

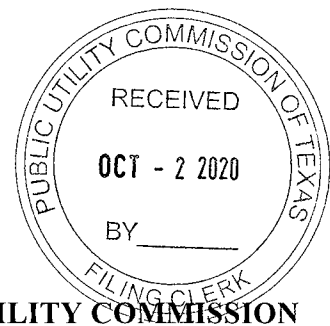


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DOCKET NO. 51269

**PETITION TO REVOKE CYNDIE
PARK UNIT I WATER'S
CERTIFICATE OF CONVENIENCE
AND NECESSITY PURSUANT TO
TEX. WATER CODE § 13.254 AND 16
TEXAS ADMINISTRATIVE CODE
§ 24.245**

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PUBLIC UTILITY COMMISSION

OF TEXAS

**COMMISSION STAFF'S PETITION TO REVOKE CYNDIE PARK UNIT I WATER'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Petition to Revoke Cyndie Park Unit I Water'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 Certificate of Public Convenience and Necessity (CCN) No. 12107 for Cyndie Park Unit I Water (Cyndie Park) should be revoked. Upon investigation, Staff has determined that the public water system associated with Cyndie Park is inactive, and that the CCN should be revoked.

In the event Cyndie Park fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Cyndie Park, granting all relief sought in this Petition. In support of this Petition, 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 "utility, or 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

¹ Tex. Water Code Ann. § 13.041 (TWC).

a certificate that the present or future public convenience and necessity will require that installation, operation, or extension.”

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.”²

A retail public utility that possesses a CCN is required to provide continuous and adequate service.³ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁴ 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.⁵

Pursuant to the contested case provisions of the Administrative Procedure Act,⁶ 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.⁷ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.⁸ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.⁹

III. FACTUAL ALLEGATIONS

Cyndie Park is located in Nueces County, Texas outside of the city of Robstown. On April 6, 1988, the Texas Water Commission granted CCN No. 12107 to “Juan L. Castillo, Grant J. Wiedemann, Fermin Valle, Richard Munoz and Marian Wiedemann dba Cyndie Park I Water Co-Op.”¹⁰

² TWC § 13.002(19) and 16 TAC § 24.3(31).

³ See TWC § 13.250(a) and 16 TAC § 24.225.

⁴ TWC § 13.254(a)(1) and 16 TAC 24.245(d)(1)(A).

⁵ *Id.*

⁶ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (APA).

⁷ APA § 2001.051.

⁸ 16 TAC § 22.183.

⁹ APA § 2001.056(4) and 16 TAC § 22.183.

¹⁰ See Attachment One, Water Certificate of Convenience and Necessity No. 12107.

In Docket 48372, the Nueces Water Supply Corporation (Nueces WSC) filed an application to acquire Cyndie Park, but Nueces WSC was ultimately unable to effectuate that transaction because it could not locate anyone from Cyndie Park to sign the Transferor's Oath.¹¹ In Docket 51159, Nueces WSC sought to amend its CCN to include territory exclusively granted to Cyndie Park and to decertify Cyndie Park's CCN.¹² In its application, Nueces WSC indicated that it had been unable to contact anyone from Cyndie Park.¹³ A copy of a TCEQ investigation report from April 2009, which was provided by Nueces WSC in its application, indicated that the public water system associated with Cyndie Park has been inactive since before 2000.¹⁴

Commission records further indicate that Cyndie Park's CCN is inactive.¹⁵

Staff's review of Commission records indicate that Cyndie Park is no longer in business, and the facilities it used to provide continuous and adequate service are inactive. Therefore, Cyndie Park is no longer providing and is incapable of providing continuous and adequate service.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Cyndie Park's CCN No. 12107 because Cyndie Park is no longer in business, and the facilities it used to provide continuous and adequate service are inactive.¹⁶ As long as CCN No. 12107 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.¹⁷ Nueces WSC indicated in its application that it was already serving six customers within Cyndie Park's service area.¹⁸

¹¹ *Application of Nueces County Water Supply Corporation for Sale, Transfer, or Merger of Cyndie Park Unit I Co-op Facilities and Certificate Rights in Nueces County*, Docket 48372, Motion to Withdraw Application (July 11, 2018).

¹² *Application of Nueces County Water Supply Corporation to Amend a Certificate of Convenience and Necessity and to Decertify Cyndie Park Unit I Water Coop's Certificate of Convenience and Necessity in Nueces County*, Docket 51159, Application (Aug. 12, 2020).

¹³ *Id.* at 33. "The address of the current owner(s) of Cyndie Park Unit I Water Coop is unknown, and Nueces Water Supply Corporation has been unsuccessful in locating the responsible party. Attached hereto is a copy of the letter from Nueces WSC to Mr. Grant Weidemann, the contact of record for Cyndie Park Unit I. The letter was returned undeliverable. Since no representative of Cyndie Park Unit I can be located and the current residential customers have no water service provider, Nueces WSC is submitting its application for the decertification of the Cyndie Park Unit I CCN so that Nueces WSC can be singly certified to provide reliable water service to the residents."

¹⁴ *Id.* at 38. "Cyndie Park Unit I Water COOP was a former PWS that was dissolved/deleted. According to the TCEQ Integrated Water Utilities Database (IWUD), this water system has been inactive for over 10 years."

¹⁵ <https://www.puc.texas.gov/WaterSearch/Utility?siteId=13468>

¹⁶ See TWC § 13.254(a)(1) and 16 TAC 24.245(d)(1)(A).

¹⁷ See TWC § 13.242.

¹⁸ *Supra* note 12, at 43.

For the above stated reasons, Staff recommends revocation of CCN No. 12107 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC §§ 22.54 and 22.55 require 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 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, Staff will provide a copy of this petition by certified mail, return receipt requested, to Cyndie Park's last known address in the TCEQ's and Commission's records:

Cyndie Park Unit I Water
RR 1 BOX
Robstown, Texas 78380-9801

Grant Weidemann
Cyndie Park Unit I Water Co-op
PO Box 543
Nebraska City, NE 68410¹⁹

Cyndie Park Unit I Water Co-op
Route 1, Box 10
Robstown, Texas 78380²⁰

Staff could not locate Cyndie Park I Water Co-op as registered with the Texas Secretary of State.

¹⁹ Address listed for the public water system associated with Cyndie Park in the TCEQ's Drinking Water Watch. https://dww2.tceq.texas.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=10998&tinwsys_st_code=TX&wsnumber=TX1780051%20%20%20&DWWState=TX

²⁰ Address listed in the TCEQ investigation report, *supra* note 13.

Pursuant to 16 TAC § 22.183, Staff hereby notifies Cyndie Park that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Cyndie Park 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 Cyndie Park's CCN No. 12107. If Cyndie Park 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, Staff respectfully requests that the Commission grants Staff's request to revoke Cyndie Park's CCN No. 12107. In the event that Cyndie Park fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to Cyndie Park, revoking CCN No. 12107.

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Rachelle Nicolette Robles
Division Director

/s/ Taylor Kilroy

Taylor Kilroy
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CERTIFICATE OF SERVICE

I certify that on October 2, 2020, 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 Cyndie Park Unit I Water (Cyndie Park) in the Commission's and TCEQ's records:

Cyndie Park's Last Known Address in Commission records:

Cyndie Park Unit I Water
RR 1 BOX
Robstown, Texas 78380-9801

Cyndie Park's Last Known Address in TCEQ's records:

Grant Weidemann
Cyndie Park Unit I Water Co-op
PO Box 543
Nebraska City, NE 68410

Cyndie Park Unit I Water Co-op
Route 1, Box 10
Robstown, Texas 78380

/s/ Taylor Kilroy
Taylor Kilroy

Attachment 1

Water Certificate of Convenience and Necessity

No. 12107

TEXAS WATER COMMISSION



CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 12107

I. Certificate Holder:

Name: Juan L. Castillo, Grant J. Wiedemann, Fermin Valle,
Richard Munoz and Marian Wiedemann dba
Cyndie Park I Water Co-Op

Address: Route 1, Box 10 Cyndie Lane
Robstown, Texas, 78380

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 7.5 miles northeast of Agua Dulce, Texas off of Farm to Market Road 1833. The service area is generally bounded on the south by an unnamed County Road and on the north by the certified service area of Cyndie Park II Water Company, CCN No. 12100, in Nueces County.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official service area map, WRS-178, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

ISSUED this 6th day of April, 1988

ATTEST:

Karen A. Phillips *Pam Hapkins*

For the Commission