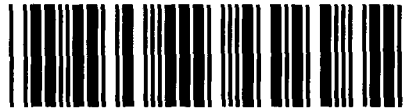




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**DeAnn T. Walker**  
Chairman

**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

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PUBLIC UTILITY COMMISSION  
PUBLIC RECORDS

## *Public Utility Commission of Texas*

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

All Parties of Record

FROM: Hunter Burkhalter *HB*  
Administrative Law Judge

RE: **Open Meeting of August 29, 2019**  
**Docket No. 48458** – *Petition to Revoke Dayton-Kennewick Recreation Inc.'s Certificate of Convenience and Necessity Pursuant to Texas Water Code § 13.254 and 16 Texas Administrative Code § 24.245*

DATE: July 22, 2019

Enclosed is a copy of the Proposed Default Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, August 29, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties may file corrections or exceptions to the Proposal for Decision on or before Wednesday, August 21, 2019.

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

taw  
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**DOCKET NO. 48458**

<b>PETITION TO REVOKE DAYTON- KENEFICK RECREATION, INC.'S CERTIFICATE OF CONVENIENCE AND NECESSITY PURSUANT TO TEXAS WATER CODE § 13.254 AND 16 TEXAS ADMINISTRATIVE CODE § 24.245</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**PROPOSED DEFAULT ORDER**

This Default Order addresses the petition of Commission Staff to revoke the water certificate of convenience and necessity (CCN) of Dayton-Kenefick Recreation, Inc. for violations of the Texas Water Code and Commission rules. The Commission grants the petition, by default, and revokes Dayton-Kenefick Recreation's CCN number 11519.

**I. Findings of Fact**

The Commission makes the following findings of fact.<sup>1</sup>

**CCN Holder**

1. Dayton-Kenefick Recreation is registered with the Texas secretary of state as a domestic non-profit corporation under file number 41047701.
2. Dayton-Kenefick Recreation is authorized to provide water service under CCN number 11519 in Liberty County.

**Commission Staff's Petition**

3. On June 13, 2018, Commission Staff filed its petition in this proceeding, in which it seeks to revoke the CCN of Dayton-Kenefick Recreation for failure to provide continuous and adequate water service.
4. The petition alleges that Dayton-Kenefick Recreation 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) (*formerly* § 24.113(i)(1)(A)).

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<sup>1</sup> The findings of fact are derived from the factual allegations found in Commission Staff's petition and are deemed admitted by default.

5. Dayton-Kenefick Recreation's CCN was issued on November 1, 1979.
6. Dayton-Kenefick Recreation's status with the Texas secretary of state is listed as inactive.
7. The Commission's records indicate that Dayton-Kenefick Recreation is no longer in business and the facilities it used to provide water service are inactive.
8. Dayton-Kenefick Recreation is no longer providing and is incapable of providing continuous and adequate water service.

### **Notice**

9. The Commission's records list Dayton-Kenefick Recreation's address as: Rt. 1 Box 501, Dayton, Texas 77535.<sup>2</sup>
10. On June 13, 2018, Commission Staff sent copies of the petition, by certified mail, return receipt requested, to: (a) the address of Dayton-Kenefick Recreation as shown in the Commission's records; and (b) the address for Dayton-Kenefick Recreation's registered agent for process, as shown in the records of the Texas secretary of state.
11. The petition notified Dayton-Kenefick Recreation 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.**

### **The Motion for Default**

12. On July 27, 2018, Commission Staff filed a motion for entry of a default order.
13. The motion for default was served upon Dayton-Kenefick Recreation in the same way that the petition was served.

### **Grounds for Default**

14. More than 30 days have passed since service of the petition to Dayton-Kenefick Recreation.

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<sup>2</sup> <http://www.puc.texas.gov/WaterSearch/Utility?siteId=15383> Under Tex. Gov't Code § 2001.090 and 16 TAC § 22.222, the Commission takes official notice of Dayton-Kenefick Recreation's address as shown in the Commission's records.

15. Dayton-Kenefick Recreation did not request a hearing on the merits, and did not respond to the petition.
16. More than 30 days have passed since service of the motion for default.
17. Dayton-Kenefick Recreation did not respond to the motion for default.
18. Commission Staff proved, by default, that Dayton-Kenefick Recreation 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 jurisdiction over this matter under TWC § 13.254.
2. Dayton-Kenefick Recreation is a retail public utility under 16 TAC § 24.3(59).
3. As the holder of CCN number 11519, Dayton-Kenefick Recreation 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.
4. Because Dayton-Kenefick Recreation 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).
5. Adequate notice was provided to Dayton-Kenefick Recreation in compliance with 16 TAC §§ 22.54 and 22.183, and Texas Government Code § 2001.054.
6. Dayton-Kenefick Recreation'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.
7. 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. The motion for default is granted and Dayton-Kenefick Recreation's CCN number 11519 is revoked.
2. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
3. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed at Austin, Texas the \_\_\_\_ day of August 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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

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**SHELLY BOTKIN, COMMISSIONER**