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PUBLIC UTILITY COMMISSION  
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# OPEN MEETING COVER SHEET

## COMMISSIONER MEMORANDUM

**MEETING DATE:** August 8, 2019

**DATE DELIVERED:** August 7, 2019

**AGENDA ITEM NO.:** 9

**CAPTION:** **Docket No. 47398** - Application of the City of Horseshoe Bay for Water and Sewer Certificates of Convenience and Necessity in Llano and Burnet Counties

**DESCRIPTION:** Commissioner Memoranda

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## *Public Utility Commission of Texas*

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TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Mark Hovenkamp  
Commission Advising 

RE: Docket No. 47398; *Application of the City of Horseshoe Bay for Water and Sewer Certificates of Convenience and Necessity in Llano and Burnet Counties*, August 8, 2019 Open Meeting, Item No. 9.

DATE: August 7, 2019

Please find enclosed a memorandum by Chairman Walker regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Chairman DeAnn T. Walker 

**DATE:** August 7, 2019

**RE:** Open Meeting of August 8, 2019 – Agenda Item No. 9  
Docket No. 47398 – *Application of the City of Horseshoe Bay for Water and Sewer Certificates of Convenience and Necessity in Llano and Burnet Counties*

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I have concerns with the manner in which the issue of the default revocation portion of the order was initiated and processed. Typically, I do not believe that it is appropriate for Commission Staff or any party to file a petition to revoke a utility's certificate and convenience in another utility's application to obtain a certificate of convenience and necessity. The better approach is for Commission Staff to file its revocation petition in a separate docket. While it is not clear to me why this approach was taken in this docket, I believe it is likely due to the manner in which Horseshoe Bay filed the application in which it requested a certificate for all areas not already certificated to another entity. Without this limiting language in the application, the Commission is able under chapter 13 of the Texas Water Code to grant a certificate for a service area to one utility that overlaps the service area of another utility.

While I do not think that these two applications should have been considered in the same docket, I do not want to create the additional work that a remand and severance of the issues would cause. However, it is my preference for the Commission Staff and Docket Management to process such issues in the future in separate proceedings. In this instance, for expediency, I recommend that the Commission adopt the proposed order in this proceeding with the following changes.

The proceeding should be restyled to reflect the fact that both the application of the City of Horseshoe Bay for a certificate of convenience and necessity and the petition of Commission Staff for a decertification are being address in this docket. Also, the proper name of Deerhaven Inc. needs to be determined and consistently used throughout the order. The Commission Staff's petition for revocation as well as the proposed order use interchangeably "Deerhaven, Inc." and "Deerhaven Inc." For use in the order, the legal name should be determined and used.

Finding of fact 2 should be modified to reflect the fact that prior to a Commission order neither certificate has been issued; thus, new CCN numbers have not been created prior to the Commission's order.

2. Horseshoe Bay does not currently have an approved water CCN or sewer CCN. It ~~seeks to provide water service under new CCN number 13271 and sewer service under new CCN number 21111.~~

Finding of fact 4 should be modified to reflect the name under which the application was originally filed.

4. On July 12, 2017, Horseshoe Bay filed an application to obtain new water and sewer CCNs in Llano and Burnet counties under the name Horseshoe Bay Water Utility.

Finding of fact 5 should be modified to reflect the statements made within Horseshoe Bay's amended application.

5. On November 8, 2017, Horseshoe Bay amended its application to revise its requested area to include only areas within its city limits that are not within other certificated service areas.

Finding of fact 7 should be modified for clarity and accuracy.

7. The requested area is ~~approximately up to 4 miles north, south, east, and west of downtown Horseshoe Bay; and is~~ generally bounded on the north by Lake Lyndon B. Johnson and the Llano County Line; on the east by United States Highway 281; on the south by State Highway 71; and on the west by County Road 311.

Finding of fact 8 should be modified to correctly reflect Horseshoe Bay's pleading.

8. On December 22, 2017, Horseshoe Bay ~~amended its application to include a petition~~ filed a request under Texas Water Code § 13.254(a-1) to decertify and cancel the inactive water CCN number 10467 held by Deerhaven Inc. In its request, Horseshoe Bay asserted that this CCN was no longer active and had been replaced by the Deerhaven Water Control and Improvement District under CCN number 13180.

Finding of fact 58 should be deleted because it duplicates finding of fact 8. The subsequent findings of fact will need to be renumbered.

- ~~58. On December 22, 2017, Horseshoe Bay petitioned to decertify and cancel the inactive CCN number 10467 held by Deerhaven Inc.~~

Finding of fact 64 should be modified for accuracy.

64. Deerhaven Inc. is no longer providing and is incapable of providing continuous and adequate water service within its service area under water CCN number 10467.

Both footnotes should be deleted, and two new ordering paragraphs should be added to address the issues. The subsequent ordering paragraphs will need to be renumbered.

- xx. The Commission deems the allegations in Commission Staff's petition as to Deerhaven, Inc. as true and admits those facts into evidence.
- xx. The Commission takes official notice of its records that contain the address of Deerhaven, Inc.

Finally, I propose directing the Office of Policy and Docket Management to make other non-substantive corrections to make this order consistent with the Commission's style guide and practice for writing its orders.

I look forward to discussing this matter with you at the open meeting.