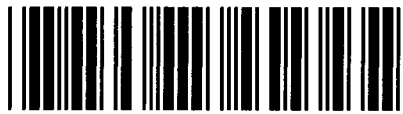




Control Number: 48460



Item Number: 1

Addendum StartPage: 0

DOCKET NO.

48450

PETITION TO REVOKE
HEARTHSTONE COLONY WATER
SUPPLY CORPORATION'S
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
PURSUANT TO TEX. WATER CODE
ANN. § 13.254 AND 16 TAC § 24.113

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PUBLIC UTILITY COMMISSION 9:12

OF TEXAS

COMMISSION STAFF'S PETITION TO REVOKE
HEARTHSTONE COLONY WATER SUPPLY CORPORATION'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING

Staff of the Public Utility Commission of Texas (Commission) files this Petition to Revoke Hearthstone Colony Water Supply Corporation's Certificate of Public Convenience and Necessity (Petition) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

I. INTRODUCTION

For the reasons discussed below, the water service Certificate of Public Convenience and Necessity (CCN) No. 11755 for Hearthstone Colony Water Supply Corporation (Hearthstone) should be revoked. Upon investigation, Commission Staff has determined that the public water system associated with Hearthstone is inactive, and that the CCN should be revoked.

In the event Hearthstone fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Hearthstone, granting all relief sought in this Petition. In support of this Petition, Commission Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.¹ Pursuant to Tex. Water Code Ann. § 13.242 (TWC), a "water supply or sewer service corporation may not in any way render retail water or sewer utility service

¹ Tex. Water Code Ann. § 13.041 (West Supp. 2014) (TWC).

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directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension.”

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 service to a specified geographic area.”² A retail public utility is “[a]ny 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.”³

A retail public utility that possesses a CCN is required to provide continuous and adequate service.⁴ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁵ 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.”⁶

Pursuant to the contested case provisions of the Administrative Procedure Act,⁷ a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, where the party may respond to and present evidence and argument on each issue involved in the case.⁸ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.⁹ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.¹⁰

III. FACTUAL ALLEGATIONS

Hearthstone is located in Harris County, Texas in the City of Houston. On June 14, 1982, Hearthstone filed an application with the Secretary of State to become a Texas corporation. On

² 16 Tex. Admin. Code § 24.3(15) (TAC).

³ TWC § 13.002(19) and 16 TAC § 24.3(58).

⁴ See TWC § 13.250(a) and 16 TAC § 24.114.

⁵ TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

⁶ *Id.*

⁷ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁸ APA §§ 2001.051-.178.

⁹ 16 TAC § 22.183.

¹⁰ APA § 2001.056(4) and 16 TAC § 22.183.

April 27, 1983, Hearthstone was granted CCN No. 11755. Hearthstone underwent a tax forfeiture on January 21, 1985. The utility has ceased to operate, and is now listed as inactive on the Secretary of State's website. Commission Staff's review of Commission's records indicate that Hearthstone is no longer in business, and the facilities it used to provide continuous and adequate service are inactive. Therefore, Hearthstone is no longer providing and is incapable of providing continuous and adequate service.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Hearthstone's CCN No. 11755 because Hearthstone is no longer in business, and the facilities it used to provide continuous and adequate service are inactive.¹¹ As long as CCN No. 11755 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.¹²

For the above stated reasons, Commission Staff recommends revocation of CCN No. 11755 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.113(i)(1)(A).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.¹³ In license revocation proceedings, APA § 2001.054 requires 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." In order to proceed on a default basis, 16 TAC § 22.183 requires Commission Staff to provide notice by certified mail, return receipt requested: (a) to a certificate holder's last known address in the Commission's records; (b) to the person's registered agent for process on file with the Secretary of State; or (3) to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to Hearthstone's last known address in the TCEQ's and Commission's records:

¹¹ See TWC § 13.254(a)(1) and 16 TAC 24.113(i)(1)(A).

¹² See TWC § 13.242.

¹³ APA §§ 2001.001-.902.

Hearthstone Colony WSC
5851 San Felipe
Houston, TX 77057

Commission Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Timothy G Green
6750 E. Loop South, Ste. 150
Bellaire, TX 77401

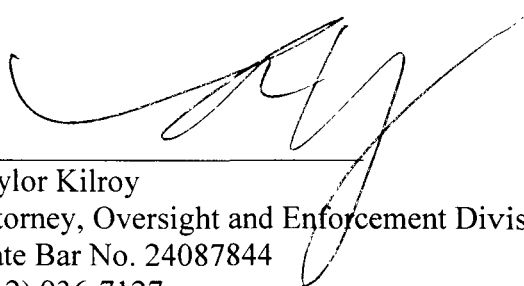
Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies Hearthstone that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Hearthstone fails to request a hearing within 30 days after service of the Petition and Notice of Opportunity for Hearing. The purpose of a hearing on the merits is to consider revocation of Hearthstone's CCN No. 11755. If Hearthstone fails to request a hearing, the presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to APA § 2001.056(4) and 16 TAC § 22.183.

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. REQUEST

WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Commission grants Commission Staff's request to revoke Hearthstone's CCN No. 11755. In the event that Hearthstone fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to Hearthstone, revoking CCN No. 11755.

Respectfully Submitted,



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78701-3326

CERTIFICATE OF SERVICE

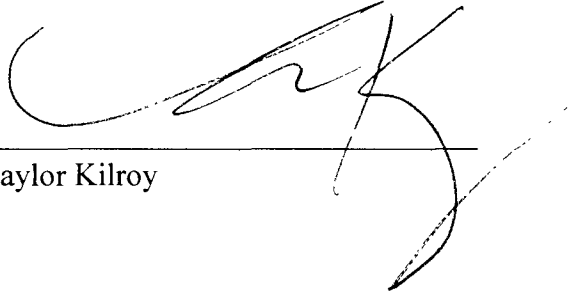
I certify that on June 13, 2018, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Hearthstone Colony Water Supply, Inc. (Hearthstone) in the Commission's records and to the address for the registered agent for process on file with the Secretary of State:

Hearthstone's Last Known Address in Commission Records:

Hearthstone Colony WSC
5851 San Felipe
Houston, TX 77057

Address for the registered agent for process on file with the Secretary of State:

Timothy G. Green
6750 E. Loop South, Ste. 150
Bellaire, TX 77401



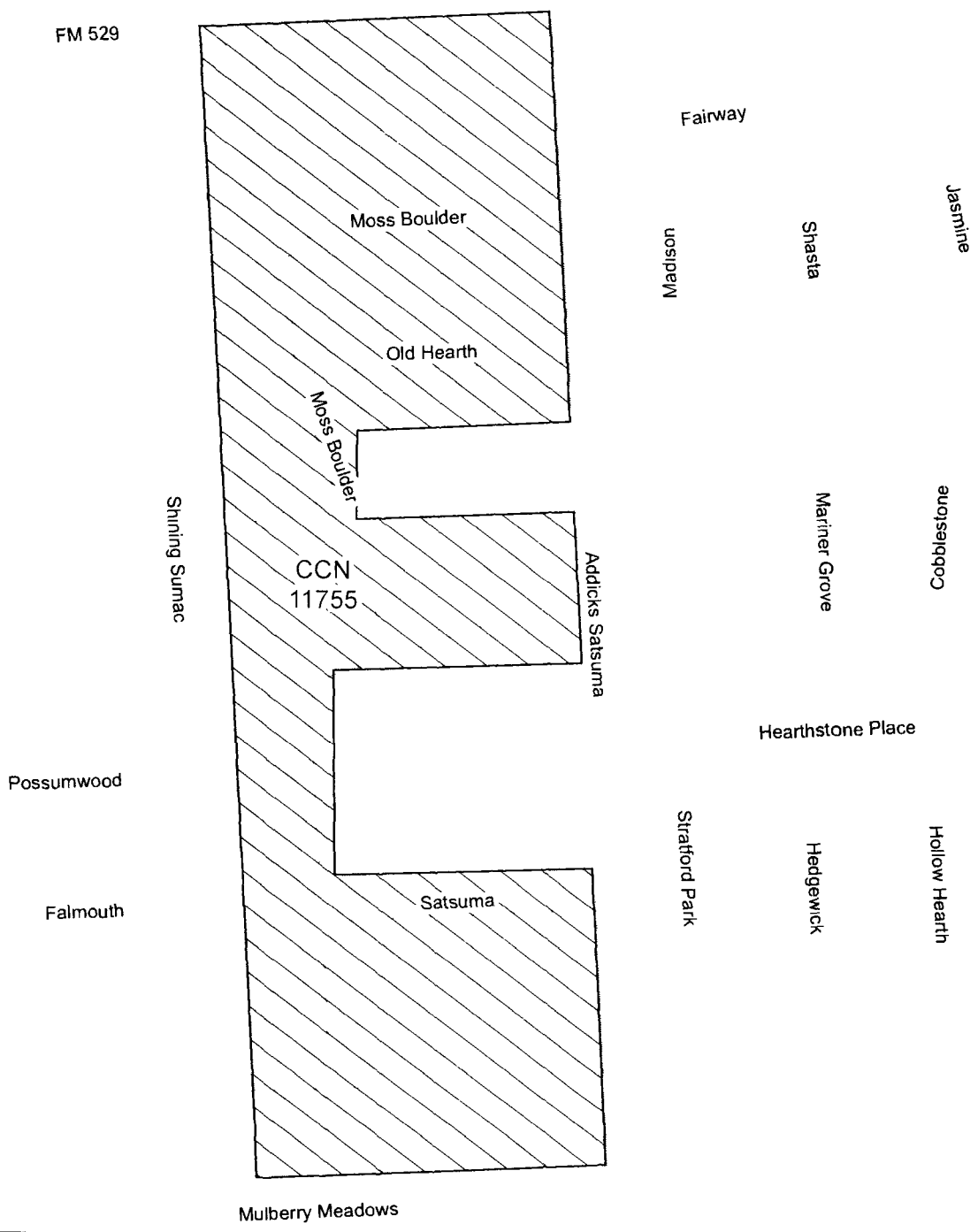
Taylor Kilroy

Attachment 1

Map of Water Service Certificate of Convenience and Necessity

No. 11755

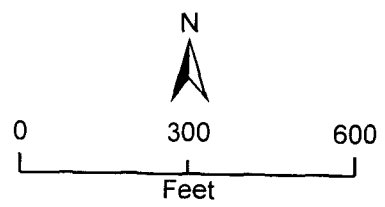
Hearthstone Colony WSC
Water CCN No. 11755 in
Harris County



Water CCN



11755 - Hearthstone Colony WSC



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Map by: Kristy Nguyen
Date created: May 25, 2018
Project path: n\11755 hearthstone colony\11755 hearthstone colony

Attachment 2

Order Granting Water Service Certificate of Convenience and
Necessity

No. 11755

DOCKET NOS. 4350, 4638, 4743, 4776, and 4808

APPLICATIONS OF BOIS d'ARC MUNICIPAL
UTILITY DISTRICT, ET AL., FOR OR TO
AMEND CERTIFICATES OF CONVENIENCE AND
NECESSITY WITHIN FANNIN, HARRIS,
PARKER, AND COMAL COUNTIES

PUBLIC UTILITY COMMISSION

OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled applications were processed in accordance with applicable statutes by an examiner who prepared and filed a report containing Findings of Fact and Conclusions of Law, which Examiner's Report is ADOPTED and made a part of this Order. The Commission further ORDERS that:

1. Bois d'Arc Municipal Utility District is granted the certificate of convenience and necessity requested in Docket No. 4350 and as described in Finding of Fact No. 1. Bois d'Arc MUD is hereby assigned Certificate No. 11753.
2. Peek Road Utilities, Inc. is granted the certificate of convenience and necessity requested in Docket No. 4638 and as described in Finding of Fact No. 2. Peek Road is hereby assigned Certificate No. 11754.
3. Sawyer Development Corporation d/b/a Hearthstone Colony Water Supply Corporation is granted the certificates of convenience and necessity requested in Docket No. 4743 and as described in Finding of Fact No. 3. Hearthstone Colony WSC is hereby assigned Certificate Nos. 11755 (water) and 20588 (sewer).
4. Willow Wood Water Works is granted the amendment to its Certificate of Convenience and Necessity No. 11580 requested in Docket No. 4776 and as described in Finding of Fact No. 4.

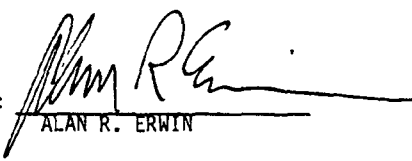
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5. South Central Utilities, Inc. is granted the certificate of convenience and necessity requested in Docket No. 4808 and as described in Finding of Fact No. 5. South Central is hereby assigned Certificate No. 11756.

SIGNED AT AUSTIN, TEXAS, on this the 27 day of April, 1983.

PUBLIC UTILITY COMMISSION OF TEXAS

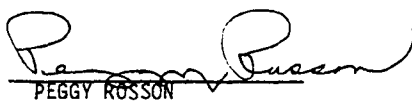
SIGNED:


ALAN R. ERWIN

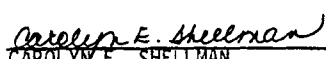
SIGNED:


PHILIP F. RICKETTS

SIGNED:


PEGGY ROSSON

ATTEST:


CAROLYN E. SHELLMAN
SECRETARY OF THE COMMISSION

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