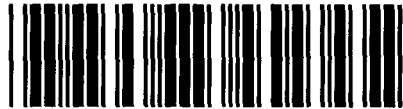




Control Number: 49181



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **49181** RECEIVED

PETITION TO REVOKE THE TOWN §  
OF LAKEVIEW'S CERTIFICATES OF §  
CONVENIENCE AND NECESSITY §  
PURSUANT TO TEX. WATER CODE §  
§ 13.254 AND 16 TEXAS §  
ADMINISTRATIVE CODE § 24.245 §

PUBLIC UTILITY COMMISSION  
2019 FEB -7 PM 12:52  
OFFICE OF THE PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S PETITION TO REVOKE  
THE TOWN OF LAKEVIEW'S CERTIFICATES OF  
PUBLIC CONVENIENCE AND NECESSITY AND  
NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas files this petition to revoke the Town of Lakeview's certificates of public convenience and necessity 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. 11350 and sewer utility service CCN No. 20525 for the Town of Lakeview should be revoked. Upon investigation, Commission Staff has determined that the public water system and sewer system associated with the Town of Lakeview are inactive, and that the CCNs should be revoked.

In the event the Town of Lakeview fails to request a hearing within 30 days of service of this petition, a default order should be issued, without additional notice to the Town of Lakeview, 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

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<sup>1</sup> Tex. Water Code § 13.041 (TWC).

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.”<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>

In accordance with 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 30 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

The Town of Lakeview was located in Jefferson County, Texas. On November 1, 1979, the Town of Lakeview was granted water CCN No. 11350. The Town of Lakeview was also granted sewer CCN 20525, though Commission Staff is unable to identify the exact date on which the certification occurred. The Town of Lakeview was later annexed by the nearby City of Port

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<sup>2</sup> 16 Tex. Admin. Code § 24.3(14) (TAC).

<sup>3</sup> TWC § 13.002(19) and 16 TAC § 24.3(59).

<sup>4</sup> See TWC § 13.250(a) and 16 TAC § 24.205.

<sup>5</sup> TWC § 13.254(a)(1) and 16 TAC 24.245(i)(1)(A).

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

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

<sup>8</sup> APA § 2001.051.

<sup>9</sup> 16 TAC § 22.183.

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

Arthur, Texas in 1980. The Town of Lakeview utility has ceased to operate, but remains listed as active according to Commission records; however, Commission Staff's review of Commission records further indicates that the Town of Lakeview no longer exists, and its water and sewer utilities are inactive. Therefore, the Town of Lakeview is no longer providing and is incapable of providing continuous and adequate service. In addition, the area of Port Arthur formerly known as the Town of Lakeview is being served by the City of Port Arthur for water and sewer services.

Commission Staff has attached a copy of water CCN No. 11350 to this petition. Although a review of Commission records has verified that the Town of Lakeview was also granted sewer CCN No. 20525, Commission Staff was unable to locate a copy of CCN No. 20525 for the Commission's reference. There is no copy available on the Commission Interchange, in the Commission's Central Records Department, or otherwise located within Commission records to the best of Commission Staff's knowledge.

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

The Commission should revoke the Town of Lakeview's water CCN No. 11350 and sewer CCN No. 20525 because the utility no longer exists, and is therefore incapable of providing continuous and adequate service.<sup>11</sup> These revocations will not negatively impact the residents of the former Town of Lakeview with respect to water and sewer services. Because it is a municipality, the City of Port Arthur may provide these services without a CCN.<sup>12</sup>

For the above stated reasons, Commission Staff recommends revocation of water CCN No. 11350 and sewer CCN No. 20525 in accordance with TWC § 13.254(a)(1) and 16 TAC § 24.245(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. 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

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<sup>11</sup> See TWC § 13.254(a)(1) and 16 TAC 24.245(i)(1)(A).

<sup>12</sup> See TWC § 13.242.

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 the Town of Lakeview's last known address in TCEQ and Commission records:

Town of Lakeview  
P.O. Box 1089  
Port Arthur, Texas 77641

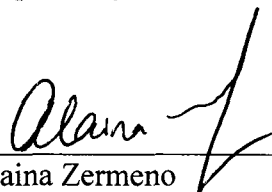
In accordance with 16 TAC § 22.183, Commission Staff hereby notifies the Town of Lakeview that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if the Town of Lakeview fails to request a hearing within 30 days after service of the petition and notice of opportunity for hearing. The purpose of a hearing on the merits is to consider revocation of the Town of Lakeview's water CCN No. 11350 and sewer CCN No. 20525. If the Town of Lakeview 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 grant Commission Staff's request to revoke the Town of Lakeview's water CCN No. 11350 and sewer CCN No. 20525. In the event that the Town of Lakeview fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to the Town of Lakeview, revoking water CCN No. 11350 and sewer CCN No. 20525.

Respectfully Submitted,


A handwritten signature in black ink, appearing to read "Alaina", followed by a stylized flourish or checkmark-like stroke.

Alaina Zermeno  
Attorney, Oversight and Enforcement Division  
State Bar No. 24098656  
(512) 936-7385 (telephone)  
(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 February 7, 2019, 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 Town of Lakeview in the Commission's records:

Town of Lakeview  
P.O. Box 1089  
Port Arthur, Texas 77641

  
\_\_\_\_\_  
Alaina Zermeno

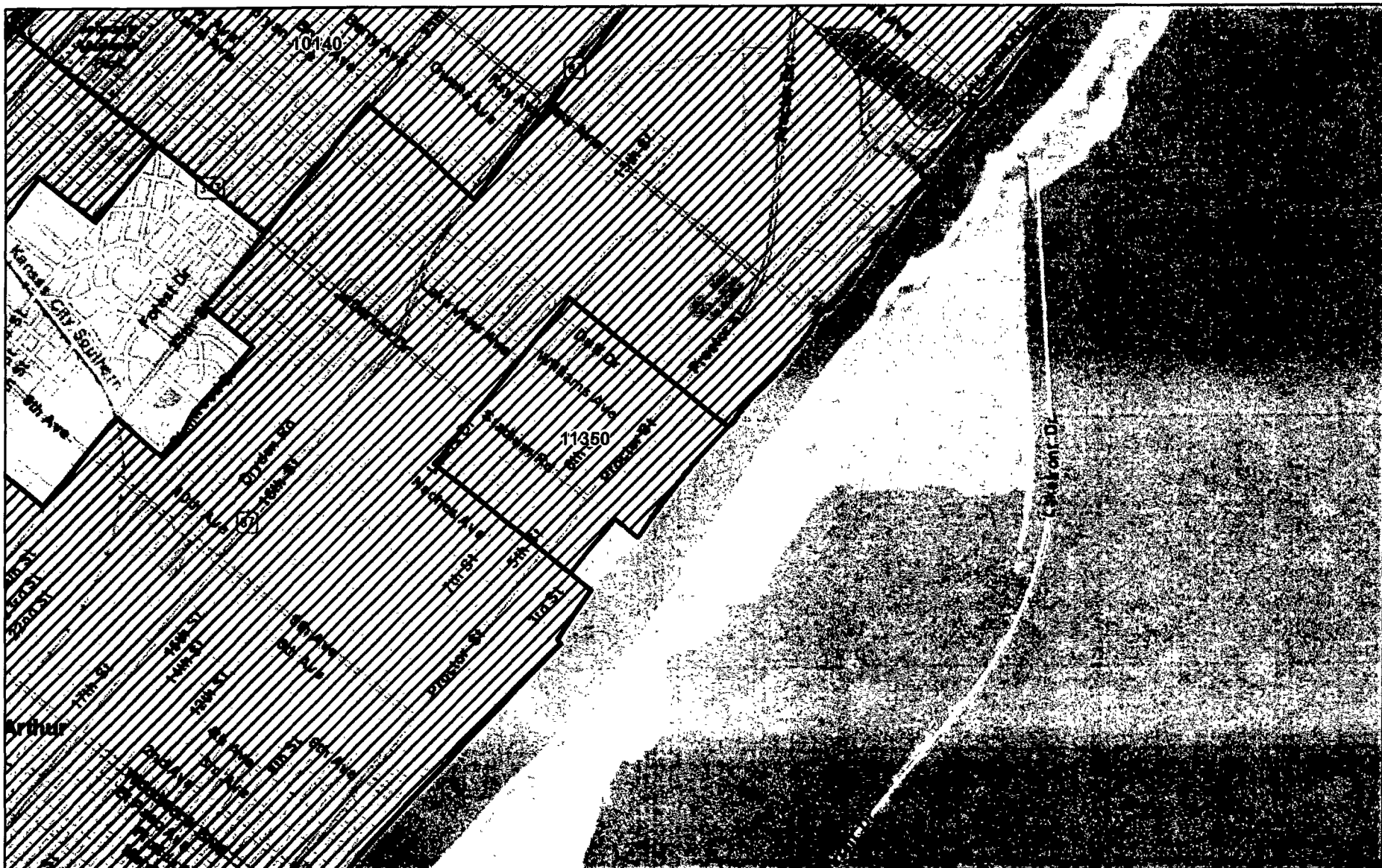
# Attachment 1

Map of Water Service Certificate of Convenience and Necessity

No. 11350

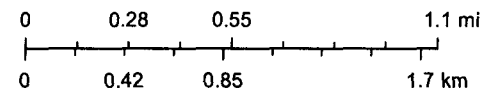


# Town of Lakeview CCN No. 11350



January 8, 2019

1:36,112



Esri, HERE, Garmin, INCREMENT P, NGA, USGS

# Attachment 2

Map of Sewer Service Certificate of Convenience and Necessity

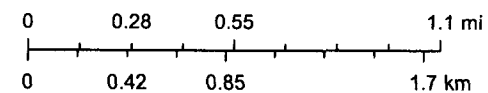
No. 20525

# Town of Lakeview CCN No. 20525



January 8, 2019

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# Attachment 3

Water Service Certificate of Convenience and Necessity

No. 11350

43309

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UTILITY  
FILING CLERK

# Public Utility Commission of Texas

By These Presents Be It Known To All That

TOWN OF LAKEVIEW, TEXAS

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 11350, 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

