

Control Number: 47398



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**DOCKET NO. 47398**

**APPLICATION OF THE CITY OF  
HORSESHOE BAY FOR WATER AND  
SEWER CERTIFICATES OF  
CONVENIENCE AND NECESSITY IN  
LLANO AND BURNET COUNTIES AND  
PETITION OF COMMISSION STAFF  
TO REVOKE THE CERTIFICATE OF  
CONVENIENCE AND NECESSITY OF  
DEERHAVEN, INC.**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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**ORDER AND DEFAULT ORDER**

This Order addresses the application of the City of Horseshoe Bay to obtain new water and sewer certificates of convenience and necessity (CCNs) in Llano and Burnet counties. This Order also addresses the petition of Commission Staff to revoke Deerhaven, Inc.'s water CCN. The Commission issues Horseshoe Bay water CCN number 13271 and sewer CCN number 21111, and revokes, by default, Deerhaven, Inc.'s water CCN number 10467.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. Horseshoe Bay is a municipality that owns and operates its water and sewer system. It currently provides service to customers within Horseshoe Bay's corporate limits.
2. Horseshoe Bay does not currently have an approved water CCN or sewer CCN.
3. Horseshoe Bay currently operates under Texas Commission on Environmental Quality (TCEQ) permitted public water system (PWS) identification number 1500015 and Wastewater Discharge Permit No. WQ-11217-001.

**Application**

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.
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.

6. The requested area includes 10,435 acres and has 3,457 connections.
7. The requested area 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.
8. On December 22, 2017, Horseshoe Bay filed a request under Texas Water Code § 13.254(a-1) to decertify and cancel CCN number 10467 held by Deerhaven, Inc. In its request, Horseshoe Bay asserted that this CCN is no longer active and had been replaced by the Deerhaven Water Control and Improvement District under CCN number 13180.
9. In Order No. 6 issued on March 5, 2018, the administrative law judge (ALJ) found the application administratively complete.
10. On April 16, 2019 and May 6, 2019, Horseshoe Bay filed a clarification that the legal name under which it conducts business is as the City of Horseshoe Bay.

**Notice of Horseshoe Bay's CCN applications**

11. Notice of the application appeared in the July 28, 2017 issue of the *Texas Register*.
12. On April 25, 2018, the applicant filed an affidavit of Jeffrey A. Koska, director of utilities for Horseshoe Bay, attesting that notice was mailed to neighboring utilities, counties, cities, and affected parties.
13. On April 25, 2018, the applicant also filed publisher's affidavits attesting to the publication of notice in *The Highlander*, a newspaper of general circulation in Llano and Burnet counties, on March 30, 2018 and April 6, 2018.
14. On June 14, 2018, the applicant filed a second affidavit of Mr. Koska attesting that notice was mailed to Burnet County WCID 1, an entity that Commission Staff identified as failing to receive the initial notice.
15. In Order No. 8 issued June 22, 2018, the ALJ found the notice sufficient.

**Evidentiary Record**

16. On October 30, 2018, Commission Staff and Horseshoe Bay filed a joint proposed motion to admit evidence.

17. In Order No. 14 issued on January 3, 2019, the ALJ admitted evidence into the record of this proceeding.
18. In Order No. 15 issued on March 6, 2019, the ALJ rescinded Order No. 14 and required Commission Staff and the applicant to amend the motion to admit evidence filed on October 30, 2018 in order to clarify various discrepancies in Commission Staff's final recommendation and the parties' proposed Notice of Approval.
19. On May 22, 2019, Commission Staff and Horseshoe Bay filed an amended joint proposed motion to admit evidence and amended joint proposed Notice of Approval.
20. In Order No. 17 issued on June 18, 2019, the ALJ admitted the following evidence into the record of this proceeding: (a) the application of the City of Horseshoe Bay filed July 12, 2017; (b) applicant's supplement to its application, including GIS digital files and PDF files of the proposed water and sewer CCN areas, filed November 8, 2017; (c) applicant's supplement to its application, requesting cancellation of Deerhaven, Inc.'s CCN, filed December 22, 2017; (d) applicant's affidavits and proof of notice, filed April 25, 2018; (e) applicant's supplemental affidavit and proof of notice, filed June 14, 2018; (f) applicant's consent form for maps and certificates, filed August 15, 2018; (g) Commission Staff's final recommendation and supporting documentation, filed August 28, 2018; (h) Commission Staff's proof of notice, directed to Deerhaven, Inc., filed October 30, 2018; (i) Commission Staff's response to Order No. 15, filed March 28, 2019; (j) applicant's response to Order No. 16, requiring ownership clarification, filed April 16, 2019; (k) applicant's consent form for revised maps and revised certificates, filed April 22, 2019; (l) applicant's response to Order No. 16, requiring ownership clarification, and supporting documentation, filed May 6, 2019; (m) Commission Staff's amended recommendation on final disposition and supporting documentation, including final maps and certificates, filed May 9, 2019.
21. On July 24, 2019, Commission Staff filed corrections to the proposed order and a request to reopen the record to admit evidence.
22. In Order No. 18 issued on July 25, 2019, the ALJ granted Commission Staff's request to reopen the record to admit 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 hearing, filed on March 1, 2018, into the record.

**Adequacy of Existing Service – TWC § 13.246(c)(1), 16 TAC § 24.227(d)(1)**

23. Horseshoe Bay has a public water system registered with the TCEQ under PWS identification number 1500015 and it is currently in operation in the proposed service area.
24. Horseshoe Bay has a wastewater treatment plant (WWTP) associated with a permit issued by the TCEQ, Wastewater Discharge Permit No. WQ-11217-001. The WWTP is currently in operation in the proposed service area.
25. Horseshoe Bay has five TCEQ-licensed operators responsible for the operation of the PWS and WWTP.

**Need for Additional Service – TWC § 13.246(c)(2), 16 TAC § 24.227(d)(2)**

26. There is no need for additional service. Horseshoe Bay currently owns and operates existing water and sewer systems, filling a service need for 3,457 existing customers in the proposed service area.

**Effect of Granting the Amendment – TWC § 13.246(c)(3), 16 TAC § 24.227(d)(3)**

27. Horseshoe Bay is currently providing service in the area.
28. There will be no effect on any other retail public utilities servicing the area, as the current provider of water and sewer service will not change.

**Ability to Serve: Managerial and Technical – TWC §§ 13.246(c)(4), 13.241(a), 16 TAC §§ 24.227(a), 24.227(d)(4)**

29. Horseshoe Bay's PWS consists of two surface water treatment plants, which treat raw water from Lake Lyndon B. Johnson to produce water that meets TCEQ drinking water quality standards.
30. The two surface water treatment plants are capable of producing up to five million gallons of water per day meeting the TCEQ minimum capacity requirements for the expected service demand for the 3,457 existing customers located in the requested service area.
31. The wastewater discharge permit will remain active through December 21, 2026.
32. Horseshoe Bay does not have any violations in the TCEQ database for either its PWS or WWTP.

33. No additional construction will be required to provide water or sewer utility service to the requested service area.
34. Horseshoe Bay personnel responsible for the production of treated water and the treatment of wastewater possess the appropriate licensing.

**Service from Other Utilities – TWC § 13.246(c)(5), 16 TAC § 24.227(d)(5)**

35. Horseshoe Bay is providing retail public utility service to customers in the requested service area using existing infrastructure located within its corporate boundaries.
36. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation – TWC § 13.241(d), 16 TAC § 24.227(b)**

37. Regionalization or consolidation does not need to be considered because Horseshoe Bay does not anticipate building any new facilities to continue serving the area.

**Ability to Serve: Financial Ability and Stability – TWC § 13.246(c)(6), 13.241(a), 16 TAC §§ 24.11(e), 24.227(a), (d)(6)**

38. As of September 14, 2016, Horseshoe Bay has an AA+ credit rating from *Standard and Poor's Financial Services LLC*, which constitutes an investment-grade credit rating.
39. Horseshoe Bay has a debt-to-equity ratio of 0.95.
40. Horseshoe Bay's financial statements do not reflect any cash shortages.
41. Horseshoe Bay's financial statements demonstrate that it has sufficient cash available to cover any projected operations and maintenance shortage.

**Financial Assurance - TWC § 13.246(d), 16 TAC § 24.227(e)**

42. There is no need to require Horseshoe Bay to provide a bond or other financial assurance to ensure continuous and adequate service.

**Environmental Integrity – TWC § 13.246(c)(7), 16 TAC § 24.227(d)(7)**

43. Granting the requested CCNs will not negatively affect the environmental integrity of the requested area because it will be served via existing water and sewer infrastructure.

**Effect on Land – TWC § 13.246(c)(9), 16 TAC § 24.227(d)(9)**

44. Since the requested area will be serviced via existing water and sewer infrastructure, the issuance of a water and sewer CCN should have no effect on the land.

**Improvement in Service or Lowering of Cost - TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)**

45. Horseshoe Bay will continue to provide service to the existing customers in the requested area.
46. Horseshoe Bay did not indicate that there would be any expected reduction of costs.

**Maps and Certificates**

47. On August 8, 2018, Commission Staff emailed its proposed final maps and certificates to Horseshoe Bay.
48. On August 15, 2018, Horseshoe Bay filed its consent form concurring with the proposed final maps and certificates prepared by Commission Staff.
49. On April 17, 2019, Commission Staff emailed its revised proposed final maps and certificates to the applicant, reflecting the applicant's proper legal name.
50. On April 22, 2019, Horseshoe Bay filed a consent form concurring with the revised proposed final maps and certificates prepared by Commission Staff, reflecting the applicant's proper legal name.
51. On May 9, 2019, Commission Staff filed the revised proposed maps and certificates as an attachment to its amended recommendation on final disposition.

**Informal Disposition for Issuance of Requested CCNs**

52. More than 15 days has passed since completion of the notice provided in this docket.
53. No person filed a protest or motion to intervene.
54. Horseshoe Bay and Commission Staff are the only parties to this proceeding.
55. No party requested a hearing and no hearing is needed.
56. Commission Staff recommended approval of the application.
57. The decision is not adverse to any party.

**Petition for Revocation of Deerhaven, Inc.'s Water CCN Number 10467**

58. On March 1, 2018, Commission Staff petitioned to revoke the inactive CCN number 10467 held by Deerhaven, Inc.

59. In its petition, Commission Staff alleges that Deerhaven, Inc. is no longer providing and is incapable of providing continuous and adequate water service and, therefore, its CCN should be revoked under Texas Water Code (TWC) § 13.254(a)(1) and 16 Texas Administrative Code (TAC) § 24.245(i)(1)(A).
60. Deerhaven, Inc.'s currently holds water CCN number 10467.
61. On January 9, 1989, Deerhaven, Inc. forfeited its existence as a Texas corporation.
62. Deerhaven, Inc. does not possess an active public water system and is not providing to the area located within its water CCN number 10467.
63. 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.

**Notice of Default Revocation**

64. The Commission's records list Deerhaven, Inc.'s address as: Deerhaven, Inc., PO Box 475, Llano, Texas 78643.
65. On March 6, 2018, Commission Staff sent copies of the petition, by certified mail, return receipt requested, to: (a) the address of Deerhaven, Inc. as shown in the Commission's records; and (b) the address for Deerhaven, Inc.'s registered agent for process, as shown in the records of the Texas secretary of state.
66. The petition notified Deerhaven, Inc. that it was entitled to request a hearing within 30 days after the filing of the petition, and included the following admonition, in at least 12-point, bold-face type:

**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.**

**Grounds for Default**

67. More than 30 days have passed since service of the petition to Deerhaven, Inc.
68. Deerhaven, Inc. did not request a hearing on the merits, and did not respond to the petition.
69. Commission Staff proved, by default, that Deerhaven, Inc. is no longer providing and is incapable of providing continuous and adequate water service in its certificated area.



## II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this application under Texas Water Code (TWC) §§ 13.241, 13.244, 13.246, and 13.254.
2. Horseshoe Bay is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59).
3. Notice of this application complies with TWC § 13.246 and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,<sup>1</sup> the TWC, and Commission rules.
5. The application meets the requirements set forth in TWC §§ 13.241, 13.244 and 13.246, and 16 TAC § 24.227.
6. Horseshoe Bay has demonstrated adequate financial, managerial and technical capability for providing continuous and adequate service to the requested area and its existing service area as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. The issuance of new water CCN number 13271 and new sewer CCN number 21111 is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(c).
8. Under TWC §13.257(r) and 16 TAC § 24.235(f), Horseshoe Bay is required to record a certified copy of the approved certificates and maps, along with a boundary description of the service area in the real property records of Llano and Burnet counties and to submit evidence of the recording to the Commission.
9. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding in regards to the issuance of the new water and sewer CCNs.
10. Deerhaven, Inc. is a retail public utility under 16 TAC § 24.3(59).

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<sup>1</sup> Tex. Gov't Code §§ 2001.001–.902.

11. As the holder of CCN 10467, Deerhaven, Inc. is obligated to serve every consumer within its certified area and render continuous and adequate service within the area under TWC § 13.250 and 16 TAC § 24.247.
12. Because Deerhaven, Inc. is no longer providing and is incapable of providing continuous and adequate service in the area covered by its CCN in violation of TWC § 13.250 and 16 TAC § 24.247, the Commission is entitled to revoke the CCN under TWC § 13.254(a)(1) and 16 TAC § 24.245(i)(1)(A).
13. Adequate notice was provided to Deerhaven, Inc. in compliance with 16 TAC §§ 22.54 and 22.183, and Texas Government Code § 2001.054.
14. Deerhaven's failure to request a hearing within 30 days of the notice of an opportunity for a hearing qualifies this proceeding for disposition by default under 16 TAC § 22.183.
15. The requirements for disposition by default in 16 TAC § 22.183 the have been met in this proceeding in regards to the revocation of Deerhaven's CCN.

### **III. Ordering Paragraphs**


In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the application and issues Horseshoe Bay water CCN number 13271 and sewer CCN number 21111 consistent with this Order.
2. The Commission grants the certificates attached to this Order.
3. The Commission deems the allegations in Commission Staff's petition as to Deerhaven, Inc.'s as true and admits those facts into evidence.
4. The Commission takes official notice of its records that contain the address of Deerhaven, Inc.
5. The Commission grants the petition for revocation of a water CCN, by reason of default, and revokes Deerhaven, Inc.'s water CCN number 10467.
6. Horseshoe Bay must serve every customer and applicant for water and sewer service within the area certified under CCN number 13271 and number 21111, and such service must be continuous and adequate.

7. Horseshoe Bay must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Llano and Burnet counties affected by this application.
8. Horseshoe Bay must file in this docket proof of the recording required in ordering paragraph 5 not later than 45 days after the date of this Order.
9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 4th day of August 2019.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**DEANN T. WALKER, CHAIRMAN**



**ARTHUR C. D'ANDREA, COMMISSIONER**



**SHELLY BOTKIN, COMMISSIONER**