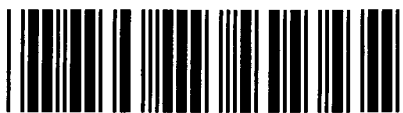




Control Number: 48469



Item Number: 1

Addendum StartPage: 0

48469

DOCKET NO. \_\_\_\_\_

2018 JUN 18 12:46  
PUBLIC UTILITY COMMISSION  
FILING CLERK

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

OF TEXAS

**COMMISSION STAFF'S PETITION TO REVOKE  
 NEW DEAL 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 New Deal 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. 11080 for New Deal Water Supply Corporation (New Deal) should be revoked. Upon investigation, Commission Staff has determined that the public water system associated with New Deal is inactive, and that the CCN should be revoked.

In the event New Deal fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to New Deal, 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.<sup>1</sup> 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 directly or indirectly to the public without first having obtained from the utility commission a

<sup>1</sup> Tex. Water Code Ann. § 13.041 (West Supp. 2014) (TWC).

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.”<sup>2</sup> 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.”<sup>3</sup>

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

Pursuant to the contested case provisions of the Administrative Procedure Act,<sup>7</sup> 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.<sup>8</sup> If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.<sup>9</sup> Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.<sup>10</sup>

### III. FACTUAL ALLEGATIONS

New Deal is located in Lubbock County, Texas in the City of New Deal. On October 29, 1963, New Deal filed an application with the Secretary of State to become a Texas corporation. On November 1, 1979, New Deal was granted CNN No. 11080. The utility has ceased to operate,

---

<sup>2</sup> 16 Tex. Admin. Code § 24.3(15) (TAC).

<sup>3</sup> TWC § 13.002(19) and 16 TAC § 24.3(58).

<sup>4</sup> See TWC § 13.250(a) and 16 TAC § 24.114.

<sup>5</sup> TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

<sup>6</sup> *Id.*

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

<sup>8</sup> APA §§ 2001.051-.178.

<sup>9</sup> 16 TAC § 22.183.

<sup>10</sup> APA § 2001.056(4) and 16 TAC § 22.183.

and is now listed as inactive on the Secretary of State's website. Commission Staff's review of Commission's records indicate that New Deal is no longer in business, and the facilities it used to provide continuous and adequate service are inactive. Therefore, New Deal is no longer providing, and is incapable of providing, continuous and adequate service.

#### **IV. RECOMMENDATION FOR REVOCATION**

The Commission should revoke New Deal's CCN No. 11080 because New Deal is no longer in business, and the facilities it used to provide continuous and adequate service are inactive.<sup>11</sup> As long as CCN No. 11080 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.<sup>12</sup>

For the above stated reasons, Commission Staff recommends revocation of CCN No. 11080 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.<sup>13</sup> 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 New Deal's last known address in the TCEQ's and Commission's records:

New Deal WSC  
PO BOX 117  
New Deal, TX 79350

---

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

<sup>12</sup> See TWC § 13.242.

<sup>13</sup> APA §§ 2001.001-.902.

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:

Billy Fortenberry  
PO BOX 207  
New Deal, TX 79350

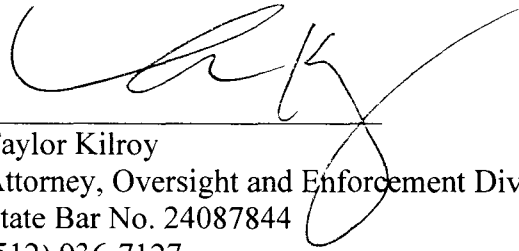
Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies New Deal that the factual allegations in this petition could be deemed admitted, and the relief sought herein granted by default if New Deal fails to request a hearing within 30 days after service of the Petition and Notice of Opportunity for Hearing. The purpose of a hearing on the merits is to consider revocation of New Deal's CCN No. 11080. If New Deal 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 New Deal's CCN No. 11080. In the event that New Deal fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to New Deal, revoking CCN No. 11080.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'TK', is written over a horizontal line.

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 18, 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 New Deal Water Supply, Inc. (New Deal) in the Commission's records and to the address for the registered agent for process on file with the Secretary of State:

New Deal's Last Known Address in Commission Records:

New Deal WSC  
PO BOX 117  
New Deal, TX 79350

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

Billy Fortenberry  
PO BOX 207  
New Deal, TX 79350

  
\_\_\_\_\_  
Taylor Kilroy

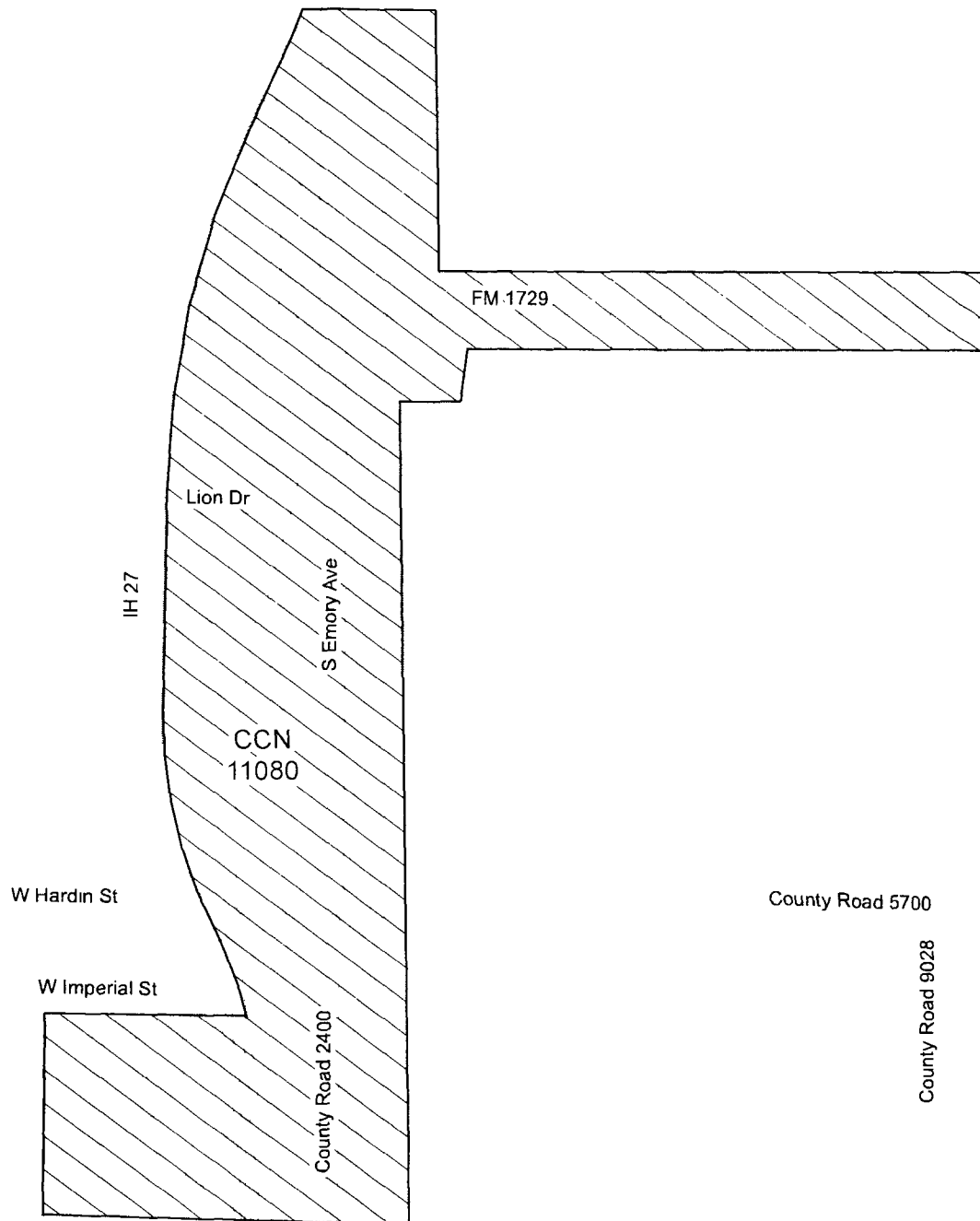
# Attachment 1

Map of Water Service Certificate of Convenience and Necessity

No. 11080



**New Deal WSC  
Water CCN No. 11080 in  
Lubbock County**



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

**Water CCN**



11080 - New Deal WSC



0 1,250 2,500  
Feet

Map by: Kristy Nguyen  
Date created: May 25, 2018  
Project path: n:\11080 new deal wsc\11080 new deal wsc

000008

# Attachment 2

## Water Service Certificate of Convenience and Necessity

# Public Utility Commission of Texas

By These Presents Be It Known To All That

NEW DEAL WATER SUPPLY CORPORATION

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## Certificate of Convenience and Necessity

numbered 11080, to provide water utility service to that service area or those service areas designated by final Order or Orders duly entered by this Commission, which Order or Orders are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these

presents do evidence the authority and the duty of this Grantee to provide such utility service in accordance with the laws of this State and the Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 1st day of November, 1979.



*Philip F. Ricketts*

Philip F. Ricketts  
SECRETARY OF THE COMMISSION

