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Item Number: 1

Addendum StartPage: 0

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PETITION TO REVOKE BOCA CHICA §
WATER SUPPLY CORPORATION'S §
CERTIFICATE OF PUBLIC §
CONVENIENCE AND NECESSITY §
PURSUANT TO TEX. WATER CODE §
ANN. § 13.254 AND 16 TAC § 24.113 §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

**COMMISSION STAFF'S PETITION TO REVOKE
BOCA CHICA WATER SUPPLY, INC.'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas (Commission) files this Petition to Revoke Boca Chica Water Supply, Inc.'s Certificates of Public Convenience and Necessity (Petition) 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 water service Certificate of Public Convenience and Necessity (CCN) No. 11736 for Boca Chica Water Supply, Inc. (Boca Chica) should be revoked. On June 10, 1982, the Commission received Boca Chica's application for a water CCN and granted it in Commission Docket No. 4532. Upon investigation, Staff has determined that the Public Water System associated with Boca Chica is inactive and that the CCN should be revoked.

In the event Boca Chica fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Boca Chica, granting all relief sought in this Petition. In support of this Petition, Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.¹ Pursuant to Tex. Water Code Ann. § 13.242 (West Supp. 2014) (TWC), a "water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the

¹ Tex. Water Code Ann. § 13.041 (West Supp. 2014) (TWC).

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utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension.”

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 service to a specified geographic area.”² 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.”³

A retail public utility that possesses a CCN is required to provide “continuous and adequate service.”⁴ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.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 10 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

Boca Chica is located in Cameron County, Texas approximately sixteen miles east of Brownsville International Airport on State Highway 4. In Commission Docket No. 4532, Boca Chica filed an application on June 10, 1982, for a CCN to provide water utility service to this area

² 16 Tex. Admin. Code § 24.3(15) (TAC).

³ TWC § 13.002(19) and 16 TAC § 24.3(58).

⁴ See TWC § 13.250(a) and 16 TAC § 24.114.

⁵ TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

⁶ *Id.*

⁷ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁸ APA §§ 2001.051-.178.

⁹ 16 TAC § 22.183.

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

consisting of existing and proposed “facilities plus two hundred feet,” with the facilities shown on the map in Attachment 1, located northeast of the City of Brownsville. In 1982, Boca Chica was granted CCN No. 11736.¹¹

Boca Chica filed an application with the Secretary of State to become a Texas corporation on September 23, 1981. The utility has ceased to operate and is now listed as “Forfeited Existence” on the Secretary of State’s website. Staff’s review of Commission’s records indicate that Boca Chica is no longer in business and the facilities it used to provide continuous and adequate service are inactive. Therefore, Boca Chica is no longer providing and is incapable of providing continuous and adequate service.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Boca Chica’ CCN No. 11736 because Boca Chica is no longer in business and the facilities it used to provide continuous and adequate service are inactive.¹² As long as CCN No. 11736 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.¹³

For the above stated reasons, Staff recommends revocation of CCN No. 11736 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.113(a)(1).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC § 22.54 and 22.55 require Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.¹⁴ In license revocation proceedings, APA § 2001.054 requires 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." In order to proceed on a default basis, 16 TAC § 22.183 requires 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 Secretary of State; or (3)

¹¹ CCN No. 11736 covers an area approximately sixteen miles East of Brownsville International Airport on State Highway Number four and approximately eight miles South of Port Isabel, Texas. (see Attachment 1)

¹² See TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

¹³ See TWC § 13.242.

¹⁴ APA §§ 2001.001-902.

to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Staff will provide a copy of this petition by certified mail, return receipt requested, to the Boca Chica owner's last known address in the TCEQ's and Commission's records:

Boca Chica Water Supply, Inc.
P.O. Box 3632
Brownsville, Texas 78521-4852

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the President of Boca Chica on file with the Commission and TCEQ:

Ramon Sanchez
P.O. Box 3632
Brownsville, Texas 78521-4852

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the emergency contact address used in Commission and TCEQ records:

Guillermo Vega, Jr.
P. O. Box 1938
Brownsville, Texas 78520

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Ramon Sanchez
3220 Southmost Rd.
Brownsville, Texas 78521-4852

Staff will also provide a copy of this petition by certified mail, return receipt requested, to an alternative address found after reasonable investigation to:

Boca Chica Water Supply, Inc.
Star Route Box 98
Brownsville TX, 78521

Pursuant to 16 TAC § 22.183, Staff hereby notifies Boca Chica that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Boca Chica fails to request a hearing within 30 days after service of the Petition and Notice of Opportunity for Hearing. The purpose of a hearing on the merits is to consider revocation of Boca Chica's CCN No. 11736. If Boca Chica fails to request a hearing the presiding officer may issue a

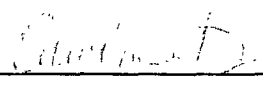
default order on an informal basis without a hearing on the merits pursuant to APA § 2001.056(4) and 16 TAC § 22.183.

The factual allegations listed in 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.

VI. REQUEST

WHEREFORE, PREMISES CONSIDERED, Staff respectfully requests that the Commission grants Staff's request to revoke Boca Chica's CCN No. 11736. In the event that Boca Chica fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to Boca Chica, revoking CCN No. 11736.

Respectfully Submitted,



Caroline G. Dinges
Attorney, Oversight and Enforcement Division
State Bar No. 24101700
(512) 936-7065
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78701-3326

CERTIFICATE OF SERVICE

I certify that on April 17, 2017, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Boca Chica Water Supply, Inc. (Boca Chica) in the Commission's records, to addresses used in the Texas Commission on Environmental Quality (TCEQ) proceedings, to the address for the registered agent for process on file with the Secretary of State:

Boca Chica's Last Known Address in Commission Records:

Boca Chica Water Supply, Inc.
P.O. Box 3632
Brownsville, Texas 78521-4852

Address used for the president in TCEQ records:

Ramon Sanchez
P.O. Box 3632
Brownsville, Texas 78521-4852

Address for the emergency contact for Boca Chica in TCEQ records:

Guillermo Vega, Jr.
P. O. Box 1938
Brownsville, Texas 78520

Address for the registered agent for process on file with the Secretary of State:

Ramon Sanchez
3220 Southmost Rd.
Brownsville, TX 78520

Address found after reasonable investigation:

Boca Chica Water Supply, Inc.
Star Route Box 98
Brownsville TX, 78521



Caroline G. Dinges

Attachment 1

Map of Water Service Certificate of Convenience and Necessity

No. 11736

Boca Chica Water System Water CCN No. 11736 in Cameron County

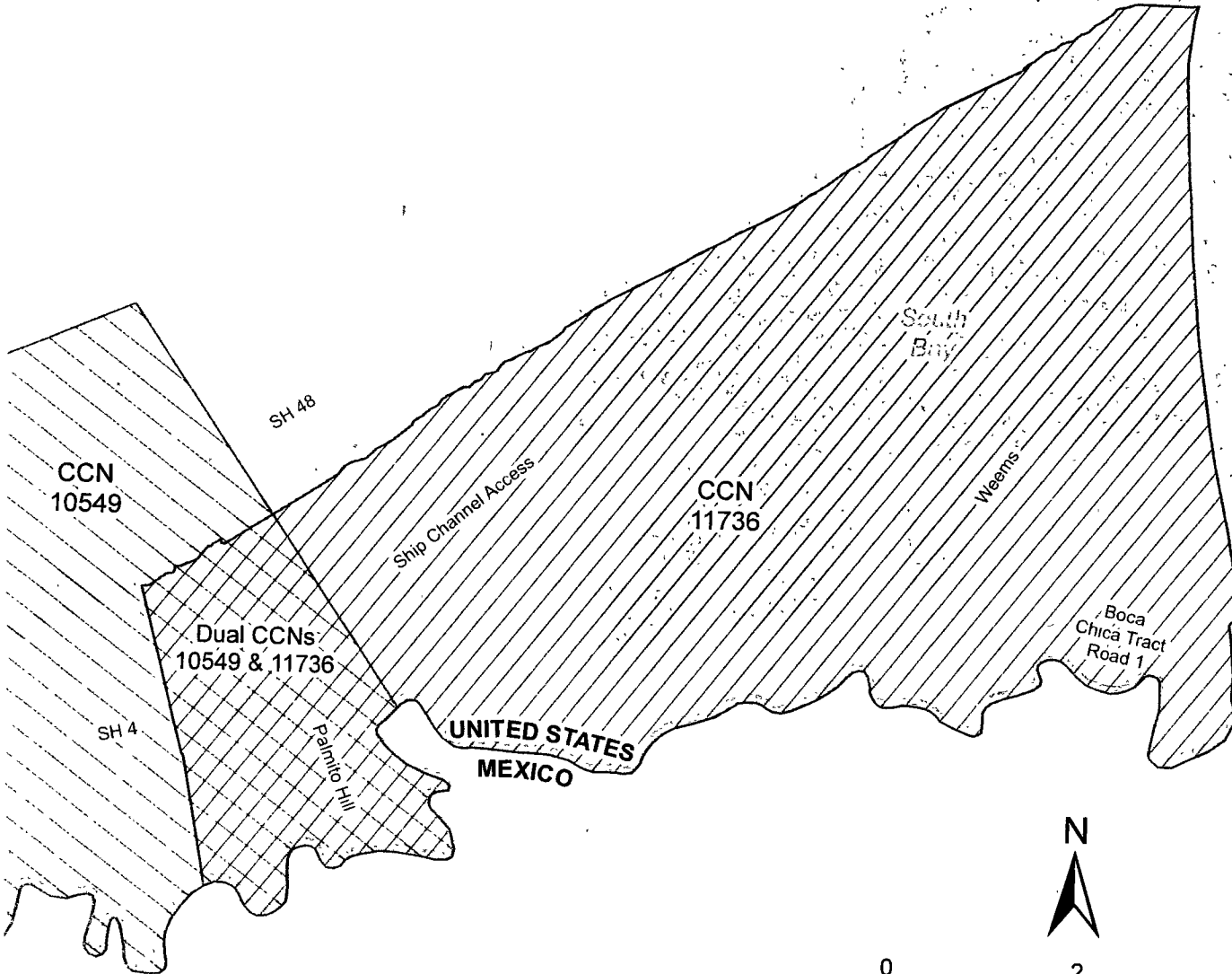
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
Shore

Atlantic
Ocean



Public Utility Commission of Texas
701 N. Congress Ave
Austin, TX 78701

Water CCN

-  11736 - Boca Chica Water System
-  10549 - City of Brownsville

Map by: Kristy Nguyen
Date created: April 13, 2017
Project path: \\BocaChica\BocaChica11736