweetwater's existence, much less an ability to provide required wastewater services on a continuous, adequate and/or economically viable and acceptable basis.⁹ Hays does not own all of the property within Sweetwater's CCN No. 20887, but requests decertification of Sweetwater's CCN in its entirety.¹⁰

Hays stated that Sweetwater is neither legally qualified nor competent to provide wastewater service to the property.¹¹ Hays stated that Sweetwater has forfeited its existence as a domestic limited liability company with the Texas Secretary of State and the Texas Comptroller.¹² Hays stated that the Commission approved a petition for partial decertification of CCN No. 20887 in Docket No. 43849¹³ and that the exhibits in that docket indicate that Sweetwater has allowed its permit with the Texas Commission on Environmental Quality (TCEQ) to expire.¹⁴ Hays also provided a 2008 letter from Sweetwater President/Owner, Dwight Zemp to Mr. Tim Terrill, with Walton Texas, LP, the applicant in Docket No. 43849, in which Mr. Zemp stated that Sweetwater discontinued all operations in the Central Texas area and Sweetwater does not object to cancellation of CCN No. 20887.¹⁵

Commission Staff stated that Hays has demonstrated that Sweetwater has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service to the area or part of the area covered by the certificate. Commission Staff concluded that

⁷ Petition at 4.

⁸ *Id.* at 2.

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3-4.

¹¹ *Id.*

¹² *Id.*

¹³ *Application of Walton Texas, L.P. to Amend Sweetwater Utility LLC's Sewer Certificate of Convenience and Necessity by Expedited Release in Hays County*, Docket No. 43849, Notice of Approval (Jan. 22, 2015).

¹⁴ Petition at 3.

¹⁵ *Id.*

Hays' application meets the criteria of Texas Water Code § 13.254(a)(1)¹⁶ and 16 Texas Administrative Code § 24.113(a)(1) (TAC) and therefore recommended approval.¹⁷

The Commission agrees with Commission Staff and adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural History

1. On July 5, 2016, Hays filed an application to decertify Sweetwater's sewer CCN No. 20887 in Hays County.
2. On July 6, 2016, Order No. 1 was issued, requiring comments on the administrative completeness of the application and proposed notice.
3. On August 4, 2016, Commission Staff recommended that the application be deemed sufficient for further review and that Hays be instructed to provide mailed notice to certain entities and to Sweetwater at its last known address.
4. On August 5, 2016, Order No. 2 was issued, finding the application sufficient for further review and directing Hays to provide notice to certain entities and to Sweetwater at its last known address.
5. On September 20, 2016, Commission Staff clarified that complete revocation of Sweetwater's CCN is sought, not partial decertification, and recommended that notice was sufficient based on Hays' affidavit of mailed notice to the required entities and Hays' affidavit stating that a copy of the petition was sent by certified mail to the last known address of Sweetwater, including copies of the post-marked receipts to confirm delivery.
6. On September 21, 2016, Order No. 3 was issued, finding the notice of the application provided by Hays to be sufficient, re-styling the docket to reflect revocation instead of decertification of a portion of CCN No. 20887, and adopting Commission Staff's proposed procedural schedule.

¹⁶ Tex. Water Code Ann. § 13.254(a)(1) (West 2008 and Supp. 2016) (TWC).

¹⁷ Commission Staff's Final Recommendation, Attached Memorandum at 1 (Nov. 21, 2016).

7. On November 21, 2016, Commission Staff recommended approval of Hays' application and provided a revised map showing Sweetwater's CCN No. 20887 revoked in its entirety.
8. The map discussed in Finding of Fact No. 7 is attached to this Order.
9. On December 12, 2016, Hays filed a concurrence with Commission Staff's recommendation of November 21, 2016.
10. On December 21, 2016, Commission Staff and Hays filed a joint proposed notice of approval and motion to admit evidence.
11. On February 21, 2017, Order No. 4 was issued, restyling this docket again to recognize that Hays seeks complete revocation of Sweetwater's CCN No. 20887, not partial, determining that providing a copy of the petition to Sweetwater did not provide notice of an opportunity for a hearing as required by TWC § 13.254(a); therefore, in the absence of Sweetwater's consent, providing notice of an opportunity for a hearing, which notice was also sent, by certified mail, return receipt requested, to the addresses for Sweetwater that Hays provided and as found in the Commission's databases.
12. On June 27, 2017, Order No. 5 was issued, admitting evidence into the record of this proceeding.

Notice

13. Notice of the application was published in the *Texas Register* on July 22, 2016.
14. On July 5, 2016, Hays provided a copy of the petition to Sweetwater by certified mail.
15. On September 7, 2016, Hays filed an affidavit as proof that a copy of the petition was served on Sweetwater at its last known address and through its last known agent for service of process, C.T. Corporation.
16. On September 19, 2016, Hays filed an affidavit as proof of mailed notice to other entities on September 19, 2016.

Opportunity for a Hearing

17. On February 21, 2017, notice of an opportunity for a hearing was sent by certified mail to Sweetwater at three addresses: P.O. Box 2167, Kyle, Texas 78640-1806, 220 Malibu St., Castle Rock, Colorado 80109-1578 and C.T. Corporation.

18. On May 18, 2017, a February 24, 2017 responsive letter from C.T. Corporation was filed, stating that Sweetwater is inactive on the records of the Texas Secretary of State and that C.T. Corporation's services for Sweetwater have been discontinued for more than 5 years.
19. On May 24, 2017, United States Postal Service tracking information was provided for the notice described in Finding of Fact No. 17 sent to Sweetwater's Kyle, Texas and Castle Rock, Colorado addresses.
20. More than 30 days have passed since notice of an opportunity for a hearing was provided.
21. Sweetwater did not request a hearing on the merits.

Project Description

22. Hays has sufficiently demonstrated that the application meets the requirements of TWC § 13.254(a)(1) and 16 TAC § 24.113(a)(1); therefore, Sweetwater's CCN No. 20887 should be revoked.
23. Hays owns land that is located within Sweetwater's CCN No. 20887, which has never received sewer service from Sweetwater.
24. Sweetwater's TCEQ wastewater discharge permit has expired.¹⁸
25. Sweetwater's authority to transact business in Texas has been forfeited.¹⁹
26. Sweetwater has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area covered by CCN No. 20887.

Informal Disposition

27. More than 15 days have passed since completion of the notice provided in this docket.
28. The only parties to this proceeding are Hays and Commission Staff.
29. No protests, motions to intervene, or requests for hearing have been filed; therefore, no hearing is necessary.

¹⁸ *Id.*, Exhibit 3.

¹⁹ *Id.*, Exhibit 4.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter under TWC §§ 13.041, 13.241, 13.250 and 13.254(a).
2. Notice of the application was provided in compliance with 16 TAC §§ 24.106(b), 24.113(s) and 16 TAC § 22.54-.55.
3. Notice was provided to Sweetwater as required by TWC § 13.254(a) and 16 TAC § 24.113(a).
4. Hays is entitled to approval of the application, having sufficiently demonstrated that Sweetwater has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area covered by the certificate, as provided in TWC § 13.254(a) and 16 TAC § 24.113(a).
5. The 20-day notice requirement in 16 TAC § 22.35(b)(2) has been met in this proceeding.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Hays' application is approved.
2. Sweetwater's sewer CCN No. 20887 is revoked.
3. The Commission's official service area boundary map for Sweetwater shall reflect the change described above.
4. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

Signed at Austin, Texas the _____ day of July 2017.

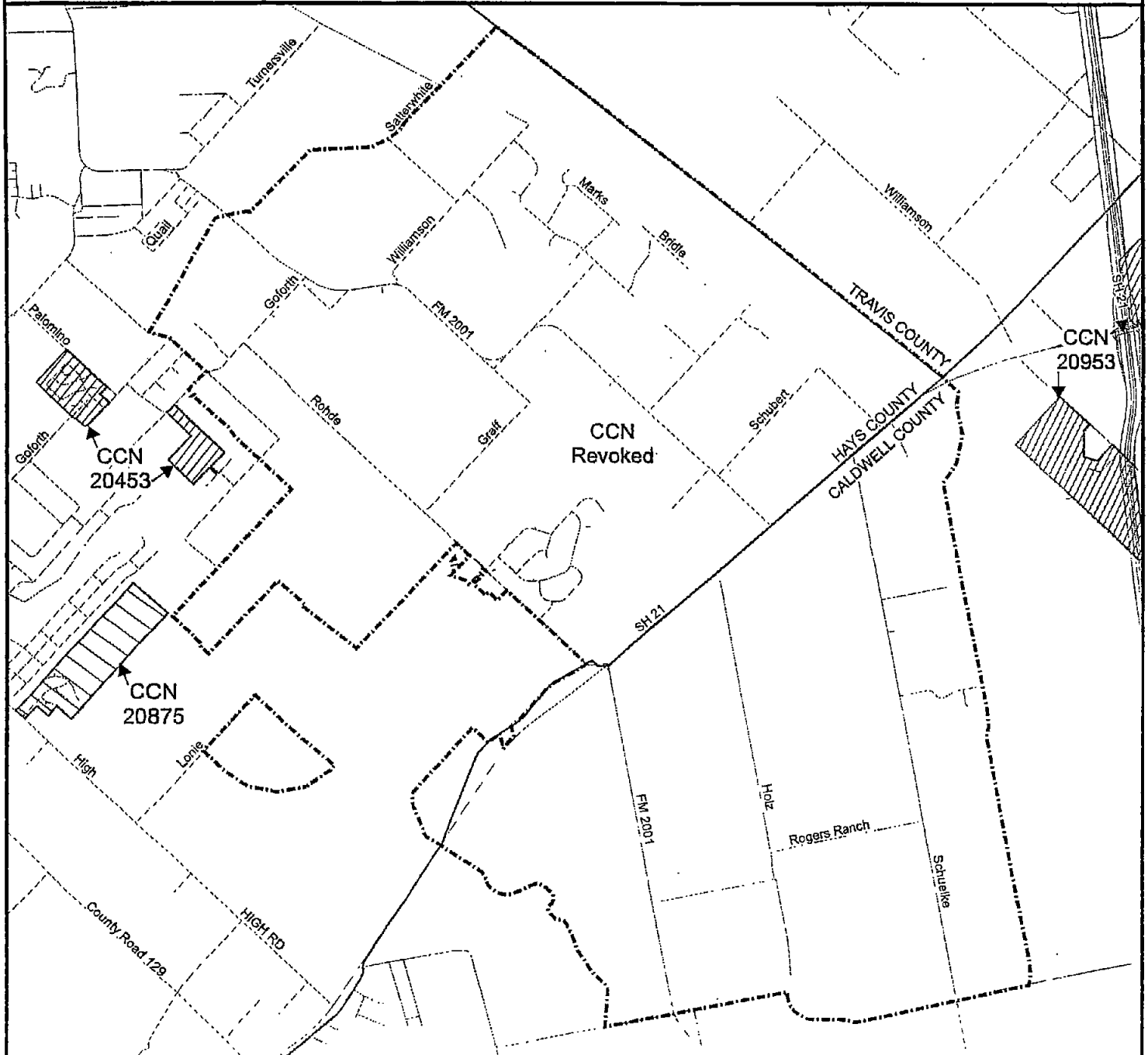
PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER




BRANDY MARTY MARQUEZ, COMMISSIONER

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Sweetwater Utility, LLC
 Revocation of Sewer CCN
 CCN No. 20887
 PUC Docket No. 46128
 Petition by Hays Consolidated ISD to Revoke
 Sweetwater Utility, LLC's CCN by TWC § 13.254(a)(1) in Hays County



Sewer CCN Service Areas

-  20453 - Aqua Texas Inc
-  20875 - The Railyard WWTP
-  20953 - Mustang Plaza

Revoked CCN Area

