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Filing Date - 2023-08-11 02:42:14 PM

Control Number - 55141

Item Number - 6

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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Hunter Burkhalter 
Chief Administrative Law Judge

RE: **Docket No. 55141** – *Petition to Revoke Kaufman County Development District No. 1's Certificate of Convenience and Necessity Under Texas Water Code § 13.254 and 16 Texas Administrative Code § 24.245*

DATE: August 11, 2023

Enclosed is the Proposed Default Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Default Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by August 25, 2023.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

/s/ ag
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DOCKET NO. 55141

PETITION TO REVOKE KAUFMAN	§	PUBLIC UTILITY COMMISSION
COUNTY DEVELOPMENT DISTRICT	§	
NO. 1'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY	§	
UNDER TEXAS WATER CODE § 13.254	§	
AND 16 TEXAS ADMINISTRATIVE	§	
CODE § 24.245	§	

PROPOSED DEFAULT ORDER

This Default Order addresses Commission Staff's petition to revoke Kaufman County Development District No. 1's certificate of convenience and necessity (CCN) for violations of the Texas Water Code (TWC) and Commission rules. The Commission grants the petition, by default, and revokes Kaufman County Development District No. 1's CCN number 12944.

I. Findings of Fact

The Commission makes the following findings of fact.

CCN Holder

1. Kaufman County Development District No. 1 (KCDD1) was created by the Kaufman County Commissioners' Court on July 23, 1996, under the authority of Texas Tax Code chapter 312.¹
2. In December 2003, the Texas Commission on Environmental Quality (TCEQ) issued CCN number 12944 to KCDD1.
3. As the holder of CCN number 12944, KCDD1 is obligated to provide continuous and adequate water service to customers within the boundaries of its certificated service area in Kaufman County.
4. On May 8, 2017, the Kaufman County Commissioners' Court ordered the dissolution of KCDD1, under the authority of Texas Local Gov't Code chapter 383. As a result, KCDD1 no longer exists.

¹ In 1997, the relevant provisions of Texas Tax Code chapter 312 were relocated to Texas Local Gov't Code chapter 383. *See*, Acts of 1997, 75th Legs. R.S., ch. 165, eff. Sept. 1, 1997.

Commission Staff's Petition

5. On June 14, 2023, Commission Staff filed its petition in this proceeding in which it seeks to revoke KCDD1's CCN number 12944 because the district has failed to provide continuous and adequate water service in its certificated service area.
6. A Commission Staff review of records related to CCN number 12944 indicates that KCDD1 is not providing water utility service to customers, and any facilities previously used to provide continuous and adequate water service, if any ever existed, are no longer active.
7. A Commission Staff investigation of TCEQ records indicates that no public water system is associated with CCN number 12944.
8. KCDD1 has not paid to the TCEQ its required regulatory assessment fee since 2018.
9. KCDD1 has no water customers, does not provide water utility service, and is incapable of providing continuous and adequate water service to customers in its certificated service area.

Notice

10. According to the Commission's records, there are three last known addresses for KCDD1:

Kaufman County Development District No. 1
3100 McKinnon Street, Suite 1100
Houston, TX 75201-1033

Kaufman County Development District No. 1
600 N. Pearl Street, Suite 900
Dallas, TX 75201-2872

Kaufman County MUD 11
P.O. Box 80
Tomball, TX 77377-0080
11. On June 14, 2023, Commission Staff sent a copy of the petition, by certified mail, to the three last known addresses in the Commission's records for KCDD1 listed above.
12. The petition notified KCDD1 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.

13. The petition also notified KCDD1 that it was entitled to request a hearing within 30 days after service of the petition, and included the following admonition in at least 12-point, bold-faced type:

In accordance with 16 TAC § 22.183, Commission Staff hereby notifies Kaufman County Development District No. 1 that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Kaufman County Development District No. 1 fails to request a hearing within 30 days after service of this petition.

Evidentiary Record

14. In Order No. 1 filed on July 28, 2023, the administrative law judge (ALJ) admitted the following into evidence:
- a. Commission Staff's petition to revoke KCDD1's CCN and notice of opportunity for a hearing, including Staff Exhibits 1 through 6 attached thereto, filed on June 14, 2023; and
 - b. The affidavit of Rosa Ramirez and supporting documents which are marked as Staff Exhibit 7 and attached to Commission Staff's second motion to admit evidence filed on July 24, 2023.

Motion for Disposition by Default

15. On July 24, 2023, Commission Staff filed a motion for entry of a default order.
16. On July 24, 2023, Commission Staff sent a copy of the motion for default, by certified mail, to the three last known addresses in the Commission's records for KCDD1 listed above.

Grounds for Default

17. More than 30 days have passed since service of the petition on KCDD1.
18. KCDD1 did not request a hearing on the merits and did not respond to the petition.
19. More than 10 days have passed since service of the motion for default.
20. KCDD1 did not respond to the motion for default.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC § 13.254.
2. Prior to its dissolution, KCDD1 was a retail public utility, as that term is defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Under TWC § 13.250(a) and 16 TAC § 24.247(a), KCDD1, as a retail public utility and holder of CCN number 12944, is obligated to serve every customer and every qualified applicant for service within its certificated service area, and such service must be continuous and adequate service within the area.
4. Because KCDD1 is not 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(a), the Commission is entitled to revoke CCN number 12944 under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A).
5. Adequate notice was provided to KCDD1 in compliance with Texas Government Code §§ 2001.052 and 2001.054 and 16 TAC § 22.183(b).
6. KCDD1 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 factual allegations in Commission Staff's petition as true.
2. The Commission takes official notice of its records that contain the last-known addresses of KCDD1.
3. The Commission grants Commission Staff's motion for default order and revokes KCDD1's CCN number 12944.

4. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
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 _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER