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DOCKET NO. 46316

RECEIVED

PETITION TO REVOKE DAN NEAL §
DBA FRONTIER PARK RESORT & §
MARINA'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
PURSUANT TO TEX. WATER CODE §
§ 13.254 AND 16 TEX. ADMIN. CODE §
§ 24.113 §
§

PUBLIC UTILITY COMMISSION
OF TEXAS

2016 OCT 20 AM 11:27
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

Order No. 1, issued on October 3, 2016, ordered Commission Staff to file a proposed default order no later than November 15, 2016. Pursuant to that Order, Commission Staff's Proposed Default Order is attached.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that on October 20, 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

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PETITION TO REVOKE DAN NEAL	§	PUBLIC UTILITY COMMISSION
DBA FRONTIER PARK RESORT &	§	
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§ 13.254 AND 16 TEX. ADMIN. CODE	§	OF TEXAS
§ 24.113		

PROPOSED DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke Dan Neal dba Frontier Park Resort & Marina's (Mr. Neal) Certificate of Public Convenience and Necessity (Petition). Commission Staff's Petition is granted and Mr. Neal's Certificate of Public Convenience and Necessity No. 12689 is revoked. The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. Dan Neal dba Frontier Park Resort & Marina is a retail public utility that was granted Certificate of Convenience and Necessity (CCN) number 12689 by the Texas Commission on Environmental Quality (TCEQ) though a transfer on March 11, 2003 in TCEQ Docket No. 33863-S.
2. At the time, Frontier Park was associated with one public water system (PWS).
3. At some point between March 11, 2003 and February 13, 2007, ownership of the PWS and all the real property of the CCN was transferred to Michael L. O'Neill.
4. No Application for a Sale, Transfer, or Merger (STM Application) for the CCN was approved to record this sale.
5. In the absence of a completed STM Application, Mr. Neal remains the holder of the CCN.
6. Mr. Neal is incapable of providing continuous and adequate service to customers because he no longer owns a PWS capable of providing service in the certificated area.
7. On August 29, 2016, Commission Staff filed the Petition and provided notice of opportunity for hearing seeking revocation of Mr. Neal's CCN No. 12689.
8. The Petition included the required disclosure in at least 12-point, bold-face type.

9. The Petition was sent by certified mail, return receipt requested, to the addresses Commission Staff was able to find for Mr. Neal after reasonable investigation. More specifically the Petition was sent by certified mail, return receipt requested to, the address Mr. Neal had on file with the TCEQ when he operated the PWS and to the address used by the TCEQ in 2011.
10. More than 30 days have passed since service of the Petition.
11. Mr. Neal did not request a hearing on the merits.

II. Conclusions of Law

1. Tex. Water Code § 13.242 (TWC) provides that a “utility ... may not in any way render retail water ... 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.”
2. 16 Tex. Admin Code § 24.3(15) (TAC) defines a CCN 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.”
3. 16 TAC § 24.3(58) defines a retail public utility as “[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.”
4. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a CCN to provide “continuous and adequate service.”
5. If the Commission finds that a retail public utility that possesses a CCN “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” in violation of TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.113.
6. Mr. Neal failed to meet the performance requirements for a CCN holder in TWC § 13.250 and 16 TAC § 24.114 when he transferred ownership of the PWS and all the real property of the CCN.

7. Mr. Neal is incapable of providing continuous and adequate service in the area covered by CCN No. 12689.
8. Issuance of a default order against Mr. Neal is appropriate because Mr. Neal failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing, as provided in 16 TAC § 22.183(a).
9. Pursuant to 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

III. Ordering Paragraphs

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

1. Commission Staff's Petition is granted.
2. Mr. Neal's CCN No. 12689 is revoked.
3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of _____, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER