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DOCKET NO. 53225

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|-------------------------------------|----------|----------------------------------|
| PETITION TO REVOKE LODGE | § | PUBLIC UTILITY COMMISSION |
| ACRES WATER SYSTEM | § | |
| CERTIFICATE OF PUBLIC | § | OF TEXAS |
| CONVENIENCE AND NECESSITY | § | |
| PURSUANT TO TEX. WATER CODE | § | |
| § 13.254 AND 16 TAC § 24.245 | § | |

COMMISSION STAFF'S MOTION FOR ENTRY OF A DEFAULT ORDER

The Staff of the Public Utility Commission of Texas files this Motion for Entry of a Default Order in accordance with 16 Texas Administrative Code (TAC) § 22.183. In support thereof, Commission Staff shows the following:

I. BACKGROUND

On April 18, 2022, Commission Staff filed an amended petition to revoke Certificate of Convenience and Necessity (CCN) No. 11070 belonging to Lodge Acres Water System (Lodge Acres). In its amended petition, Commission Staff recommend, based on underlying supporting information, that Lodge Acres is no longer providing continuous and adequate water service to the certificated area of CCN 11070, that the facilities necessary to provide continuous and adequate water service to the certificated area are inactive, and that Lodge Acres' water CCN be revoked under Texas Water Code (TWC) § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A). Commission Staff included the disclosure required under 16 TAC § 22.183(b)(1) and Commission Staff sent the amended petition to Lodge Acres' last known address as required by 16 TAC § 22.183(b)(2).

Under 16 TAC § 22.183(a), a default occurs when a party fails to request a hearing within 30 days after service of notice of an opportunity for a hearing. In this matter, Commission Staff provided notice of an opportunity for a hearing and included a warning to Lodge Acres that a default could be granted if Lodge Acres failed to timely request a hearing within 30 days of service and a reference to statutes and rules involved.

II. STAFF'S PROPOSED DEFAULT ORDER

Commission Staff has attached to this pleading a proposed default order which revokes Lodge Acres' CCN No. 11070.

III. MOTION TO ADMIT EVIDENCE

Commission Staff has attached the affidavit of Rose Ramirez, Legal Assistant in the Commission's Division of Compliance and Enforcement, attesting that a copy of the amended petition was sent by certified mail, return receipt requested, to Lodge Acres' last known address and shows that notice was given to Lodge Acres in accordance with Commission rules and the Administrative Procedure Act.¹ Ms. Ramirez's affidavit also attests that a copy of this motion was sent by certified mail, return receipt requested, to the same address. Commission Staff respectfully requests that this affidavit be admitted into evidence.

IV. CONCLUSION

Commission Staff respectfully recommends that the Commission enter the attached Default Order.

Dated: May 20, 2022

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS DIVISION OF COMPLIANCE & ENFORCEMENT

Barksdale English
Division Director

/s/Van Moreland
Van Moreland
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7163
(512) 936-7268 (facsimile)
van.moreland@puc.texas.gov

¹ Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014).

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CERTIFICATE OF SERVICE

I certify that on May 20, 2022, a copy of this document was sent via certified mail, return receipt requested, to the Commission's last known address of Lodge Acres in accordance with 16 TAC § 22.183(b).

/s/Van Moreland
Van Moreland

ATTACHMENT ONE
AFFIDAVIT OF ROSE RAMIREZ

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AFFIDAVIT OF ROSE RAMIREZ

STATE OF TEXAS §
TRAVIS COUNTY §

BEFORE ME, the undersigned authority, on this day personally appeared, Rose Ramirez, and being by me duly sworn, upon oath declared that the statements and capacity acted in are true and correct.

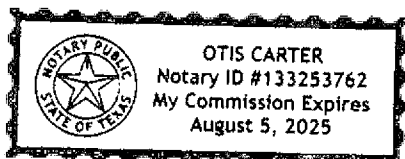
"My name is Rose Ramirez. I am the Legal Assistant in the Division of Compliance and Enforcement of the Public Utility Commission of Texas (Commission). I am over the age of twenty-one, and I am competent to make this Affidavit. In accordance with 16 Texas Administrative Code § 22.183(b), on April 19, 2022, I mailed, by certified mail, a copy of Commission Staff's Amended Petition to Revoke Lodge Acres Water System's Certificate of Convenience and Necessity and Notice of Opportunity for a Hearing, filed on April 19, 2022, to Lodge Acres Water System's last known address found in the Commission's records.


"On May 20, 2022, I mailed by certified mail, a copy of Commission Staff's Second Motion for a Default Order filed on May 20, 2022, to Lodge Acres Water System's last known address found in the Commission's records. Please see the attached tracking information for each item, a copy of the amended petition, and a copy of the Motion for Entry of a Default Order.

"Lodge Acres Water System
9016 Mountain Lake C
Austin, TX 78957"


AFFIANT: Rose Ramirez

SWORN TO AND SUBSCRIBED BEFORE ME THIS 20 DAY OF MAY 2022.




Notary Public for the State of Texas



Atten: ROSE PUENTE

Public Utility Comm. of TX
1701 N. Congress Ave.
P O Box 13326
Austin, Texas 78701

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☐ Adult Signature Restricted Delivery ☐ Registered Mail
☒ Certified Mail ☐ Return Receipt for Merchandise
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☐ Collect on Delivery (COD) ☐ Signature Confirmation
☐ Insured Mail ☐ Signature Confirmation Restricted Delivery
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| USPS Tracking/Article Number | | Addressee (Name, Street, City, State, & ZIP Code™) | Postage | (Extra Service) Fee | Handling Charge | Actual Value if Registered | Insured Value | Due Sender if COD | ASR Fee | ASRD Fee | RD Fee | RR Fee | SC Fee | SCRD Fee | SH Fee |
|---|--------------------------|--|---------|--|-----------------|----------------------------|---------------|-------------------|---------|----------|--------|--------|--------|----------|--------|
| 1. | 7021 2720 0000 9785 5531 | Lodge Acres Water System 9016 Mountain Lake C Austin, TX 78957 | | | | | | | | | | | | | |
| 2. | 7021 2720 0000 9785 5548 | Senna Hills Utility Company 600 Congress Ave. Ste. 1250 Austin, TX 78701-3234 | | | | | | | | | | | | | |
| 3. | 7021 2720 0000 9785 5555 | Keth J. Cunningham 1301 Capital of Texas Hwy South Ste. A-300 Austin, TX 78746 | | | | | | | | | | | | | |
| 4. | 7021 2720 0000 9785 5524 | MABDD Inc 2600 One American Center 600 Congress Austin, TX 78701 | | | | | | | | | | | | | |
| 5. | 7021 2720 0000 9785 5562 | MABDD Inc 101 San Jacinto Blvd Austin, TX 78707-4025 | | | | | | | | | | | | | |
| 6. | | | | | | | | | | | | | | | |
| 7. | | | | | | | | | | | | | | | |
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| Total Number of Pieces Listed by Sender | | Total Number of Pieces Received at Post Office | | Postmaster, Per (Name of receiving employee) | | | | | | | | | | | |

ATTACHMENT TWO
PROPOSED DEFAULT ORDER

DOCKET NO. 53225

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PROPOSED DEFAULT ORDER

This Default Order addresses the April 19, 2022 amended petition of Commission Staff to revoke the water certificate of convenience and necessity (CCN) of Lodge Acres Water System (Lodge Acres) for violations of the Texas Water Code (TWC) and Commission rules. The Commission grants the amended petition, by default, and revokes Lodge Acres' CCN No. 11070.

I. Findings of Fact

The Commission makes the following findings of fact:

Certificate of Convenience and Necessity

1. On November 1, 1979, the Commission granted water CCN number 11070 to Lodge Acres.
2. Under CCN number 11070, Lodge Acres is obligated to provide continuous and adequate water service to customers within the boundaries of the CCN's certificate service area in Travis County.

Commission Staff's Amended Petition

3. On April 19, 2022, Commission Staff filed its amended petition in this proceeding, in which it seeks to revoke Lodge Acres' CCN number 11070 for failure to provide continuous and adequate water service.
4. The amended petition alleges that Lodge Acres is no longer providing water utility service to customers, and that any facilities previously used to provide continuous and adequate water service are no longer active.
5. A Commission Staff review of records related to CCN number 11070 indicates Lodge Acres is no longer providing water utility service to customers and any facilities used to provide continuous and adequate water service are no longer active.

6. Lodge Acres does not provide and is not capable of providing continuous and adequate water service to customers in its certificated service area.

Notice

7. Lodge Acres' last known address in the Commission's records is:

Lodge Acres Water System
9016 Mountain Lake C
Austin, TX 78957

8. On April 19, 2022, Commission sent a copy of the amended petition by certified mail, return receipt requested, to Lodge Acres' last known address identified above.
9. The amended petition notified Lodge Acres of the relevant legal authority and the Commission's jurisdiction over this matter, cited to particular sections of the statutes and rules involved, and provided a statement of the factual allegations, as provided under Texas Government Code § 2001.052(a).
10. The amended petition also notified Lodge Acres that Lodge Acres was entitled to request a hearing within 30 days after the filing of the petition and included the following admonition in at least 12-point, bold-faced type, as provided by 16 Texas Administrative Code (TAC) § 22.183(b)(1):

In accordance with 16 TAC § 22.183, Commission Staff hereby notifies Lodge Acres that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Lodge Acres fails to request a hearing within 30 days after service of this petition.

Evidentiary Record

11. On May 20, 2022, Commission Staff filed a motion requesting the affidavit of Rose Ramirez be admitted into evidence.
12. In Order No. __ filed on ____, the administrative law judge admitted the affidavit of Ms. Ramirez and supporting documents, attached to Commission Staff's Motion for Entry of a Default Order.

Motion for Disposition by Default

13. On May 20, 2022, Commission Staff filed a motion for entry of a default order.

14. On May 20, 2022, Commission Staff sent a copy of the motion for entry of a default order by certified mail, return receipt requested, to Lodge Acres' last known address identified above.

Grounds for Default

15. More than 30 days have passed since service of the amended petition to Lodge Acres.
16. Lodge Acres did not request a hearing on the merits and did not respond to the amended petition.
17. More than 30 days have passed since service of the motion for entry of a default order.
18. Lodge Acres did not respond to the motion for entry of a default order.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this petition under TWC § 13.254.
2. Lodge Acres is a retail public utility under TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Under TWC § 13.250(a) and 16 TAC § 24.247, Lodge Acres, as the holder of CCN number 11070, is obligated to provide water service to every customer and applicant for service within its certificated area who requests water service and meets the terms of Lodge Acres' water service policies, and such service must be continuous and adequate.
4. Because Lodge Acres is no longer providing and is incapable of providing continuous and adequate service in its certificated service area, in violation of TWC § 13.250(a) and 16 TAC § 24.247, the Commission is entitled to revoke CCN number 11070 under TWC § 13.254(a)(1) and 16 TAC § 24.45(d)(1)(A).
5. Adequate notice was provided to Lodge Acres in compliance with Texas Government Code §§ 2001.052 and 2001.054 and 16 TAC § 22.183.
6. Lodge Acres 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).
7. 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 orders.

1. The Commission deems the allegations in Commission Staff's amended petition as true and admits those facts into evidence.
2. The Commission grants Commission Staff's motion for default order and revokes Lodge Acres CCN number 11070.
3. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
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 _____, 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADMAS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER