



Control Number: 47398



Item Number: 17

Addendum StartPage: 0

DOCKET NO. 47398

2018 MAR -1 PM 2:13

PETITION OF HORSESHOE BAY  
WATER UTILITY FOR A WATER  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN LLANO AND  
BURNET COUNTIES

§  
§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE  
COMPLETENESS AND PETITION TO REVOKE THE CERTIFICATE OF  
CONVENIENCE AND NECESSITY OF DEERHAVEN, INC. AND NOTICE OF  
OPPORTUNITY FOR A HEARING**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Commission Staff's Recommendation on Administrative Completeness and Petition to Revoke the Certificate of Convenience and Necessity of Deerhaven, Inc. and Notice of Opportunity for a Hearing. In support thereof, Staff shows the following:

**I. BACKGROUND**

On July 12, 2017, Horseshoe Bay Water Utility (Horseshoe Bay) filed an application to obtain a water certificate of convenience and necessity (CCN) and a sewer CCN in Llano and Burnet Counties. On December 22, 2017, Horseshoe Bay amended its application to include a request to decertify and cancel Deerhaven Inc.'s water CCN No. 10467. Horseshoe Bay alleges that Deerhaven Inc.'s CCN No. 10467 is no longer active and was replaced by Deerhaven Water Conservation and Improvement District (CCN No. 13180) in 2010.<sup>1</sup>

Order No. 5, issued February 13, 2018, required Staff to file a recommendation by March 1, 2018. Therefore, this pleading is timely filed.

**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."<sup>2</sup> A retail public utility is "[a]ny

<sup>1</sup> Horseshoe Bay's Request to Decertify and Cancel Deerhaven Inc.'s CCN (Dec. 22, 2017).

<sup>2</sup> 16 Tex. Admin. Code § 24.3(15) (TAC).

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."<sup>3</sup> A retail public utility that possesses a CCN is required to provide "continuous and adequate service."<sup>4</sup>

A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.<sup>5</sup> The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.<sup>6</sup> 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."<sup>7</sup>

Pursuant to the contested case provisions of the Administrative Procedure Act,<sup>8</sup> 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.<sup>9</sup> If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.<sup>10</sup> Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.<sup>11</sup>

### **III. FACTUAL ALLEGATIONS**

Deerhaven Inc. is a retail public utility in Llano County, Texas that holds CCN No. 10467. Deerhaven Inc. forfeited its existence as a Texas corporation on January 9, 1989, does not

---

<sup>3</sup> 16 TAC § 24.3(58).

<sup>4</sup> Tex. Water Code § 13.250 (TWC) and 16 TAC § 24.114.

<sup>5</sup> TWC § 13.254(a)(1).

<sup>6</sup> TWC § 13.041. See also, House Bill 1600 and Senate Bill 567 83<sup>rd</sup> 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.

<sup>7</sup> TWC § 13.254(a)(1).

<sup>8</sup> Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902 (APA).

<sup>9</sup> APA § 2001.051.

<sup>10</sup> 16 TAC § 22.183.

<sup>11</sup> APA § 2001.056(4) and 16 TAC § 22.183.

have an active public water supply, and is not providing water service to the area covered by CCN No. 10467.

#### **IV. RECOMMENDATION FOR REVOCATION**

The Commission should revoke Deerhaven Inc.'s CCN No. 10467, as Deerhaven Inc. has forfeited its status as a Texas corporation, and is incapable of providing continuous and adequate service. Horseshoe Bay is seeking to acquire the service territory, and revoking CCN No. 10467 will allow Horseshoe Bay to more easily complete the process to obtain a CCN.

For the above stated reasons, Commission Staff recommends revocation of CCN NO. 10467 pursuant to TWC § 13.254 and 16 TAC § 24.113.

#### **V. NOTICE OF OPPORTUNITY FOR HEARING**

Commission Staff is required to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.<sup>12</sup> 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."<sup>13</sup> 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."<sup>14</sup>

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

Deerhaven Inc.  
PO Box 475  
Llano, Texas 78643

---

<sup>12</sup> 16 TAC §§ 22.54, 22.55.

<sup>13</sup> APA § 2001.054(c).

<sup>14</sup> 16 TAC 22.183(b)(2)(C)

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to Deerhaven Inc's registered agent as listed on the Texas Secretary of State's website:

Wade Hutto  
200 W. Luce  
Llano, Texas 78643

Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies Deerhaven Inc. that the factual allegations contained in this petition could be deemed admitted and the relief sought herein granted by default if Deerhaven Inc. 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. 10467.

**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. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS OF HORSESHOE BAY'S APPLICATION FOR A WATER AND SEWER CCN**

As detailed in the attached memorandum from Elisabeth English of the Water Utilities Division, Staff has reviewed Horseshoe Bay's application and recommends that the application be found administrative complete. Staff recommends that Horseshoe Bay be directed to use the attached notice forms to provide notices as detailed in Ms. English's attached memorandum. Staff further recommends that Horseshoe Bay be directed to file a copy of the actual notice issued and a fully executed affidavit of notice, using the attached draft affidavit.

## **VII. PROCEDURAL SCHEDULE**

Staff recommends that the application be found administratively complete. Therefore, Staff proposes the following procedural schedule:

<b>Event</b>	<b>Date</b>
Deadline for Horseshoe Bay to file proof of notice with the Commission	April 27, 2018
Deadline for Staff to file a recommendation on sufficiency of notice	May 9, 2018
Deadline to intervene	30 days after notice is issued

## **VIII. CONCLUSION**

Staff respectfully requests the entry of an order consistent with the above recommendations.

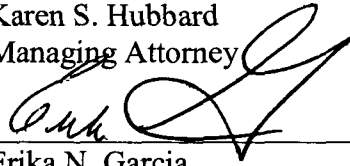
Date: March 1, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Karen S. Hubbard  
Managing Attorney



Erika N. Garcia  
State Bar No. 24092077  
(512) 936-7290  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**DOCKET NO. 47398**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record March 1, 2018, in accordance with 16 TAC § 22.74.

  
Erika N. Garcia

## PUC Interoffice Memorandum

---

**To:** Erika Garcia, Attorney  
Legal Division

**Thru:** Lisa Fuentes, Manager  
Water Utilities Division

**From:** Elisabeth English, Engineering Specialist  
Water Utilities Division

**Date:** March 1, 2018

**Subject:** **Docket 47398**, *Application of Horseshoe Bay Water Utility to Obtain Water and Sewer Certificates of Convenience and Necessity (CCN) in Llano and Burnet Counties*

On July 12, 2017, Horseshoe Bay Water Utility (Applicant) filed an application to obtain water and sewer Certificates of Convenience and Necessity (CCN) in Llano and Burnet Counties, Texas, pursuant to Texas Water Code (TWC) §§ 13.242-.250 and 16 Tex. Admin. Code (TAC) §§ 24.101-.107.

The Applicant amended its application on November 8, 2017, to request only the current utility service area within its municipal boundaries. Additionally, the Applicant filed a request on December 22, 2017, to cancel Deerhaven Inc.'s water CCN No. 10467, which is located within Applicant's municipal boundaries, due to Deerhaven Inc.'s inactive status.

Based on a review of the application as amended, Staff recommends that the application be found administratively complete and accepted for filing. Staff further recommends the Applicant be ordered to do the following:

- 1) Provide notice of the application to the following:
  - a) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or certificated service area are located within two miles from the outer boundary of the requested area; and
  - b) the county judge of each county that is wholly or partially included in the requested area; and
  - c) each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. The landowner information may be obtained from the most current tax appraisal rolls of the applicable central appraisal district; and
  - d) the following entities:
    - Aqua Texas Inc (CCN Nos. 11157 and 20453)
    - Burnet County Judge
    - Burnet County MUD 3
    - Burnet County WCID 1
    - Central Texas GCD
    - Channel Oaks Water System (CCN No. 12109)
    - City of Cottonwood Shores (CCN Nos. 13185 and 21051)
    - City of Granite Shoals (CCN No. 11450)
    - City of Highland Haven



- City of Marble Falls (CCN Nos. 11137 and 20426)
  - City of Meadowlakes
  - City of Sunrise Beach Village (CCN No. 13208)
  - Corix Utilities Texas Inc (CCN No. 13227)
  - Deerhaven Inc (CCN No. 10467)
  - Deerhaven WCID (CCN No. 13180)
  - Horseshoe Bay WCID 1
  - Horseshoe Bays WCID 3
  - Llano County Judge
  - Llano County MUD 1
  - Lower Colorado River Authority
  - Wilderness Cove Water Company (CCN No. 12334)
- 2) Include an accurate map delineating the requested service area with each individual notice to neighboring utilities, other affected parties, and landowners. Information related to districts including addresses can be obtained by the Applicant from the TCEQ web site located at <http://www14.tceq.texas.gov/iwud/>.
  - 3) Publish notice once each week for two (2) consecutive weeks in a newspaper of general circulation in both Llano and Burnet counties.
  - 4) File in this docket a copy of the actual notice and map issued, along with an affidavit specifying every person and entity to whom notice was provided and the date that the notice was provided, as well as the publisher's affidavit for proof of newspaper publication. It is recommended that the Applicant use the attached notices and affidavits to meet these requirements.

**Notice to Neighboring Systems and Cities**

**NOTICE OF APPLICATION TO OBTAIN A WATER AND SEWER CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN) AND TO CANCEL A WATER CCN IN LLANO  
AND BURNET COUNTY, TEXAS**

To: \_\_\_\_\_  
(Neighboring System or City)

Date Notice Mailed: \_\_\_\_\_, 2018

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City State Zip)

Horseshoe Bay Water Utility has filed an application with the Public Utility Commission of Texas to obtain a water and sewer CCN, and to cancel Deerhaven Inc.'s water CCN No. 10467 in Llano and Burnet Counties.

The proposed water and sewer utility service area is located approximately up to 4 miles north, south, east, and west of downtown City of Horseshoe Bay, Texas, and is generally bounded on the north by Lake Lyndon B. Johnson and Burnet/Llano County Line; on the east by US 281; on the south by SH 71; and on the west by CR 311.

The total area being requested includes approximately 10,435 acres and 3,457 current customers.

The requested area overlaps the boundaries of the Central Texas GCD. If the district does not request a public hearing, the Commission shall determine that the district is consenting to the Horseshoe Bay Water Utility's request to provide retail water and sewer utility services within the area requested in this application.

**See enclosed map showing the requested area.**

*Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date.*

If a valid public hearing is requested, the Commission will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, SOAH will submit a recommendation to the Commission for final decision. An evidentiary hearing is a legal proceeding similar to a civil trial in state district court.

A landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the requested area, may file a written request with the Commission to be excluded from the requested area ("opt out") within (30) days from the date that notice was provided by the Utility. All opt out requests must include a large scale map and a metes and bounds description of the landowner's tract of land. In addition, the landowner must also send a copy of the opt out request to the Utility. Staff may request additional information regarding your request.

Persons who wish to request this option should file the required documents with the:  
Public Utility Commission of Texas  
Central Records

1701 N. Congress, P. O. Box 13326  
Austin, TX 78711-3326

In addition, the landowner must also send a copy of the opt out request to the Utility. Staff may request additional information regarding your request.

Si desea información en español, puede llamar al 1-888-782-8477.

PUBLIC UTILITY COMMISSION



AFFIDAVIT OF NOTICE TO NEIGHBORING UTILITIES AND CITIES  
DOCKET NO. 47398

STATE OF TEXAS COUNTY OF \_\_\_\_\_ has provided individual  
notice to the following entities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF NOTICE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OATH

I, \_\_\_\_\_, being duly sworn, file this form as  
\_\_\_\_\_ (indicate relationship to applicant, that is,  
owner, member of partnership, title of officer of corporation, or other authorized representative of  
applicant); that in such capacity, I am qualified and authorized to file and verify such form, am  
personally familiar with the notices given with this application, and have complied with all notice  
requirements in the application and application acceptance letter; and that all such statements made  
and matters set for therein are true and correct.

\_\_\_\_\_  
Applicant's Authorized Representative

If the applicant to this form is any person other than the sole owner, partner, officer of the applicant,  
or its' attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Print or Type Name of Notary Public

Commission Expires \_\_\_\_\_

***Notice for Publication***

**NOTICE OF APPLICATION TO OBTAIN A WATER AND SEWER CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN) AND TO CANCEL A WATER CCN IN LLANO  
AND BURNET COUNTY, TEXAS**

Horseshoe Bay Water Utility has filed an application with the Public Utility Commission of Texas to obtain a water and sewer CCN, and to cancel Deerhaven Inc.'s water CCN No. 10467 in Llano and Burnet Counties.

The proposed water and sewer utility service area is located approximately up to 4 miles north, south, east, and west of downtown City of Horseshoe Bay, Texas, and is generally bounded on the north by Lake Lyndon B. Johnson and Burnet/Llano County Line; on the east by US 281; on the south by SH 71; and on the west by CR 311.

The total area being requested includes approximately 10,435 acres and 3,457 current customers.

A copy of the map showing the requested area is available at:

The requested area overlaps the boundaries of the Central Texas GCD. If the district does not request a public hearing, the Commission shall determine that the district is consenting to the Horseshoe Bay Water Utility's request to provide retail water and sewer utility services within the area requested in this application.

*Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date.*

If a valid public hearing is requested, the Commission will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, SOAH will submit a recommendation to the Commission for final decision. An evidentiary hearing is a legal proceeding similar to a civil trial in state district court.

A landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the requested area, may file a written request with the Commission to be excluded from the requested area ("opt out") within (30) days from the date that notice was provided by the Utility. All opt out requests must include a large scale map and a metes and bounds description of the landowner's tract of land. In addition, the landowner must also send a copy of the opt out request to the Utility. Staff may request additional information regarding your request.

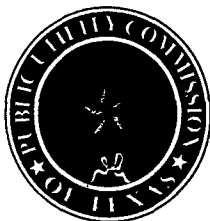
Persons who wish to request this option should file the required documents with the:

Public Utility Commission of Texas  
Central Records  
1701 N. Congress, P. O. Box 13326  
Austin, TX 78711-3326

In addition, the landowner must also send a copy of the opt out request to the Utility. Staff may request additional information regarding your request.

Si desea información en español, puede llamar al 1-888-782-8477.

# PUBLIC UTILITY COMMISSION



## PUBLISHER'S AFFIDAVIT

DOCKET NO. 47398

STATE OF TEXAS COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_,

who being by me duly sworn, deposes and that (s)he is the

\_\_\_\_\_ of the \_\_\_\_\_  
(TITLE) (NAME OF NEWSPAPER)

that said newspaper is regularly published in \_\_\_\_\_  
(COUNTY/COUNTIES)

and generally circulated in \_\_\_\_\_, Texas;  
(COUNTY/COUNTIES)

and that the attached notice was published in said newspaper on the following dates, to wit:

\_\_\_\_\_  
(DATES)

\_\_\_\_\_  
(SIGNATURE OF NEWSPAPER REPRESENTATIVE)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Print or Type Name of Notary Public

Commission Expires \_\_\_\_\_