

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 23, 2011

**Via Certified Mail Return Receipt Requested**  
**Article No. 7010 3090 0000 7807 1773**  
**Via First Class Mail, Postage Pre-Paid**

Mr. Paul Gillette, Director  
Falcon Club Utility Company, Inc.  
19100 Falcon Club Dr.  
Amarillo, Texas 79119

Re: Falcon Club Utility Company, Inc.  
Docket No. 2010-1589-UCR-E;  
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Gillette:

On March 23, 2011, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject to this order is Falcon Club Utility Company, Inc. The Emergency Order renews the appointment of Brent Herbolsheimer ("Mr. Herbolsheimer") as temporary manager of the public water system located at the north western corner of legal description SECT 173 B S & F, Lot Block 0009, Entire Section Less, Platted Tracts, Amarillo, Randall County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on March 23, 2011. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **June 8, 2011**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas**. A copy of the record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Texas Commission on Environmental Quality Agenda process will be provided to you at a later time.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Order**. An Administrative Law Judge will be available to conduct a hearing at Agenda on June 8, 2011, should you so request.

Mr. Paul Gillette  
March 23, 2011  
Page 2

Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-0654.

Sincerely,



Peipey Tang, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Peipey.Tang@tceq.texas.gov](mailto:Peipey.Tang@tceq.texas.gov)

Enclosure

cc: Mr. Jim McWilliams, Water Section Manager, Amarillo Regional Office  
Mr. Terence Webb, Receivership Coordinator  
Mr. Blas Coy, Office of Public Interest Counsel  
Mr. Brent Herbolshimer, 5812 S. Rusk, Amarillo, Texas, 79118  
Office of the Chief Clerk

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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 23, 2011

### **Via Hand Delivery**

Paul David Gillette  
Potter County Detention Center  
13100 Northeast 29<sup>th</sup> Avenue  
Amarillo, Texas 79111

Re: Falcon Club Utility Company, Inc.  
Docket No. 2010-1589-UCR-E;  
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Gillette:

On March 23, 2011, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject to this order is Falcon Club Utility Company, Inc. The Emergency Order renews the appointment of Brent Herbolsheimer ("Mr. Herbolsheimer") as temporary manager of the public water system located at the north western corner of legal description SECT 173 B S & F, Lot Block 0009, Entire Section Less, Platted Tracts, Amarillo, Randall County, Texas.

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Mr. Paul Gillette  
March 23, 2011  
Page 2

Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-0654.

Sincerely,

A handwritten signature in cursive script that reads "Peipey Tang".

Peipey Tang, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Peipey.Tang@tceq.texas.gov](mailto:Peipey.Tang@tceq.texas.gov)

Enclosure

cc: Mr. Jim McWilliams, Water Section Manager, Amarillo Regional Office  
Mr. Terence Webb, Receivership Coordinator  
Mr. Blas Coy, Office of Public Interest Counsel  
Mr. Brent Herbolshimer, 5812 S. Rusk, Amarillo, Texas, 79118  
Office of the Chief Clerk

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



2011 MAR 23 PM 1:49

CHIEF CLERKS OFFICE

**TCEQ DOCKET NO. 2010-1589-UCR-E**

**IN THE MATTER OF  
AN ENFORCEMENT ACTION AGAINST  
FALCON CLUB UTILITY  
COMPANY, INC.;  
RN104523386;  
CCN13084**

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§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**EMERGENCY ORDER  
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER  
OF A WATER UTILITY**

On March 23, 2011, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Falcon Club Utility Company, Inc. ("Falcon Club").

**I.  
FINDINGS OF FACT**

1. Falcon Club owns and operates a public water system located at the north western corner of legal description SECT 173 B S & F, Lot Block 0009, Entire Section Less, Platted Tracts, Amarillo, Randall County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 25 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 Tex. Admin. Code § 290.38(66).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 13084.
4. Falcon Club has abandoned the Utility by failing to pay a bill owed to an electric utility resulting in the electric utility issuing a notice of discontinuance of necessary services ("Exhibit A").
5. Paul Gillette ("Mr. Gillette") is the sole Director of Falcon Club. Mr. Gillette is currently detained at the Potter County Detention Center in an unrelated criminal matter. On September 7, 2010, the Executive Director sent a letter to Mr. Gillette to determine Falcon Club's intentions in continuing operations at the Utility ("Exhibit B"). On March 18, 2011, the Executive Director sent a letter to Mr. Gillette regarding Falcon Club's failure to respond to the

Executive Director and the Executive Director's intentions for renewing an Emergency Order to continue operations at the Utility ("Exhibit C"). To date, the Executive Director has not received any communications from Mr. Gillette or his representatives regarding Falcon Club's intentions in continuing operations at the Utility ("Exhibit D").

6. Commission records show that the mailing address for Falcon Club is 19100 Falcon Club Dr., Amarillo, Texas, 79119.
7. No other source of water is available to the more than 75 people whose water is supplied by the Utility.
8. A potential health hazard exists as a result of the abandonment of the Utility. Brent Herbolsheimer ("Mr. Herbolsheimer") is currently serving as the temporary manager of the Utility through an Emergency Order issued on September 29, 2010 and affirmed by the Commission on November 3, 2010. Mr. Herbolsheimer is a licensed Class C operator ("Exhibit E"). A temporary manager is necessary to continue operations of the Utility to ensure that water is provided to Utility customers and to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.
9. Mr. Herbolsheimer has agreed to serve as temporary manager of the Utility for an additional 180 days and his mailing address is 5812 S. Rusk, Amarillo, Texas, 79118. His telephone number is (806) 683-5936.
10. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

## II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Falcon Club owns and operates the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 4, 7, and 8 show that the Utility has abandoned operations and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.

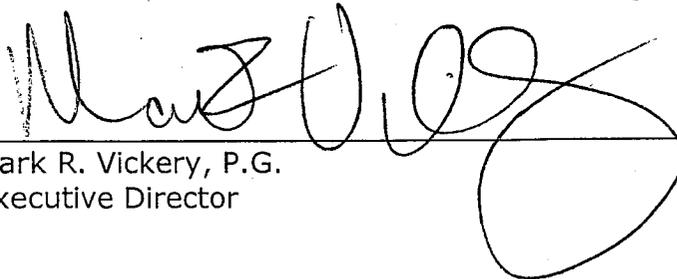
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of the receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Falcon Club is set forth in Finding of Fact No. 6.

### **III. ORDER**

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. March 23, 2011.
2. Immediately upon the effective date of this Emergency Order, Mr. Herbolsheimer is hereby appointed to temporarily manage and operate the Utility.
3. Mr. Herbolsheimer shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. September 19, 2011, whichever occurs first.
4. Mr. Herbolsheimer is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and

- duties set forth in TEX. WATER CODE § 13.4132.
5. Mr. Herbolsheimer shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
  6. Mr. Herbolsheimer's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
  7. Mr. Herbolsheimer's compensation will come from Utility revenues in the amount of fifteen dollars (\$15.00) per month per connection.
  8. Mr. Herbolsheimer shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
  9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on June 8, 2011 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the June 8, 2011 Agenda meeting, Falcon Club may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
  10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Mark R. Vickery, P.G.  
Executive Director

**From:** "Tigrett, JoDell" <JoDell.Tigrett@XCELENERGY.COM>  
**Date:** Thu, 23 Sep 2010 07:55:41 -0600  
**To:** BHERBY1968@HOTMAIL.COM <BHERBY1968@HOTMAIL.COM>  
**Subject:** FALCON CLUB UTILITY CO ACT 7824998

Attn: Brent,

I show that the service could be disconnected here anytime after 09232010. The balance that is up for disconnect is \$414.57.

Let me know what you want to do?

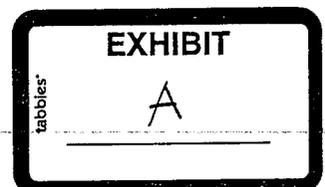
Thanks.

**Jo Dell Tigrett**  
**Xcel Energy | Responsible By Nature**  
**Commercial Credit Specialist**  
4701 Parkside Drive, Amarillo, TX 79109  
P:806.640.6117F:612.573.4022  
E:jodell.tigrett@xcelenergy.com ( <mailto:jodell.tigrett@xcelenergy.com> )

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**XCELENERGY.COM**

Please consider the environment before printing this email.



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 7, 2010

**Via First Class Mail, Postage Pre-Paid**

Paul David Gillette  
Potter County Detention Center  
13100 Northeast 29th Avenue  
Amarillo, Texas 79111

Re: Falcon Club Utility Company, Inc.  
Intent to Ensure Continuous and Adequate Service

Dear Mr. Gillette,

The purpose of this letter is to determine Falcon Club Utility Company, Inc.'s ("Utility") intentions regarding the provision of water service to its customers. Falcon Club Utility Company, Inc. operates pursuant to Certificate of Convenience and Necessity ("CCN") No. 13084. As a CCN holder and pursuant to 30 TEX. ADMIN. CODE § 291.114, Falcon Club Utility Company, Inc. must provide continuous and adequate service to every customer.

Currently, the electricity bill is overdue for the Utility. Although Brent Herbolsheimer is currently overseeing operation of the Utility, he has no authority to bill or collect payments for water service. Expenses for the Utility are accruing and if, in particular, the electricity bill is not paid soon the electricity will be shutoff, and then Falcon Club Utility Company's customers will be without water. As noted above, failure to provide continuous and adequate service to your customers is a violation of the Texas Commission on Environmental Quality's rules.

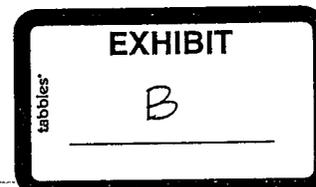
As director of Falcon Club Utility Company, Inc., please respond to this letter with Falcon Club's intentions to maintain operations at the Utility by paying the outstanding electricity bill and providing continuous and adequate service to the Utility customers. Please also respond in writing how Falcon Club Utility Company, Inc. intends to continue operations at the Utility.

Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-0654.

Sincerely,

A handwritten signature in cursive script that reads "Peipey Tang".

Peipey Tang  
Attorney  
Litigation Division



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 18, 2011

**Via First Class Mail, Postage Pre-Paid**

Paul David Gillette  
Potter County Detention Center  
13100 Northeast 29th Avenue  
Amarillo, Texas 79111

Re: Falcon Club Utility Company, Inc.  
Renewal of Emergency Order Appointing Temporary Manager

Dear Mr. Gillette,

On September 29, 2010, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ") issued an Emergency Order to appoint a temporary manager to continue operations at Falcon Club Utility Company, Inc. ("Utility"). On November 3, 2010, the TCEQ Commissioners affirmed the Emergency Order issued on September 29, 2010. The September 29, 2010 Emergency Order expires on March 28, 2011.

On September 7, 2010, the TCEQ sent you a letter requesting that you, as director of Falcon Club Utility Company, Inc., respond regarding the Utility's intentions to maintain operations at the Utility by paying the outstanding electricity bill and providing continuous and adequate service to the Utility's customers. To date, the TCEQ has not received any communication from you or your representatives regarding Falcon Club Utility Company, Inc.'s intentions for maintaining operations at the Utility. Therefore, the TCEQ intends to issue a renewal Emergency Order to continue operations at the Utility for an additional 180 days.

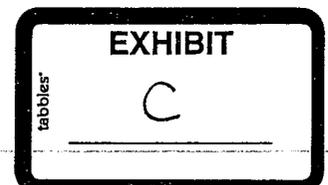
If you have any additional information or comments, please contact me at the TCEQ Litigation Division at (512) 239-0654.

Sincerely,

A handwritten signature in cursive script that reads "Peipey Tang".

Peipey Tang, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Peipey.Tang@tceq.texas.gov](mailto:Peipey.Tang@tceq.texas.gov)

cc: Mr. Jim McWilliams, Water Section Manager, Amarillo Regional Office  
Mr. Terence Webb, Receivership Coordinator  
Ms. Tammy Holguin-Benter, Utilities and Districts  
Mr. Blas Coy, Office of Public Interest Counsel



**AFFIDAVIT OF PEIPEY TANG**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

My name is Peipey Tang. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On August 30, 2010, I spoke with Richard Lee King, criminal attorney for Paul Gillette regarding Falcon Club Utility Company, Inc.'s intentions in continuing services at the Utility. Mr. King referred me to Patrick Swindell, civil attorney for Paul Gillette.

On August 30, 2010 and September 3, 2010, I left messages with Mr. Swindell regarding Falcon Club Utility Company Inc. On August 31, 2010 and September 9, 2010, Mr. Swindell left me messages. On September 9, 2010, I left Mr. Swindell a message asking him to call me back if he would be able to determine if Falcon Club Utility Company, Inc. would continue operations at the Utility. On September 28, 2010, I left Mr. Swindell a message regarding the issuance of an emergency order for the Utility.

On September 23, 2010, I spoke with Jo Dell Tigrett, a representative of Xcel Energy, the electric utility company for Falcon Club Utility Company, Inc. Ms. Tigrett confirmed that Brent Herbolsheimer requested a hold on the electric utility account and the service disconnection date on the electric utility account is September 30, 2010.

On September 27, 2010, I called the Potter County Detention Center and confirmed that Paul Gillette received a letter from me dated September 7, 2010 on September 9, 2010. On March 22, 2011, I called the Potter County Detention Center and confirmed that Paul Gillette received a letter from me dated March 18, 2011 on March 21, 2011.

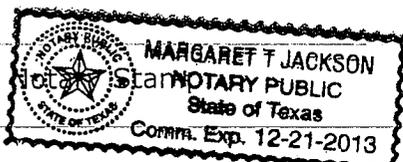
On March 17, 2011, I called Mr. Swindell's office and received confirmation that Mr. Swindell no longer represented Mr. Gillette. I left a message with Mr. Swindell requesting any contact information for Mr. Gillette's current representatives. To date, I have not received any further communications from Mr. Swindell.

To date, I have not received any communications from Paul Gillette.

Peipey Tang  
Peipey Tang  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 23rd day of March, A.D., 2011.



Margaret Jackson  
Notary Signature





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Questions or Comments

Search Page Search Results Search Options CR Query Licenses TCEQ Home

## TCEQ Search Licensing or Registration Information

### License Detail

To report a change of address or work phone number, please e-mail licenses@tceq.state.tx.us. Make sure to include your TCEQ license number.

**Name:** HERBOLSHEIMER, BRENT L  
**Address:** 5812 S RUSK ST  
**City:** AMARILLO  
**State:** TX  
**ZIP:** 79118-8818  
**County:** RANDALL  
**Work Phone:** 806-683-5936  
 806-275-1671

### License(s)

There were 2 licenses found.

Program	License Type and Level	License Number	Last Issued Date	Exp. Date	CEUs Earned	License Status
WATEROL	GROUND WATER TREATMENT OPERATOR C	WG0011736	12/09/2008	12/09/2011	0	CURRENT
WATEROL	WATER OPERATOR D	WO0022660	10/23/2007	12/09/2008	N/A	EXPIRED

**Note:** The number of CEUs needed in order to renew a license is based on the term (length) of each license. Please go to the program page for the license you hold to determine the number of CEUs needed and to view the latest information and renewal requirements for your license.

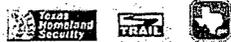
### Course(s)

There were 3 courses found. **Note:** You may see the same course listed multiple times. This occurs because the course counted towards multiple license programs.

Program	Course Title	Course Code	Hours	Date	Provider
WATEROL	GROUNDWATER PRODUCTION	223	20.0	11/06/2008	W TEX RS
WATEROL	WATER DISTRIBUTION	605	20.0	09/25/2008	PANHDL RS
WATEROL	BASIC WATER	92	20.0	09/27/2007	PANHDL RS

**Note:** Please allow 45 days from the last date of the training session for a record to appear in the search results. If a course does not appear on your training record after three months, please fax a copy of the course-completion certificate to 512/239-6272. Include either your TCEQ license number or Social Security Number if neither is displayed on the certificate.

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