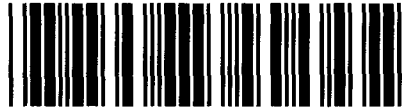




Control Number: 49181



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DOCKET NO. 49181

**PETITION TO REVOKE THE TOWN
OF LAKEVIEW'S CERTIFICATES 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**
2019 MAR 11 1:56 PM
FILED

MOTION FOR ENTRY OF DEFAULT ORDER

Staff of the Public Utility Commission of Texas (Commission Staff) files this Motion for Entry of Default Order in the above-styled cause in accordance with 16 Texas Admin. Code (TAC) §§ 24.245(i) and 22.183.

I. Introduction

For the reasons discussed below, Commission Staff requests that the Commission grant this Motion for Entry of Default Order (Motion) and enter the attached Proposed Default Order granting the Petition to Revoke the Town of Lakeview's Certificates of Convenience and Necessity (CCN)¹ regarding water CCN No. 11350 and sewer CCN No. 20525. In support of this Motion, Commission Staff respectfully shows the following:

II. Procedural Background

On February 7, 2019 Commission Staff filed a Petition to Revoke the Town of Lakeview's Certificates of Convenience and Necessity (petition). Commission Staff alleged in the petition that the Town of Lakeview is not providing continuous and adequate service because the utility is no longer operating. Commission Staff sent a copy of the petition by certified mail, return receipt requested, to the address the Town of Lakeview most recently had on file with the Commission.

The Town of Lakeview has not requested a hearing since Commission Staff provided the petition. More than 30 days have passed since providing the Town of Lakeview with the petition.

III. Jurisdiction and Legal Authority

The Commission has jurisdiction over this case under § 13.254 of the Texas Water Code (TWC).

¹ *Petition to Revoke the Town of Lakeview's Certificates of Convenience and Necessity Pursuant to Texas Water Code §13.254 and 16 Texas Administrative Code §24.245, Docket No. 49181 (Feb. 7, 2019).*

Under 16 TAC § 24.245(i)(1)(A), the Commission may revoke a CCN after notice and a hearing if the CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. Under 16 TAC § 22.183, the Commission may issue a default order² when the party having the burden of proof fails to appear for a hearing or fails to request a hearing within 30 days after service of notice and opportunity for a hearing.³

Adequate notice for a default requires disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default if the defaulting party fails to timely request a hearing.⁴ Adequate notice also requires that the disclosure be sent via certified mail to the party's last known address in the Commission's records if the party has a license, certificate, or registration approved by the Commission.⁵

IV. Conclusion and Prayer


Commission Staff provided the Town of Lakeview with the notice required in 16 TAC § 22.183 regarding the petition to revoke water CCN 11350 and sewer CCN 20525. The Town of Lakeview did not request a hearing within 30 days of Commission Staff providing it notice of the opportunity for a hearing and the possibility of a default judgment. Accordingly, Commission Staff respectfully requests that the Commission grant this Motion and enter the attached Default Order granting the Petition to Revoke the Town of Lakeview's Certificates of Convenience and Necessity for water CCN 11350 and sewer CCN 20525.

² 16 TAC § 22.183(b).

³ 16 TAC § 22.183(a).

⁴ 16 TAC § 22.183(b)(1).

⁵ 16 TAC § 22.183(b)(2)(A).



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CERTIFICATE OF SERVICE

I certify that on March 12, 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 the Town of Lakeview in the Commission's records:

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



Alaina Zermeno

DOCKET NO. 49181

PETITION TO REVOKE TOWN OF	§	PUBLIC UTILITY COMMISSION
LAKEVIEW'S CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY	§	OF TEXAS
PURSUANT TO TEXAS WATER CODE	§	
§ 13.254 AND 16 TEXAS	§	
ADMINISTRATIVE CODE § 24.245	§	
	§	

PROPOSED DEFAULT ORDER

This Default Order addresses the petition of Commission Staff to revoke the certificates of public convenience and necessity of the Town of Lakeview for violations of the Texas Water Code¹ and Commission rules.² The Commission grants Commission Staff's petition and revokes water certificate of convenience and necessity (CCN) 11350 and sewer CCN 20525.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Background

1. The Town of Lakeview is a retail public utility that was granted water CCN 11350 and sewer CCN 20525 on November 1, 1979.
2. The Town of Lakeview was located in Jefferson County, Texas.
3. The nearby City of Port Arthur, Texas annexed the Town of Lakeview in 1980. Port Arthur is also located in Jefferson County, Texas.
4. Since its annexation, the Town of Lakeview has ceased to operate but remains listed as active on the Secretary of State's website.
5. The Town of Lakeview is no longer an existing utility, and its water and sewer services are inactive.

¹ Tex. Water Code Ann. § 13.254 (TWC).

² 16 Texas Admin. Code § 24.245 (TAC).

Application

6. On February 7, 2019, Commission Staff filed a petition and provided notice of opportunity for hearing seeking revocation of the Town of Lakeview's water CCN 11350 and sewer CCN 20525.
7. The petition disclosed, using a font size larger than 12-point, bold-face type, that the factual allegations in the petition could be deemed admitted and the relief requested could be granted by default if a timely hearing request was not made.

Notice

8. On February 7, 2019, Commission Staff sent a copy of the petition by certified mail, return receipt requested, to the addresses Commission Staff was able to find for the Town of Lakeview after reasonable investigation. More specifically, the petition was sent by certified mail, return receipt requested, to the address that the Town of Lakeview most recently had on file with the Commission.

Default

9. More than 30 days have passed since service of the petition to the Town of Lakeview.
10. The Town of Lakeview did not request a hearing on the merits.

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under § 13.254 of the Texas Water Code (TWC).
2. TWC § 13.242 provides that a "utility ... may not in any way render retail water ... utility service 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."
3. Under 16 Texas Administrative Code (TAC) § 24.3(14), a CCN is "[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 utility service to a specified geographic area."
4. Under 16 TAC § 24.3(59), 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."

5. TWC § 13.250 and 16 TAC § 24.247 require a retail public utility that possesses a certificate to provide "continuous and adequate service."
6. If the Commission finds that a retail public utility that possesses a certificate "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," the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.245.
7. The Town of Lakeview failed to meet the performance requirements for a certificate holder in TWC § 13.250 and 16 TAC § 24.247 when it ceased operating and ceased to provide continuous and adequate service.
8. The Town of Lakeview is incapable of providing continuous and adequate service in the area covered by water CCN No. 11350 and sewer CCN No. 20525.
9. Issuance of a default order against the Town of Lakeview is appropriate because the Town of Lakeview failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing, as provided in 16 TAC § 22.183(a).
10. The requirements for disposition by default in 16 TAC § 22.183 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 order:

1. Commission Staff's petition is granted.
2. The Town of Lakeview's water CCN No. 11350 and sewer CCN No. 20525 are revoked.
3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations.
4. 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 _____, 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER