



Control Number: 46316



Item Number: 7

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**Donna L. Nelson**  
Chairman

**Kenneth W. Anderson, Jr.**  
Commissioner

**Brandy Marty Marquez**  
Commissioner

**Brian H. Lloyd**  
Executive Director



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

TO: Donna L. Nelson, Chairman  
Kenneth W. Anderson, Jr., Commissioner  
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Irene Montelongo  
Director, Docket Management

RE: **Open Meeting of January 12, 2017**  
**Docket No. 46316** – *Petition to Revoke Dan Neal d/b/a Frontier Park Resort & Marina's Certificate of Convenience and Necessity Pursuant to Tex. Water Code § 13.254 and 16 Tex. Admin. Code § 24.113*

DATE: December 14, 2016

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PUBLIC UTILITY COMMISSION  
FILING CLERK

Enclosed is a copy of the Proposed Default Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, January 12, 2017, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Default Order on or before Wednesday, January 4, 2017.

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

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**DOCKET NO. 46316**

<b>PETITION TO REVOKE DAN NEAL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>DBA FRONTIER PARK RESORT &amp;</b>	<b>§</b>	
<b>MARINA'S CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>PURSUANT TO TEX. WATER CODE</b>	<b>§</b>	
<b>§ 13.254 AND 16 TEX. ADMIN. CODE</b>	<b>§</b>	
<b>§ 24.113</b>	<b>§</b>	

**PROPOSED DEFAULT ORDER**

This Order addresses the petition of Commission Staff to revoke the certificate of public convenience and necessity of Dan Neal d/b/a Frontier Park Resort & Marina (Mr. Neal) for violations of the Texas Water Code<sup>1</sup> and Commission rules.<sup>2</sup> Commission Staff's petition is granted and certificate of convenience and necessity 12689 is revoked.

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

**I. Findings of Fact**

1. Mr. Neal was granted certificate 12689 by the Texas Commission on Environmental Quality (TCEQ) through a transfer on March 11, 2003, in TCEQ Docket No. 33863-S.
2. At the time, Mr. Neal 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 of the real property of the certificate was transferred to Michael L. O'Neill.
4. No application for a sale, transfer, or merger (STM application) for the certificate was approved to record the sale.
5. In the absence of a completed STM application, Mr. Neal remains the holder of certificate 12689.
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. Mr. O'Neill is currently functioning as the *de facto* owner of Frontier Park.

<sup>1</sup> Tex. Water Code Ann. § 13.254 (West 2008 and Supp. 2016) (TWC).

<sup>2</sup> 16 Tex. Admin. Code § 24.113 (TAC).

8. A December 2010 Default Judgment and Permanent Injunction identified Mr. O'Neill as the owner and operator of the PWS associated with certificate 12689.<sup>3</sup>
9. Customers located in the certificated area are being served by an entity not operating under certificate 12689.
10. G-M Water Supply Corporation has filed an application to acquire the Frontier Park system and service area. The application is abated pending final action in this docket.<sup>4</sup>
11. On August 29, 2016, Commission Staff filed the petition and provided notice of opportunity for hearing seeking revocation of Mr. Neal's certificate.
12. The petition and notice of opportunity for hearing included the required disclosure in at least 12-point, bold-face type.
13. On November 8, 2016, Commission Staff provided proof that the petition and notice of opportunity for hearing 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 TCEQ when he operated the PWS and to the address used by TCEQ in 2011.
14. Mr. Neal did not request a hearing on the merits.
15. More than 30 days have passed since service of the petition and notice of opportunity for hearing was provided.
16. The factual allegations in the petition are deemed admitted under 16 TAC § 22.183(b)(1).
17. On October 3, 2016, the Commission issued Order No. 1, requiring a proposed default order from Commission Staff.
18. On October 20, 2016, Commission Staff filed a proposed default order.

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<sup>3</sup> *State of Texas v. Michael L. O'Neill d/b/a Frontier Park Resort and Marina*, No. D-1-GV-10-001692 (353<sup>rd</sup> Dist. Ct. Tex., Dec. 20, 2010) (citing Mr. O'Neill for violations relating to Frontier Park dating back to February 13, 2007).

<sup>4</sup> *Application of G-M Water Supply Corporation for Sale, Transfer, or Merger of Frontier Park Resort & Marina's Facilities and Certificate Rights in Sabine County*, Docket No. 45762 (pending).

## II. Conclusions of Law

1. The Commission has jurisdiction over the subject matter of this proceeding under TWC §§ 13.041(a), 13.250, and 13.254.
2. Under TWC § 13.242, 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.”
3. Under 16 TAC § 24.3(15), a certificate is “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 service to a specified geographic area.”
4. Under 16 TAC § 24.3(58), a retail public utility is “any 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.”
5. In accordance with TWC § 13.250 and 16 TAC § 24.114, a retail public utility that possesses a certificate must provide “continuous and adequate service.”
6. If the Commission finds that a retail public utility that possesses a certificate “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 certificate under TWC § 13.254 and 16 TAC § 24.113.
7. Mr. Neal failed to meet the performance requirements for a certificate 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.
8. Mr. Neal is incapable of providing continuous and adequate service in the area covered by certificate 12689.
9. Issuance of a default order in this proceeding is appropriate because Mr. Neal failed to request a hearing within 30 days of service of the notice of opportunity for hearing, as provided in 16 TAC 22.183(a).

10. Under 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

**II. Ordering Paragraphs**

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

1. Commission Staff's petition for revocation of the certificate held by Mr. Neal is granted.
2. Certificate 12689 is revoked.
3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day January 2017.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**