



Control Number: 47213



Item Number: 4

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Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

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PUBLIC UTILITY COMMISSION
CLERK

Public Utility Commission of Texas

TO: Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Irene Montelongo
Director, Docket Management

RE: **Open Meeting of August 17, 2017**
PUC Docket No. 47213 – *Petition to Revoke West Oaks Phoenix Corp.'s Certificate of Convenience and Necessity Pursuant to Tex. Water Code § 13.254 and Tex. Admin. Code § 24.113*

DATE: July 17, 2017

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, August 17, 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, August 9, 2017.

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

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DOCKET NO. 47213

PETITION TO REVOKE WEST OAKS	§	PUBLIC UTILITY COMMISSION
PHOENIX CORP.'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY	§	OF TEXAS
PURSUANT TO TEX. WATER CODE	§	
§ 13.254 AND 16 TEX. ADMIN. CODE	§	
§ 24.113	§	

PROPOSED DEFAULT ORDER

This Order addresses the petition of Commission Staff to revoke the certificate of public convenience and necessity of West Oaks Phoenix Corp. for violations of the Texas Water Code and Commission rules. Commission Staff's petition is granted and certificate of convenience and necessity 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 No. 12353.
2. W. Oaks Phoenix is comprised of one public water system.¹
3. W. Oaks Phoenix's sole shareholder and only officer died in 2004.
4. W. Oaks Phoenix forfeited its existence as a Texas corporation on February 11, 2005.
5. On May 24, 2004, W. Oaks Phoenix was placed in receivership and Mr. Lonzo Gale was appointed receiver.
6. On April 27, 2015, Mr. Gale was replaced by Ms. Sandra Barbey. Ms. Barbey's term as receiver ended on May 23, 2016.
7. W. Oaks Phoenix is under the stewardship of a Commission appointed temporary manager.
8. Residents of W. Oaks Phoenix have formed a water supply corporation, Lil Countryside Water Supply Corporation, which is currently seeking a certificate to serve the area.²

¹ PWS ID No. 1160097.

² *Application of Lil Countryside WSC to Obtain a Water Certificate of Convenience and Necessity in Hunt County*, Docket No. 46986 (pending).

9. On May 26, 2017, Commission Staff filed the petition and provided notice of opportunity for hearing seeking revocation of W. Oak Phoenix's certificate 12353.
10. The petition included the required disclosure in at least 12-point, bold-face type.
11. 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.
12. More than 30 days have passed since service of the petition to W. Oaks Phoenix.
13. W. Oaks Phoenix did not request a hearing on the merits.

II. Conclusions of Law

1. Texas Water Code³ § 13.242 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. Under 16 Texas Administrative Code (TAC) § 24.3(14), a CCN 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 utility service to a specified geographic area."
3. Under 16 TAC § 24.3(58), 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."
4. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a certificate to provide "continuous and adequate service."
5. 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.

³ Tex. Water Code Ann. (West 2008 and Supp. 2016) (TWC).

6. W. Oaks Phoenix is incapable of providing continuous and adequate service in the area covered by certificate 12574.
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. The requirements for disposition by default in 16 TAC § 22.183 the 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 orders:

1. Commission Staff's petition is granted.
2. W. Oaks Phoenix's certificate 12353 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 request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the _____ day of August 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER