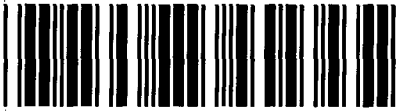




Control Number: 47212



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DOCKET NO. **47212**

PETITION TO REVOKE §
CERTIFICATE OF PUBLIC §
CONVENIENCE AND NECESSITY §
NO. 12574, PURSUANT TO TEX. §
WATER CODE. § 13.254 AND 16 §
TEX. ADMIN. CODE § 24.113 §
§

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**COMMISSION STAFF'S PETITION TO REVOKE THE CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY OF PEACH CREEK DAM AND LAKE CLUB, INC.
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. 12574 (Petition) owned by Peach Creek Dam and Lake Club, Inc. (Peach Creek) 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. 12574, held by Peach Creek, should be revoked. In the event Peach Creek fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Peach Creek, 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

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

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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

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 July 5, 1991, Peach Creek was granted CCN No. 12574. Peach Creek is comprised of one public water system.¹¹ Peach Creek was owned by Harold Bradham.¹²

² 16 TAC § 24.3(58).

³ Tex. Water Code § 13.250 (TWC) and 16 TAC § 24.114.

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 PWS ID No. 1700064. The Texas Commission on Environmental Quality (TCEQ) uses the term public water system (PWS) to describe facilities used for providing potable water service to "at least 15 service connections or serve at least 25 individuals at least 60 days out of the year." 30 TAC § 290.38(66) (Tex. Comm'n. Env'tl. Quality). A CCN may be comprised of a single or multiple PWSs.

¹² *Application of Peach Creek Dam & Lake Club Water System and the City of Patton Village for Sale, Transfer or Merger of Facilities and Certificate of Convenience and Necessity in Montgomery County*, Docket 43132 (March 30, 2016).

Mr. Bradham intended to transfer the utility and CCN to the City of Patton Village (Patton Village). Patton Village and Mr. Bradham filed an application for transfer of the system on September 16, 2014.¹³ Patton Village assumed operation of the utility, employing an operator and obtaining a permit from the Lone Star Groundwater Conservation District (LSGCD) for the well serving Peach Creek. Approval of the sale relied on a federal Housing and Urban Development (HUD) grant administered by the Texas Department of Agriculture. In 2016, Patton Village learned that a recently redrawn flood map placed Peach Creek in a floodway. HUD rules and regulations prohibited the use of the grant on projects in a floodway. Without the grant, Patton Village could no longer meet the Commission's financial, managerial, and technical requirements to acquire the system. On March 24, 2016, Patton Village withdrew its application to acquire the system.

While the application was still pending for the transfer of Peach Creek to Patton Village, Mr. Bradham passed away. The Bradham estate is the current owner of Peach Creek and it is failing and has failed to provide continuous and adequate service. Patton Village presently serves Peach Creek as a temporary manager,¹⁴ and it plans on submitting an Application for a Sale, Transfer, or Merger (STM) to acquire the system in the near future.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke CCN No. 12574 because Peach Creek is no longer providing and is incapable of providing continuous and adequate service. Mr. Bradham's estate has no interest in continuing operations. The only reason service presently exists for the customers of Peach Creek is that Patton Village is serving as temporary manager. Patton Village is seeking to acquire the service territory, and revoking CCN No. 12574 will allow Patton Village to more easily complete the STM process.

For the above stated reasons, Commission Staff recommends revocation of CCN No. 12574 pursuant to TWC § 13.254 and 16 TAC § 24.113.

¹³ *Id.*

¹⁴ Docket No. 46262.

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."¹⁵ In 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."¹⁶

Commission Staff will provide a copy of this request by certified mail, return receipt requested, to the last known address of Peach Creek in the Commission's records:

Peach Creek Dam and Lake Club, Inc.
P.O. Box 559
Splendora, Texas 77372

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to Patton Village's attorney:

Alan Petrov, Attorney for the City of Patton Village
Johnson Petrov LLP
2929 Allen Parkway, Suite 3150
Houston, TX 77019

Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies Peach Creek that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Peach Creek 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. 12574.

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.

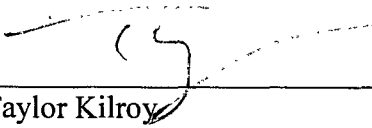
¹⁵ APA § 2001.054(c).

¹⁶ 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. 12574, owned by Peach Creek. In the event Peach Creek fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to Peach Creek, revoking CCN No. 12574.

Respectfully Submitted,



Taylor Kilroy
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State Bar No. 24087844
(512) 936-7127 T
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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on May 26, 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 Peach Creek in the Commission's records:

Peach Creek Dam and Lake Club, Inc.

P.O. Box 559

Splendora, Texas 77372

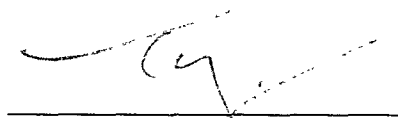
Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to Patton Village's attorney:

Alan Petrov, Attorney for the City of Patton Village

Johnson Petrov LLP

2929 Allen Parkway, Suite 3150

Houston, TX 77019



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