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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 § 24.113 | § | |
| | § | |

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 February 14, 2022, Commission Staff filed a petition to revoke Certificate of Convenience and Necessity (CCN) No. 11070 belonging to Lodge Acres Water System (Lodge Acres). In its 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).¹ Commission Staff included the disclosure required under 16 TAC § 22.183(b)(1) and Commission Staff sent the 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.

¹ Staff additionally requests that the caption of this case be revised to “PETITION TO REVOKE LODGE ACRES WATER SYSTEM’S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO TEX. WATER CODE § 13.254 AND 16 TAC § 24.245.” When it submitted its Open Docket Request in this matter, Staff erroneously cited a now repealed and replaced section of the Texas Administrative Code.

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 Puente, Legal Assistant in the Commission's Division of Compliance and Enforcement, attesting that a copy of the 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.² Commission Staff has also attached the affidavit of Ms. Puente and asserts 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: April 1, 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

² 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 April 1, 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 PUENTE

DOCKET NO. 53225

PETITION TO REVOKE LODGE
ACRES WATER SYSTEM
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY
PURSUANT TO TEX. WATER CODE
§ 13.254 AND 16 TAC § 24.113

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PUBLIC UTILITY COMMISSION

OF TEXAS

AFFIDAVIT OF ROSE PUENTE

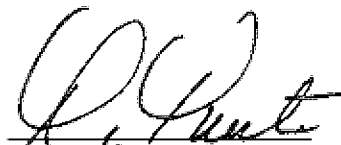
STATE OF TEXAS §
TRAVIS COUNTY §

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

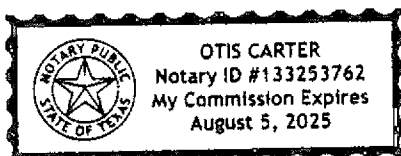
“My name is Rose Puente. I am the Legal Assistant in the Division of Compliance and Enforcement of the Public Utility Commission of Texas (Commission). I am over the age of twenty-one, and I am competent to make this Affidavit. In accordance with 16 Texas Administrative Code § 22.183(b), on February 14, 2022, I mailed, by certified mail, a copy of Commission Staff’s Petition to Revoke Lodge Acres Water System’s Certificate of Convenience and Necessity and Notice of Opportunity for a Hearing, filed on February 14, 2022, to the last known address of Lodge Acres Water System.

“On April 1, 2022, I mailed by certified mail, a copy of Commission Staff’s Motion for a Default Order filed on April 1, 2022, to Lodge Acres Water System’s last known address. Please see the attached tracking information for each item, a copy of the petition, and a copy of the Motion for Entry of a Default Order.

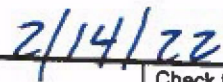
“Lodge Acres Water System
9016 Mountain Lake C
PO Box 8014
Smithville, TX 78957”


AFFIANT: Rose Puente

SWORN TO AND SUBSCRIBED BEFORE ME THIS 1 DAY OF APRIL 2022.




Notary Public for the State of Texas



Name and Address of Sender

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
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March 1, 2022 at 8:26 am
AUSTIN, TX 78711

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ATTACHMENT TWO
PROPOSED DEFAULT ORDER

DOCKET NO. 53225

| | | |
|-------------------------------------|----------|----------------------------------|
| PETITION TO REVOKE LODGE | § | PUBLIC UTILITY COMMISSION |
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| PURSUANT TO TEX. WATER CODE | § | |
| § 13.254 AND 16 TAC § 24.245 | § | |
| | § | |

PROPOSED DEFAULT ORDER

This Default Order addresses Commission Staff's petition to revoke Lodge Acres Water System (Lodge Acres)'s Certificate of Convenience and Necessity (CCN) for violations of the Texas Water Code and Commission rules. The Commission grants the 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. Lodge Acres' water CCN number 11070 certifies an area located approximately 16 miles west of Austin, Texas.
3. Lodge Acres is no longer providing water utility service to customers, and any facilities previously used to provide continuous and adequate water services are no longer active.

Commission Staff's Petition

4. On February 14, 2022, Commission Staff filed its petition in this proceeding, in which it seeks to revoke Lodge Acres' CCN No. 11070 for failure to provide continuous and adequate water service.
5. The 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.

Notice

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

Lodge Acres Water System
9016 Mountain Lake C
PO Box 8014
Smithville, TX 78957

7. On April 1, 2022, Commission Staff filed the affidavit of Rose Puente, Legal Assistant with the Commission's Division of Compliance and Enforcement, attesting that a copy of the petition was sent by certified mail, return receipt requested, to Lodge Acres' last known address on February 14, 2022.
8. In her affidavit, Ms. Puente also asserts that a copy of Commission Staff's motion for entry of a default order was sent by certified mail, return receipt requested, to Lodge Acres' last known address identified above on April 1, 2022.
9. The petition notified Lodge Acres of the 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 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 April 1, 2022, Commission Staff filed a motion requesting the affidavit of Ms. Puente be admitted into evidence.
12. In Order No. __ filed on _____, the administrative law judge admitted the following into evidence the affidavit of Ms. Puente and supporting documents, attached to Commission Staff's Motion for Entry of a Default Order,

Revocation of Certificate of Convenience and Necessity

13. A water utility that has received a CCN from the Commission is obligated under Texas Water Code (TWC) § 13.250(a) and 16 TAC § 24.247 to provide continuous and adequate service to every consumer within the boundaries of its certificated area.
14. Under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A), the Commission may revoke the CCN of a water utility if, after notice and opportunity for hearing, the Commission finds that the CCN holder is no longer providing or has failed to provide continuous and adequate service to all or part of the area located within its certificated boundaries.
15. The evidence in the record indicates that Lodge Acres is no longer providing water utility service to customers, and that any facilities previously used to provide continuous and adequate water services are no longer active.

Motion for Disposition by Default

16. On April 1, 2022, Commission Staff filed a motion for entry of a default order.
17. The motion for default was served on Lodge Acres in the same way that the petition was served.

Grounds for Default

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

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under TWC § 13.254.
2. Lodge Acres is a water utility under TWC § 13.002(23) and 16 TAC § 24.3(31).
3. Under TWC §§ 13.041(a) and 13.042(e), the Commission has jurisdiction and authority to regulate and supervise the business, rates, services, and operations of each water utility in Texas that is not located within the incorporated limits of a municipality exercising exclusive original jurisdiction under TWC § 13.042(b)

4. Lodge Acres is the holder of water CCN No. 11070.
5. A water utility that has received a CCN from the Commission is obligated under TWC § 13.250(a) and 16 TAC § 24.247 to provide continuous and adequate service to every consumer within the boundaries of its certificated area.
6. Under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A), the Commission may revoke the CCN of a water utility if, after notice and opportunity for hearing, the Commission finds that the CCN holder is no longer providing or has failed to provide continuous and adequate service to all or part of the area located within its certificated boundaries.
7. Because Lodge Acres is no longer providing water utility service to customers and any facilities previously used to provide continuous and adequate water services are no longer active, the Commission is entitled to revoke Lodge Acres' CCN No. 11070 under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A).
8. Adequate notice was provided to Lodge Acres in compliance with Texas Government Code §§ 2001.052 and 2001.054 and 16 TAC § 22.183.
9. 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).
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. The Commission deems the allegations in Commission Staff's petition as true and admits those facts into evidence.
2. Commission Staff's petition and motion for default order are granted.
3. Lodge Acres' Certificate of Convenience and Necessity is revoked.
4. The Commission is not constrained in any manner from requiring additional action or penalties for violations.

5. 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