



Control Number: 48458



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director




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Public Utility Commission of Texas

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PUBLIC UTILITY COMMISSION

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

All Parties of Record

FROM: Hunter Burkhalter 
Administrative Law Judge

RE: **Open Meeting of August 29, 2019**
Docket No. 48458 – *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*

DATE: August 14, 2019

On July 22, 2019, a proposed default order was issued in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Thursday, August 29, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas.

A revised proposed default order has been drafted and is attached. The revisions were made primarily to conform with memoranda from Chairman Walker relating to similar matters on the August 8, 2019 agenda. Specifically, the following modifications have been made to the order:

- footnotes 1 and 2 have been deleted.

¹ ~~The Findings of Fact are derived from the factual allegations found in the Commission Staff's petition and are deemed admitted by default, in accordance with 16 Tex. Admin. Code § 22.183.~~

² ~~<https://www.puc.texas.gov/WaterSearch/Utility?siteId=15383> Under Tex. Gov't Code § 2001.090 and 16 Tex. Admin. Code § 22.222, the ALJ takes official notice of the address as shown in the Commission's records.~~

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- A new finding of fact number 12 has been added, and the subsequent finding of facts have been renumbered.

Evidentiary Record

12. In Order No. 3 issued on August 14, 2019, the ALJ admitted, as evidence in the record of this proceeding, the affidavit of Tasha Lopez and the documents that are attached to Ms. Lopez's affidavit, marked as Attachment Two to Commission Staff's response to Order No. 1 and motion for entry of a default order filed on July 27, 2018.
- finding of fact 18 is deleted.
- ~~18. Commission Staff proved by default, that Dayton Kenefick Recreation is no longer providing and incapable of providing continuous and adequate water service in its certificated area.~~
- conclusion of law 7 is deleted.
- ~~7. The requirements for disposition by default in 16 TAC § 22.183 have been met in this proceeding.~~
- New ordering paragraphs 1 and 2 have been added, and the subsequent ordering paragraphs have been renumbered.
1. The Commission deems the allegations in Commission Staff's petition as true.
 2. The Commission takes official notice of its records that contain the address of Dayton-Kenefick Recreation.

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

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DOCKET NO. 48458

**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**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

REVISED 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.

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)).
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.
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.

Evidentiary Record

12. In Order No. 3 issued on August 14, 2019, the ALJ admitted, as evidence in the record of this proceeding, the affidavit of Tasha Lopez and the documents that are attached to Ms. Lopez's affidavit, marked as Attachment Two to Commission Staff's response to Order No. 1 and motion for entry of a default order filed on July 27, 2018.

The Motion for Default

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

Grounds for Default

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

16. Dayton-Kenefick Recreation did not request a hearing on the merits, and did not respond to the petition.
17. More than 30 days have passed since service of the motion for default.
18. Dayton-Kenefick Recreation did not respond to the motion for default.

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.

III. Ordering Paragraphs

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

1. The Commission deems the allegations in Commission Staff's petition as true.
2. The Commission takes official notice of its records that contain the address of Dayton-Kenefick Recreation.

3. The motion for default is granted and Dayton-Kenefick Recreation's CCN number 11519 is revoked.
4. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
5. 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

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER