



Control Number: 47213



Item Number: 3

Addendum StartPage: 0

DOCKET NO. 47213

**PETITION TO REVOKE
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
NO. 12353, PURSUANT TO TEX.
WATER CODE. § 13.254 AND 16 TEX.
ADMIN. CODE § 24.113**

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PUBLIC UTILITY COMMISSION

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**PUBLIC UTILITY COMMISSION
FILING CLERK**

OF TEXAS

**STAFF'S MOTION FOR ISSUANCE OF A DEFAULT ORDER
OF REVOCATION AND ATTACHED PROPOSED ORDER**

Staff of the Public Utility Commission of Texas (Commission) files this Motion for Issuance of a Default Order of Revocation and Attached Proposed Order (Motion for Default Order) requesting revocation of West Oaks Phoenix Corp.'s (W. Oaks Phoenix) Certificate of Public Convenience and Necessity (CCN) No. 12353.

I. INTRODUCTION

For each of the reasons discussed below, a Default Order should be issued granting all relief sought in Commission Staff's Petition to Revoke the Certificate of Public Convenience and Necessity of West Oaks Phoenix Corp. and Notice of Opportunity for a Hearing (Commission Staff's Petition), filed on May 26, 2017. In support of this Motion for Default Order, Commission Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

The contested case provisions of the Administrative Procedure Act, Tex. Gov't Code § 2001.051 (APA) entitle a party to an opportunity for a hearing after reasonable notice of not less than 10 days, and to respond to and present evidence and argument on each issue involved in the case. Pursuant to 16 Texas Admin. Code § 22.183 (TAC), if a hearing is not requested within 30 days after service of notice of an opportunity for hearing a default occurs. Upon default, the presiding officer may issue a default order, disposing of the proceeding without a

hearing, on an informal basis.¹ In addition, factual allegations in Commission Staff's Petition may be deemed admitted and the relief sought may be granted by default.²

A default order requires adequate proof that the notice of the opportunity for a hearing was sent by certified mail to the party's last known address in the Commission's records or the registered agent for process for the party on file with the Secretary of State, or, if 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."³ There must also be proof that the notice of the opportunity for a hearing included a disclosure in at least twelve-point bold face type that the factual allegations may be deemed admitted and relief sought granted if the party fails to timely request a hearing.

III. FACTUAL ALLEGATIONS

On May 26, 2017, Commission Staff filed a Petition and Notice of Opportunity for Hearing seeking revocation of W. Oaks Phoenix's CCN No. 12353. Commission Staff's Petition included the required disclosure in fourteen point bolded and underlined font.⁴ Additionally, 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."⁵ 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 (c) to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Commission Staff sent a copy of Commission Staff's Petition by certified mail, return receipt requested, to the addresses listed below:⁶

¹ APA § 2001.051 and 16 TAC § 22.183.

² *Id.*

³ 16 TAC § 22.183(b)(2).

⁴ See attached Petition and Notice of Opportunity for Hearing (Attachment 1).

⁵ APA § 2001.054

⁶ See Attachment 2, Affidavit of Tasha Lopez and Receipts from the Certified Mail Label.

Commission Staff sent a copy of this petition by certified mail, return receipt requested, to the last known address of W. Oaks Phoenix in the Commission's records:

W. Oaks Phoenix Corp.
PO Box 314
Magnolia, Texas, 77353-0314

Commission Staff also sent a copy of this petition to the following address used by the TCEQ in a separate matter:

W. Oaks Phoenix Corp.
10433 Coleridge
Dallas, Texas 75218

Commission Staff also sent a copy of this petition by certified mail, return receipt requested, to Lil Countryside, a water supply corporation presently applying for a CCN to serve this area:

Lil Countryside WSC
9077 Private Road 2329
Terrell, Texas 75160

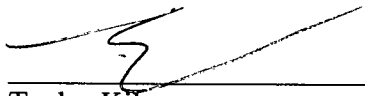
Despite service of Commission Staff's Petition, W. Oaks Phoenix failed to request a hearing on the merits and more than 30 days have passed since service of Commission Staff's Petition.

IV. REQUEST

Staff respectfully requests that all relief sought in Commission Staff's Petition be granted, with no further notice to W. Oaks Phoenix, and all facts alleged be deemed admitted by the issuance of the attached proposed default order, revoking W. Oaks Phoenix's CCN No. 12353.

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 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 July 6, 2017, pursuant to 16 Texas. Admin. Code § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of W. Oaks Phoenix in the Commission's records:

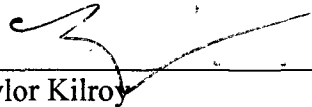
W. Oaks Phoenix Corp.
PO Box 314
Magnolia, Texas, 77353-0314

Commission Staff also sent a copy of this motion to the following address used by the TCEQ in a separate matter:

W. Oaks Phoenix Corp.
10433 Coleridge
Dallas, Texas 75218

Commission Staff also sent a copy of this motion by certified mail, return receipt requested, to Lil Countryside, a water supply corporation presently applying for a CCN to serve this area:

Lil Countryside WSC
9077 Private Road 2329
Terrell, Texas 75160


Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attachment 1

**Petition to Revoke and Notice
and Opportunity for a Hearing**

DOCKET NO. **47213**

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MAY 26 AM 11:00
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FILING CLERK

PETITION TO REVOKE
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
NO. 12353, PURSUANT TO TEX.
WATER CODE. § 13.254 AND 16
TEX. ADMIN. CODE § 24.113

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PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S PETITION TO REVOKE THE CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY OF WEST OAKS PHOENIX CORP.**
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. 12353 (Petition) owned by West Oaks Phoenix Corp. (W. Oaks Phoenix) 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. 12353, held by W. Oaks Phoenix, should be revoked. In the event W. Oaks Phoenix fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to W. Oaks Phoenix, 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).

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

W. Oaks Phoenix is a public water system in Hunt County, PWS No. 1160097. W. Oaks Phoenix's sole shareholder and only officer died in 2004 and it subsequently forfeited its existence as a Texas corporation on February 11, 2005. W. Oaks Phoenix was placed in receivership and Mr. Lonzo Gale was appointed receiver on May 24, 2004. Mr. Gale was subsequently replaced by Ms. Sandra Barbey on April 27, 2015. Ms. Barbey's term as receiver ended on May 23, 2016.

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.

On June 30, 2016, the Texas Commission on Environmental Quality (TCEQ) issued an emergency order appointing Paula Weber as temporary manager through December 27, 2016.¹¹ On December 27, the TCEQ issued another emergency order, renewing its prior emergency order appointing a temporary manager for an additional 180 days, or until June 25, 2017.¹² In a separate docket, Commission Staff is seeking to appoint a temporary manager to W. Oaks Phoenix for a further 180 days. Residents of W. Oaks Phoenix have formed a WSC named Lil Countryside WSC, and Lil Countryside is presently applying for a CCN to serve this area.¹³

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke CCN No. 12353 because W. Oaks Phoenix is incapable of providing continuous and adequate service because its sole shareholder is deceased, it has forfeited its status as a Texas corporation, and it has spent the last 13 years being operated by state-appointed receivers and temporary managers. Lil Countryside is seeking to acquire the service territory, and revoking CCN No. 12353 will allow W. Oaks Phoenix to more easily complete the process to obtain a CCN.

For the above stated reasons, Commission Staff recommends revocation of CCN No. 12353 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."¹⁴ 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

¹¹ *In the Matter of an Enforcement Action Against West Oaks Phoenix Corp.*; RN 101246346; TCEQ Docket No. 2016-0997-UCR-E, Emergency Order Appointing a Temporary Manager of a Water Utility (June 30, 2016).

¹² *In the Matter of an Enforcement Action Against West Oaks Phoenix Corp.*; RN 101246346; TCEQ Docket No. 2016-0997-UCR-E, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility (December 27, 2016).

¹³ Docket No. 46986.

¹⁴ APA § 2001.054(c).

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."¹⁵

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

W. Oaks Phoenix Corp.
PO Box 314
Magnolia, Texas, 77353-0314

In the TCEQ order appointing Ms. Weber as temporary manager, TCEQ also sent notice to the following address:

W. Oaks Phoenix Corp.
10433 Coleridge
Dallas, Texas 75218

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to Lil Countryside:

Lil Countryside WSC
9077 Private Road 2329
Terrell, Texas 75160

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

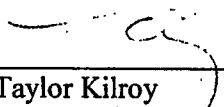
VI. REQUEST

Commission Staff respectfully requests that the Commission grant Commission Staff's request to revoke CCN No. 12353, owned by W. Oaks Phoenix. In the event W. Oaks Phoenix

¹⁵ 16 TAC 22.183(b)(2)(C)

fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to W. Oaks Phoenix, revoking CCN No. 12353.

Respectfully Submitted,



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

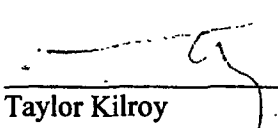
CERTIFICATE OF SERVICE

I certify that on 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 the headquarters of West Oaks Phoenix Corp. in the Commission's and TCEQ's records as well as to Lil Countryside:

W. Oaks Phoenix Corp.
PO Box 314
Magnolia, Texas, 77353-0314

W. Oaks Phoenix Corp.
10433 Coleridge
Dallas, Texas 75218

Lil Countryside WSC
9077 Private Road 2329
Terrell, Texas 75160


Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attachment 2

**Affidavit of Tasha Lopez and Receipts
from the Certified Mail Label**

DOCKET NO. 47213

PETITION TO REVOKE § PUBLIC UTILITY COMMISSION
CERTIFICATE OF PUBLIC §
CONVENIENCE AND NECESSITY §
NO. 12353, PURSUANT TO TEX. §
WATER CODE. § 13.254 AND 16 TEX. § OF TEXAS
ADMIN. CODE § 24.113

AFFIDAVIT OF TASHA LOPEZ

STATE OF TEXAS §
TRAVIS COUNTY §

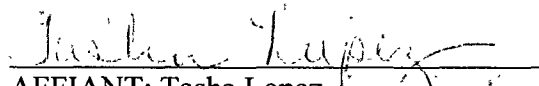
BEFORE ME, the undersigned authority, on this day personally appeared, Tasha Lopez, and being by me duly sworn, upon oath declared that the statements and capacity acted in are true and correct.

"My name is Tasha Lopez. I am the legal assistant in the Oversight & Enforcement Division of the Public Utility Commission of Texas (Commission). I am over the age of twenty-one and I am competent to make this Affidavit. In accordance with 16 TAC § 22.183(b), I mailed, by certified mail, return receipt requested, a copy of Commission Staff's Petition to Revoke the Certificate of Public Convenience and Necessity of West Oaks Phoenix Corp. and Notice of Opportunity for A Hearing, on May 26, 2017, to the last known addresses of West Oaks Phoenix, and all copies were either delivered, returned, still in transit, or are waiting to be picked up. Please see the attached tracking information for each item.

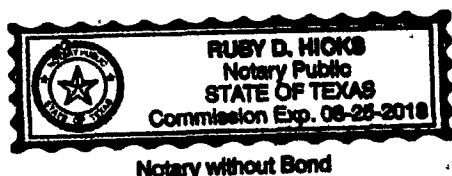
W. Oaks Phoenix Corp.
PO Box 314
Magnolia, Texas, 77353-0314

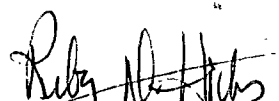
Lil Countryside WSC
9077 Private Road 2329
Terrell, Texas 75160

W. Oaks Phoenix Corp.
10433 Coleridge
Dallas, Texas 75218


AFFIANT: Tasha Lopez

SWORN TO AND SUBSCRIBED BEFORE ME this 6th day of July 2017.




Notary Public for the State of Texas

Ship Request Form

Ship Request #: 110264

Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email:
Company: Public Utility Commission

eRR Track: 9171999991703104838691

Recipient

Attn To: Lil Countryside WSC
Company: Lil Countryside WSC
Address: 9077 Private Road
#2329
City: Terrell
State: TX
Zip: 75160
Country: US

Shipping Instructions

Items

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Remove X

Tracking Number: 9171999991703104838691

Delivered

Product & Tracking Information

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Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 2, 2017, 10:29 am	Delivered	TERRELL, TX 75160
Your item was delivered at 10:29 am on June 2, 2017 in TERRELL, TX 75160.		
May 30, 2017, 2:46 pm	Notice Left (No Authorized Recipient Available)	TERRELL, TX 75160
May 30, 2017, 8:39 am	Out for Delivery	TERRELL, TX 75160
May 30, 2017, 8:29 am	Sorting Complete	TERRELL, TX 75160
May 30, 2017, 8:27 am	Arrived at Unit	TERRELL, TX 75160
May 29, 2017, 4:59 am	Departed USPS Facility	DALLAS, TX 75260
May 27, 2017, 9:29 am	Arrived at USPS Destination Facility	DALLAS, TX 75260
May 26, 2017, 8:33 pm	Departed USPS Facility	AUSTIN, TX 78710
May 26, 2017, 7:56 pm	Arrived at USPS Origin Facility	AUSTIN, TX 78710
May 26, 2017, 6:41 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701
May 26, 2017	Pre-Shipment Info Sent to USPS, USPS Awaiting Item	

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[appURL=https%3A%2F](#)

(<https://www.usps.com/>)

[%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%21input%3FtRef%3Dfullpage%26tLo%3D2%](#)

[%3D%26tLabels%3D9171999991703104838691%252C\)](#)

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Ship Request Form

Ship Request #: 110263



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-938-7401
Email:
Company: Public Utility Commission

Recipient

Attn To: West Oaks Phoenix Corp
Company: West Oaks Phoenix Corp
Address: 10433 Coleridge

City: Dallas
State: TX
Zip: 75218
Country: US

eRR Track: 9171999991703104838684

Shipping Instructions

Items

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

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Tracking Number: 9171999991703104838684

In-Transit

Product & Tracking Information

See Available Actions

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 28, 2017, 11:50 am	Available for Pickup	AUSTIN, TX 78711
Your item arrived at the AUSTIN, TX 78711 post office at 11:50 am on June 28, 2017 and is ready for pickup.		
June 28, 2017, 7:38 am	Out for Delivery	AUSTIN, TX 78701
June 28, 2017, 7:28 am	Sorting Complete	AUSTIN, TX 78701
June 28, 2017, 7:20 am	Arrived at Unit	AUSTIN, TX 78701
June 27, 2017, 7:00 pm	Departed USPS Origin Facility	AUSTIN, TX 78710
June 27, 2017, 11:07 am	Arrived at USPS Origin Facility	AUSTIN, TX 78710
June 26, 2017, 10:08 pm	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
June 26, 2017, 1:46 pm	Arrived at USPS Destination Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
June 16, 2017, 10:55 am	Unclaimed/Being Returned to Sender	DALLAS, TX 75218
May 30, 2017, 4:02 pm	Notice Left (No Authorized Recipient Available)	DALLAS, TX 75218
May 30, 2017, 7:41 am	Out for Delivery	DALLAS, TX 75218
May 30, 2017, 7:31 am	Sorting Complete	DALLAS, TX 75218

DATE & TIME	STATUS OF ITEM	LOCATION
May 30, 2017, 6:39 am	Arrived at Unit	DALLAS, TX 75218
May 29, 2017, 4:59 am	Departed USPS Facility	DALLAS, TX 75280
May 27, 2017, 9:29 am	Arrived at USPS Destination Facility	DALLAS, TX 75260
May 26, 2017, 8:33 pm	Departed USPS Facility	AUSTIN, TX 78710
May 26, 2017, 7:58 pm	Arrived at USPS Origin Facility	AUSTIN, TX 78710
May 26, 2017, 6:41 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701
May 26, 2017	Pre-Shipment Info Sent to USPS, USPS Awaiting Item	

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Return Receipt Email	▼

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Careers (<http://about.usps.com/careers>)



(<https://www.youtube.com/usps>)

Ship Request Form

Ship Request #: 110260



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email:
Company: Public Utility Commission

eRR Track: 9171999991703104838677

Recipient

Attn To: West Oaks Phoenix Corp
Company: West Oaks Phoenix Corp
Address: PO Box 314

City: Magonila
State: TX
Zip: 77353
Country: US

Shipping Instructions

Items

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

USPS Tracking® Results

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Track Another Package +

Remove X

Tracking Number: 9171999991703104838677

Delivered

Product & Tracking Information

See Available Actions

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 28, 2017, 12:02 pm	Delivered, To Original Sender	AUSTIN, TX 78711
Your item has been delivered to the original sender at 12:02 pm on June 28, 2017 in AUSTIN, TX 78711.		
June 28, 2017, 7:54 am	Arrived at Unit	AUSTIN, TX 78701
June 28, 2017, 8:47 pm	Departed USPS Origin Facility	AUSTIN, TX 78710
June 23, 2017, 10:52 am	Arrived at USPS Origin Facility	AUSTIN, TX 78710
June 22, 2017, 5:06 pm	Departed USPS Destination Facility	NORTH HOUSTON, TX 77315
June 17, 2017, 11:28 am	Vacant	MAGNOLIA, TX 77355
May 31, 2017, 8:43 am	Distribution to PO Box in Progress	MAGNOLIA, TX 77353
May 31, 2017, 8:39 am	Sorting Complete	MAGNOLIA, TX 77353
May 30, 2017, 9:29 am	Arrived at Unit	MAGNOLIA, TX 77355
May 27, 2017, 8:42 am	Arrived at USPS Destination Facility	NORTH HOUSTON, TX 77315
May 26, 2017, 8:33 pm	Departed USPS Facility	AUSTIN, TX 78710
May 26, 2017, 7:56 pm	Arrived at USPS Origin Facility	AUSTIN, TX 78710
May 26, 2017, 8:41 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701

DATE & TIME

STATUS OF ITEM

LOCATION

May 26, 2017

Pre-Shipment Info Sent to USPS,
USPS Awaiting Item

[See Less](#) ^

Available Actions

Text Updates	▼
Email Updates	▼
Return Receipt Email	▼

[See Less](#) ^

Can't find what you're looking for?

Go to our [FAQs](#) section to find answers to your tracking questions.

[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

There's an easier way to track your packages.

Why jump from page to page to track packages being sent to you? With My USPS™, you can easily track all your packages in one place. Sign up to:

- Set up automatic email and text alerts, so you'll never have to manually track a package again
- Provide delivery instructions, so your carrier knows where to leave packages

[Sign Up \(https://reg.usps.com/entreg](https://reg.usps.com/entreg)

[/RegistrationAction_input?app=UpsTools&](#)

appURL=https%3A%2F

(https://www.usps.com/)

%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%21input%3FtRef%3Dfullpage%26tLc%3D2%

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Inspector General (http://www.uspsig.gov/)

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National Postal Museum

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Attachment 3

Proposed Default Order

DOCKET NO. 47213

**PETITION TO REVOKE CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY NO. 12353, PURSUANT TO
TEX. WATER CODE § 13.254 AND 16
TEX. ADMIN. CODE § 24.113**

**§ PUBLIC UTILITY COMMISSION
§
§
§
§
§
§
OF TEXAS**

PROPOSED DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke West Oaks Phoenix Corp.'s (W. Oaks Phoenix) Certificate of Public Convenience and Necessity (Petition). Commission Staff's Petition is granted and W. Oaks Phoenix's Certificate of Public Convenience and Necessity No. 12353 is revoked. The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. W. Oaks Phoenix is a retail public utility that was granted Certificate of Convenience and Necessity (CCN) No. 12353.
2. W. Oaks Phoenix is comprised of one public water system.
3. W. Oaks Phoenix's sole shareholder and only officer died in 2004 and it subsequently forfeited its existence as a Texas corporation on February 11, 2005.
4. W. Oaks Phoenix was placed in receivership and Mr. Lonzo Gale was appointed receiver on May 24, 2004.
5. Mr. Gale was subsequently replaced by Ms. Sandra Barbey on April 27, 2015. Ms. Barbey's term as receiver ended on May 23, 2016.
6. W. Oaks Phoenix has been under the stewardship of a temporary manager from June 30, 2016 to present.
7. Residents of W. Oaks Phoenix have formed a WSC named Lil Countryside WSC, and Lil Countryside is presently applying for a CCN to serve this area.
8. On May 26, 2017, Commission Staff filed the Petition and provided notice of opportunity for hearing seeking revocation of W. Oaks Phoenix's CCN No. 12353.

9. The Petition included the required disclosure in at least 12-point, bold-face type.
10. The Petition was sent by certified mail, return receipt requested, to the addresses Commission Staff was able to find for W. Oaks Phoenix after reasonable investigation.
11. More than 30 days have passed since service of the Petition.
12. W. Oaks Phoenix 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. W. Oaks Phoenix is incapable of providing continuous and adequate service in the area covered by CCN No. 11736.
7. Issuance of a default order against W. Oaks Phoenix is appropriate because W. Oaks Phoenix 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).

8. 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. W. Oaks Phoenix's CCN No. 12353 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 _____, 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

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

**_____
BRANDY MARTY MARQUEZ, COMMISSIONER**