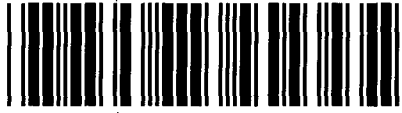




Control Number: 46316



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **46316**

**PETITION TO REVOKE
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
NO. 12689 PURSUANT TO TEX.
WATER CODE, § 13.254 AND 16
TEX. ADMIN. CODE § 24.113**

§
§
§
§
§
§
§

**PUBLIC UTILITY COMMISSION

OF TEXAS**

RECEIVED
2016 AUG 29 PM 2:17
PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S PETITION TO REVOKE
DAN NEAL'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
AND
NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas (Commission Staff) files this Petition to Revoke Certificate of Public Convenience and Necessity No. 12689 (Petition) owned by Dan Neal dba Frontier Park Resort & Marina (Mr. Neal) 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 Certificate of Public Convenience and Necessity (CCN) No. 12689, owned by Mr. Neal should be revoked. In the event Mr. Neal fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Mr. Neal, granting all relief sought in this Petition. In support of this Petition, Commission Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

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 utility service to a specified geographic area."¹ 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."² A retail public utility that possesses a CCN is required to provide "continuous and adequate service."³

¹ 16 Tex. Admin. Code § 24.3(15) (TAC).
² 16 TAC § 24.3(58).
³ Tex. Water Code § 13.250 (TWC) and 16 TAC § 24.114.

01131

A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁴ The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.⁵ 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."⁶

Pursuant to the contested case provisions of the Administrative Procedure Act,⁷ a party is entitled to an opportunity for a hearing after reasonable notice of not less than ten days, where the party may respond to and present evidence and argument on each issue involved in the case.⁸ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.⁹ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.¹⁰

III. FACTUAL ALLEGATIONS

On March 11, 2003, CCN No. 12689 was transferred to Dan Neal dba Frontier Park Resort & Marina from Doris Young dba Frontier Park Resort Water System in TCEQ Docket No. 33863-S.¹¹ At the time, Dan Neal was associated with one public water system (PWS), Frontier Park Marina (Frontier Park). 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."¹² As of June 14, 2016, Frontier Park was no longer an active PWS.¹³

⁴ TWC § 13.254(a)(1).

⁵ TWC § 13.041. See also, House Bill 1600 and Senate Bill 567 83rd 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.

⁶ TWC § 13.254(a)(1).

⁷ Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902 (APA).

⁸ APA § 2001.051.

⁹ 16 TAC § 22.183.

¹⁰ APA § 2001.056(4) and 16 TAC § 22.183.

¹¹ See CCN and Water Utility Tariff (Attachment 1).

¹² 30 TAC § 290.38(66).

¹³ DWW Water System Summary Sheet, TEXAS DRINKING WATER WATCH, http://dww2.tceq.texas.gov/DWW/JSP/DataSheet.jsp?tinwsys_is_number=5579&tinwsys_st_code=TX&wsnumber=TX2020028 &DWWState=TX&begin_date=&end_date=&counter=.

At some point between March 11, 2003 and February 13, 2007,¹⁴ ownership of the PWS appears to have been transferred to Mr. Michael L. O'Neill through unknown means. No Application for a Sale, Transfer, or Merger (STM Application) for the CCN was approved to record this sale, and the sale is to be considered void.¹⁵ In the absence of a completed application, Mr. Neal remains the holder of CCN No. 12689. At this time, Mr. Neal holds no property capable of providing service in the certificated area and serves no customers.

Mr. O'Neill is currently functioning as the de facto owner of Frontier Park. A December 2010 Default Judgment and Permanent Injunction identified Mr. O'Neill as the owner and operator of the PWS previously associated with CCN No. 12689.¹⁶ Additionally, the TCEQ Drinking Water Watch database lists Mr. O'Neill as the administrative contact for Frontier Park.¹⁷

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke CCN No. 12689 because Mr. Neal is incapable of providing continuous and adequate service because he has no assets with which to provide service within the certificated area. Commission Staff has been unable to locate, much less communicate with, Mr. Neal. Those former customers located in the certificated area are being served by another entity not operating under the CCN. As long as CCN No. 12689 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.¹⁸

For the above stated reasons, Commission Staff recommends revocation of CCN No. 12689 pursuant to TWC § 13.254 and 16 TAC § 24.113.

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act. 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."¹⁹ In

¹⁴ See *State of Texas v. Michael L. O'Neill d/b/a Frontier Park Resort and Marina*, No. D-1-GV-10-001692 (353rd Dist. Ct. Tex., Dec. 20, 2010) (citing Mr. O'Neill for violations relating to Frontier Park dating back to February 13, 2007).

¹⁵ TWC § 13.301(h) and 16 TAC § 24.109(i).

¹⁶ *Id.*

¹⁷ Water System Details for Frontier Park Marina, TEXAS DRINKING WATER WATCH, http://dww2.tceq.texas.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=5579&tinwsys_st_code=TX&w_snumber=TX2020028&DWWState=TX

¹⁸ See TWC § 13.242.

¹⁹ APA § 2001.054(c).

order to proceed on a default basis, 16 TAC § 22.183 requires Commission Staff to provide notice by certified mail, return receipt requested, to a certificate holder's last known address in the Commission's records or to the person's registered agent for process on file with the Secretary of State. In the event that the party does not have an address in the Commission's records or a registered agent on file with the Secretary of State, Commission Staff may provide notice to "an address for the party identified after reasonable investigation."²⁰

The Commission does not have an address for Dan Neal in its records. Neither Frontier Park nor Dan Neal has a registered agent on file with the Secretary of State. After a reasonable investigation, the only addresses Commission Staff has been able to find associated with Dan Neal are the address Mr. Neal had on file with TCEQ during his time as an owner of the PWS and an address used by the TCEQ when they attempted to contact Mr. Neal in 2011.

Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to the address Mr. Neal had on file with the TCEQ when he owned the system:

Dan Neal
RR1 Box 1690
Hemphill, TX 75948-9748

Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to the address the TCEQ believed Mr. Neal resided at in 2011:

Dan Neal
415 W. Madison Avenue
Iola, KS 66749-3123

Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies Mr. Neal that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Mr. Neal 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 CCN No. 12689.

The factual allegations listed in Commission 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.

²⁰ 16 TAC 22.183(b)(2)(C)

VI. REQUEST

Commission Staff respectfully requests that the Commission grant Commission Staff's request to revoke CCN No. 12689, owned by Dan Neal dba Frontier Park Resort & Marina. In the event Mr. Neal fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to Mr. Neal, revoking CCN No. 12689.

Respectfully Submitted,



Jessica Soos
Attorney, Oversight and Enforcement Division
State Bar No. 24093183
(512) 936-7132 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

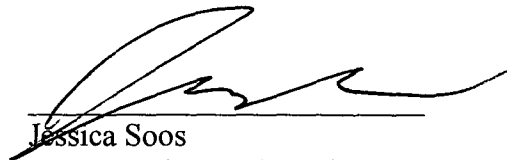
CERTIFICATE OF SERVICE

I certify that on August 29, 2016, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the address Mr. Neal had on file with the TCEQ when he owned the system:

Dan Neal
RR1 Box 1690
Hemphill, TX 75948-9748

An additional copy of this document was sent by certified mail, return receipt requested, to the address the TCEQ believed Mr. Neal resided at in 2011:

Dan Neal
415 W. Madison Avenue
Iola, KS 66749-3123



Jessica Soos
Attorney, Oversight and Enforcement Division
State Bar No. 24093183
(512) 936-7132 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326