

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

April 9, 2007

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 APR -9 PM 3:54  
CHIEF CLERKS OFFICE

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-04-7557; TCEQ Docket No. 2004-0834-UCR; In Re: Application of Campbellton Water Works, Inc. to Discontinue Water Utility Service and Cancel Certificate of Convenience and Necessity No. 12581

Dear Mr. Seal:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than April 30, 2007. Any replies to exceptions or briefs must be filed in the same manner no later than May 10, 2007

This matter has been designated **TCEQ Docket No. 2004-0834-UCR; SOAH Docket No. 582-04-7557**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Handwritten signature of Craig R. Bennett in black ink.

Craig R. Bennett  
Administrative Law Judge

CRB/l  
Enclosures  
cc: Mailing List

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SOAH DOCKET NO. 582-04-7557  
TCEQ DOCKET NO. 2004-0834-UCR

2007 APR -9 PM 3: 54

APPLICATION OF CAMPBELLTON	§	BEFORE THE STATE OFFICE'S OFFICE
WATER WORKS, INC., TO	§	
DISCONTINUE WATER UTILITY	§	OF
SERVICE AND CANCEL CERTIFICATE	§	
OF CONVENIENCE AND NECESSITY	§	ADMINISTRATIVE HEARINGS
NO. 12581	§	

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

In March 2002, the Texas Commission on Environmental Quality (Commission or TCEQ) issued an emergency order appointing McCoy Water Service Corporation (McCoy) as the Temporary Manager of Campbellton Water Works, Inc. (Campbellton), a financially troubled retail public water utility. Thereafter, in April 2003, William Thane (Applicant) was appointed as the receiver for Campbellton. In March 2004, pursuant to his role as the receiver in control of the water utility, Applicant submitted a petition to cancel Campbellton's Water Certificate of Convenience and Necessity (CCN) No. 12581 in Atascosa County, Texas.

Applicant argues the application should be granted because it is financially infeasible for Campbellton to continue to provide water service to customers in accordance with the TCEQ's guidelines, thus rendering the service unsafe for customers. The Executive Director (ED) of the TCEQ and the Office of Public Interest Counsel (OPIC) both support Applicant's request to cancel Campbellton's CCN. However, Joan Roane (Ms. Roane), the daughter of the original owner and operator of Campbellton, intervened in this action and is opposed to the requested CCN cancellation. Ms. Roane argues that Campbellton can be operated in a financially sound manner consistent with the TCEQ's rules. She requests that the CCN not be canceled and that she be given an opportunity to assume operational control of Campbellton.

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that, consistent with the factors identified by law, it is appropriate to cancel Campbellton's CCN and to allow it to discontinue providing water service. Accordingly, the ALJ recommends the Commission grant the application to cancel CCN No. 12581.

## II. BACKGROUND AND PROCEDURAL HISTORY

Campbellton was originally built and operated by Joan Roane's father. Campbellton has provided water service in Atascosa County in some form or fashion for approximately 50 years. After Ms. Roane's father died, her brother, Ira Roane, took control of the utility. Thereafter, the utility suffered both financially and in quality of service. TCEQ staff inspected the utility's facilities and issued a notice of violation in 1999, determining the utility was in violation of the Commission's rules and standards. Campbellton consented to an agreed order by the TCEQ, requiring certain corrective actions. Campbellton failed to comply with the terms of the agreed order and, in 2002, the TCEQ appointed McCoy as the temporary manager of Campbellton. Shortly after that, a district court appointed Applicant as the receiver for Campbellton, and Applicant then petitioned the TCEQ to allow Campbellton to discontinue service. Currently, Campbellton provides service to less than 20 customers.

On June 21, 2004, the TCEQ referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing on Applicant's petition. A preliminary hearing was conducted on October 5, 2004, at which the following four parties were admitted: (1) Applicant; (2) Ms. Roane; (3) the ED; and (4) OPIC. Shortly after the preliminary hearing, the case was abated and the abatement continued for nearly two years by agreement of the parties. The abatement was lifted in July 2006, a procedural schedule was adopted, and the case was set for evidentiary hearing.

The evidentiary hearing in this case convened on January 24, 2007, at SOAH in Austin, Texas. ALJ Craig R. Bennett presided over the hearing. Applicant was represented by attorney Robert Busselman. Ms. Roane appeared and was represented by attorney Mark Zeppa. The ED appeared and was represented by staff attorneys Gabriel Soto and Paul Tough. OPIC appeared and was represented by attorney Christina Mann. The hearing concluded that day, but the record did not close until March 16, 2007, after submission of the parties' written closing arguments.

### III. APPLICABLE LAW

Once a retail public utility obtains a CCN, it has an obligation to provide service according to the terms of the CCN. Texas law describes this obligation and also discusses the utility's ability to discontinue service under its CCN. Specifically, TEX. WATER CODE § 13.250 states, in relevant part, that:

- (a) . . . [A]ny retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.
- (b) Unless the commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified area. . . .
- (c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the commission prescribes.

As of the date of the hearing, there was no dispute that Campbellton was a retail public utility and is subject the statute identified above. Further, to implement Tex. Water Code §§ 13.250 and 13.254 (governing revocation of a CCN), the TCEQ has adopted rules regarding the discontinuation of service by a retail public utility. In pertinent part, 30 TEX. ADMIN. CODE § 291.115 states:

- (a) Any retail public utility which possesses or is required to possess a [CCN] desiring to discontinue, reduce or impair utility service: . . . must file a petition with the commission. . . .

\* \* \*

- (i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:
- (1) the effect on the customers;
  - (2) the costs associated with bringing the system into compliance;
  - (3) the applicant's diligence in locating alternative sources of service;
  - (4) the applicant's efforts to sell the system, such as running advertisements, contracting similar adjacent retail public utilities, or discussing cooperative organization with the customers;
  - (5) the asking price for purchase of the system as it relates to the undepreciated original cost of the system for rulemaking purposes;
  - (6) the relationship between the applicant and the original developer of the area served;
  - (7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and
  - (8) the feasibility of customers obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

There is no specific test that must be met in evaluating these factors, but the Commission is required to consider these factors in subjectively determining whether to terminate the CCN and allow the utility to discontinue service.

#### IV. DISCUSSION

##### A. Applicant's Evidence and Arguments

Applicant contends that it is simply not economically possible for Campbellton to provide continuous and adequate service consistent with the Commission's rules for safe drinking water. In support of its position, Applicant presented the testimony of Martin Thompson, field manager for McCoy.<sup>1</sup> Currently, Campbellton has approximately 17 customers, down from 61 customers a few years ago. The utility charges customers \$15 per month for unlimited water service, but many of its customers do not even pay that fee. There are no meters on the system, nor any other way to measure the amount of water used. Further, the system has no storage facilities nor any treatment facilities to treat the water with chlorine.

Mr. Thompson further testified that the water lines for Campbellton's system are seriously deficient and degraded. The system draws water from an artesian well and currently can provide only 22 pounds per square inch (psi) of water pressure, which is lower than the Commission's minimum required water pressure of 35 psi. In Mr. Thompson's opinion, if equipment were used to raise the water pressure, the existing water lines would not be able to handle it and would suffer additional leaks. Mr. Thompson indicated that McCoy had spent over \$11,000 in efforts to repair the system's water lines just to be able to continue to provide service to existing customers. In his opinion, it would cost in excess of \$1 million to bring the system into optimal compliance with TCEQ water quality rules.

Mr. Thompson testified that McCoy could begin providing service to Campbellton's customers upon termination of the CCN. McCoy serves 2,200 customers, has a facility CCN in the area, and could easily hook up Campbellton customers into McCoy's system. The current rates for McCoy customers is \$33.17 per month, which includes 3,000 gallons. Campbellton customers

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<sup>1</sup> McCoy is a nearby water utility that not only served as temporary manager for Campbellton, but also has been retained by the receiver to assist in the operation of Campbellton's utility services.

would have to pay a hook-up fee, but Mr. Thompson testified that McCoy would be amenable to extending to Campbellton's customers a 2-year payment plan for the hook-up costs. No other utilities have expressed an interest in either buying Campbellton's system or in serving those customers.

For all of the above reasons, Applicant argues that it would be better for all involved if the TCEQ simply allowed Campbellton to discontinue providing service and for Campbellton's existing customers to either drill wells or obtain service from McCoy.

**B. Ms. Roane's Evidence and Arguments**

Ms. Roane acknowledges that the water system has been run poorly in the past and is currently in a very critical state. However, she indicated that her retained expert has advised her that it would take only about \$45,000 to bring the water system into compliance with applicable standards. Moreover, she has applied for a public grant (in the amount of \$250,000) that will allegedly allow her to repair and revitalize the system and get it into compliance with applicable water quality standards.<sup>2</sup> She indicated that she would like the opportunity to take operational control of the utility and believes that she will be able to operate it adequately without the need for a large rate increase.

Ms. Roane also argues that canceling the CCN and essentially allowing McCoy to take over the existing customers will work a financial hardship on the customers. According to her, the existing customers are generally lower-income and would have difficulty paying hook-up fees in excess of \$1,000 and monthly fees that are double their current rates. As such, granting the application would be adverse to the interests of those existing customers.

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<sup>2</sup> Ms. Roane also testified that she has access to loans which would enable her to make capital improvements to the system.

Further, Ms. Roane alleges that McCoy has not properly carried out its duties in managing the Campbellton system. She contends that McCoy has attempted to poach Campbellton customers and, while serving as the temporary manager and also as the contractor for the receiver, has run the system poorly. She asserts that McCoy has not made the necessary repairs to the system because of the costs associated with such repairs. However, she argues that the receiver could have sought an emergency rate increase to raise the necessary funds to be able to make the needed repairs, but never has.

Ms. Roane contends that this application is really just an effort by McCoy to circumvent the requirements of TEX. WATER CODE § 13.254. That statute allows a CCN to be revoked and another utility to provide service in the area previously covered by the revoked CCN, but requires just compensation by the new utility for property of the former utility that is rendered valueless as a result of the decertification. Ms. Roane disputes that a receiver may unilaterally choose to abandon or terminate a CCN without complying with the requirements of TEX. WATER CODE § 13.254 and ensuring that the former utility receives just compensation for its property. Because Applicant has not complied with TEX. WATER CODE § 13.254 in this case, Ms. Roane asserts the application must be denied. Moreover, she argues that McCoy has been improperly providing service outside of its currently-certificated area to a number of customers who have chosen to discontinue their service with Campbellton and instead join the McCoy system. She asks the Commission to not reward such behavior by terminating the CCN and allowing McCoy to take over all of Campbellton's system.

### **C. The ED's Evidence and Arguments**

The ED supports termination of the CCN. The ED's sole expert witness, Prabin Basnet, testified that Campbellton has been under state oversight for non-compliance with water quality standards since 1999. When those violations were not cured by Campbellton, McCoy was appointed as temporary manager for the utility. Because the system lacks a disinfection mechanism, Mr. Basnet testified that receiving water service from the utility presented a threat to public health.

Mr. Basnet testified that he saw no evidence that it would be economically feasible for Campbellton to bring its water system into compliance with TCEQ rules. However, he opined that Campbellton customers could obtain service from McCoy if the CCN were terminated. He noted that the normal hook-up fee for new McCoy customers was \$3,000, but McCoy had agreed to reduce it to \$1,021 for Campbellton customers and to allow extended payment arrangements. As such, he believed that existing Campbellton customers have a viable alternative option for water service. In considering all of the circumstances, Mr. Basnet recommended that the application to be granted and the CCN be terminated.

The ED reviewed the applicable law and argues that Mr. Basnet's testimony and the other evidence in the record support an order granting the application and terminating the CCN. The ED disagrees that the Applicant is attempting to circumvent the requirements of TEX. WATER CODE § 13.254, because no petition has been brought under that section. The ED notes that the valuation and sale of the assets of Campbellton are currently before the district court that appointed the receiver for the utility.

The ED also disagrees that McCoy has improperly poached customers and provided service outside of its CCN territory. Mr. Basnet testified that McCoy has a facility CCN that covers much of Campbellton's service area and there is no evidence in the record to show that McCoy has provided service outside of its service area. Nor is there any evidence that McCoy has actively attempted to solicit customers away from Campbellton. In addition, the ED argues that Ms. Roane's assertion is not relevant to the analysis necessary to determine whether to cancel Campbellton's CCN. For all of the reasons discussed above, the ED recommends that the application be granted and the CCN be canceled.

**D. OPIC's Position**

OPIC supports Applicant's request to cancel the CCN. OPIC notes that the most reliable and useful testimony is that provided by the ED's witness, Prabin Basnet. OPIC asserts that the evidence shows that Campbellton—because of its financial difficulties and crumbling infrastructure—cannot continue to function as an ongoing utility and ensure adequate and continuous service to its customers. In contrast, McCoy can provide ongoing service to those customers. While OPIC finds that Ms. Roane's efforts to obtain a grant are laudable and might provide some relief for Campbellton, it notes that there is no procedural mechanism available to consider the possible grant-funded options that Ms. Roane seeks. Therefore, OPIC recommends that the application be granted to terminate Campbellton's CCN and to allow it to discontinue service.

**E. The ALJ's Analysis**

Campbellton is a failing water system, with few customers, located in a sparsely-populated area. Many of its customers do not pay for their service and the monthly service charges that are paid are extremely low. This case essentially involves a dispute by two entities over who will provide service to Campbellton's existing customers in the future. Applicant is affiliated with McCoy, the only nearby water utility. Ms. Roane is the daughter of the water system's founder, and she wishes to continue the utility for various reasons.

Both parties agree that the system is in bad shape and needs significant capital improvements to comply with the Commission's water quality rules. Applicant proposes to essentially "scrap" Campbellton's system and tie the current customers into McCoy's existing system. In contrast, Ms. Roane wishes to obtain funding to make capital improvements to the system and keep it running. Ultimately, after considering the evidence and arguments presented, the ALJ concludes that the best result for Campbellton's current customers would be for them to either drill a well or begin receiving service from McCoy. It is not feasible for Campbellton to provide adequate and continuous water

service under its CCN, and the evidence at the hearing causes the ALJ to doubt whether Ms. Roane would be able to operate the utility in the manner it needs to be operated if its CCN were to continue.<sup>3</sup> In light of the factors outlined in the Commission's rules, the ALJ concludes Campbellton's CCN should be terminated and the utility should discontinue providing water service. In support of the recommendation, the ALJ analyzes the relevant considerations further below.

### **1. Financial Considerations and Impact on Customers**

Three of the factors identified in the Commission's rules are closely linked; therefore, the ALJ analyzes them together. Specifically, (1) the effect on customers; (2) the costs associated with bringing the system into compliance; and (3) the feasibility of customers obtaining service from alternative sources, considering the costs to the customers, quality of service available from the alternative source, and length of time before full service can be provided are all closely related.<sup>4</sup>

If the CCN is terminated, current customers of Campbellton will essentially have two options: (1) obtaining water service from McCoy or (2) drilling a well. Either method would require the customers to spend some significant initial amount of money. To obtain service from McCoy, customers would have to pay tap fees and other related initial service fees of between \$1,000 and \$2,000. McCoy has indicated a willingness to allow new customers from Campbellton between one and two years to incrementally pay these initial hook-up fees. Separate from the hook-up fees, monthly water service fees would be approximately \$33 per customer. Clearly, this is more than the \$15 per month that current Campbellton customers are paying. Drilling a well would avoid monthly fees, but would easily cost more than \$1,000 for the initial drilling and installation of the well.

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<sup>3</sup> Moreover, the purpose of this proceeding is not even to decide whether Ms. Roane should be allowed to operate the system. A district court has already appointed Mr. Thane the receiver of the utility, and the continued management of the utility is subject to the jurisdiction of that court.

<sup>4</sup> 30 TEX. ADMIN. CODE § 291.115(i)(1), (2), and (8).

Although these costs are significant, they are not substantially more than what current customers would have to pay if the water system were upgraded to be brought into compliance with applicable water quality standards. Mr. Thompson indicated that the Campbellton system is so bad that it needs to be replaced nearly in its entirety. He estimated that the cost for such a job would be more than \$1 million. Even Ms. Roane's retained engineer indicated that the minimum cost to upgrade the current system and bring it into compliance was at least \$45,000. This capital cost would have to be borne by Campbellton's 17 customers—a per person cost of nearly \$3,000. The ALJ recognizes that these costs will be capitalized, but they still are significant and do not even reflect additional increases in operating expenses and costs that would be associated with upgrading the system.

Moreover, it is questionable whether the system could be sufficiently upgraded for the \$45,000 that Ms. Roane alleges. She testified that her retained engineer, Clarence Littlefield, advised her that the necessary repairs could be made for that amount, but his engineering report attached to the grant application reflects costs of more than \$230,000 to upgrade the system to a point that it could serve 128 customers. Given Mr. Thompson's testimony that it would cost in excess of \$1,000,000 and Mr. Littlefield's report estimating more than \$230,000 in upgrades, the ALJ does not give much weight to Ms. Roane's assertion that the system could be made adequate through an investment of only \$45,000.

In sum, the ALJ finds that viable alternative water service is available at a cost that is comparable to or better than the costs necessary for Campbellton to provide adequate and continuous service to its existing customers. This alternative service is known to be adequate and reliable. Accordingly, these factors weigh in favor of granting the application and terminating the CCN.

## 2. Availability of Alternative Sources of Service<sup>5</sup>

As discussed above, there is at least one utility—McCoy—that can provide service to Campbellton's existing customers. Applicant has been diligent in attempting to locate other sources of service. McCoy is the only retail water utility in proximity to Campbellton's service area. McCoy serves approximately 2,200 customers in the area and is well-equipped to serve the existing Campbellton customers. McCoy provides an obvious and viable alternative source of service to the Campbellton customers. Moreover, although McCoy's monthly service fees of \$33 are more than Campbellton's current customers are paying, they are still reasonable rates and are comparable to (and quite likely lower than) the rates that would be required if Campbellton made the necessary upgrades to its system.

## 3. Possible Sale of the System<sup>6</sup>

There is little evidence in the record of any efforts by Applicant to sell the Campbellton system. Given the deteriorating infrastructure and limited customer base, the ALJ finds it unlikely that there would be any reasonable offer to purchase the assets of the system. Moreover, even if there were such an offer, it does not appear to be the most beneficial outcome for current customers. Ms. Roane has already indicated a desire to take over and operate the system. However, Ms. Roane or any purchaser of the system would have to upgrade the system significantly, resulting in significant capital costs that would have to be borne by the customers. Therefore, the ALJ finds that the Applicant's efforts to sell the system and the information related to the asking price do not really impact the analysis of the application under the facts of this case. Clearly, there is no evidence in the record to indicate the existence of any entity that would be willing to purchase the system. As such, the ALJ concludes that there is no likely reasonable sale of the system and this factor supports terminating the CCN.

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<sup>5</sup> This encompasses the factors identified in 30 TEX. ADMIN. CODE § 291.115(i)(3) and (7).

<sup>6</sup> This encompasses the factors identified in 30 TEX. ADMIN. CODE § 291.115(i)(4) and (5).

**4. The Relationship Between the Applicant and the Original Developer of the Area Served<sup>7</sup>**

Campbellton originated with Ms. Roane's father and has been family-owned for approximately 50 years, until recent years when a receiver was appointed for the failing utility. Applicant in this case is the current receiver appointed by the district court. Legally, the receiver is charged with managing and preserving the property for the benefit of the rightful owner(s). Given the receiver's legal obligations and knowledge of the affairs of the utility, the ALJ finds it appropriate to give some weight to the receiver's determination that it is in the best interest of the utility and its customers to terminate the CCN. Accordingly, the ALJ concludes that this factor further supports a determination to cancel the CCN.

**5. Other Considerations**

Ms. Roane raises a number of other concerns in her opposition to the application. Many of these do not specifically relate to the relevant factors listed in the TCEQ's rules, but the ALJ addresses them nonetheless. Ms. Roane argues that she should be given an opportunity to run the Campbellton system and contends that she is likely to get a grant to be able to repair the failing system. However, this is not the proper forum to address Ms. Roane's desire to run the system. As she readily acknowledged at the hearing, it is the district court's responsibility to determine who is best able to manage the system, and the district court has already determined that Applicant is the appropriate person to serve as the receiver and to manage the system. Also, it is speculative as to whether Ms. Roane will be awarded the monetary grant she is seeking or, if so, whether the court would even allow Ms. Roane to take operational control of the system after that. As such, the ALJ concludes that such arguments should not have a bearing on the outcome of this case.

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<sup>7</sup> This is the factor identified in 30 TEX. ADMIN. CODE § 291.115(i)(6).

Similarly, the ALJ concludes that Ms. Roane's arguments about the applicability of the compensation requirements of TEX. WATER CODE § 13.254 are not ripe for determination in this case. Although that statute does apply to this case, certain portions are not applicable at this time. Specifically, TEX. WATER CODE § 13.254(d) requires compensation by any utility seeking to provide service in the decertified territory for property of the former CCN holder that is rendered useless as a result of decertification. However, the compensation portion of that statute does not apply in the decertification proceeding, but applies only after the decertification decision has been made.

Specifically, TEX. WATER CODE § 13.254(e) provides that "the determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the *previously decertified* area. . ." (emphasis added). This language makes it clear that the TCEQ does not even address issues of compensation for property until after the TCEQ has revoked the CCN and another utility has come in seeking to provide service to the previously decertified area. In this case, the Commission is only addressing whether to revoke Campbellton's CCN—it is not addressing whether to grant any specific right to McCoy to provide water service in the decertified area. Although it is reasonable to assume that McCoy will provide such service, that is not the issue in this case. Therefore, the ALJ finds that Applicant is not circumventing the compensation provisions of TEX. WATER CODE § 13.254 in this case, and Ms. Roane's arguments on this issue lack merit.

Finally, the ALJ disagrees with Ms. Roane's contention that either the receiver or McCoy has poorly run the Campbellton system over the last few years, or that McCoy has attempted to poach Campbellton's customers. The utility was in disrepair and in violation of the TCEQ's rules as of 1999—well before either McCoy or the receiver was involved with it. Over the last few years, McCoy has spent more than \$11,000 trying to keep the system running, while receiving very little income from the utility's customers, many of whom do not even pay the minimal \$15 monthly fee for service. Given the decaying state of the system, the ALJ is not surprised that many Campbellton customers would choose to leave it to obtain service elsewhere. There is no evidence of any illicit

actions by McCoy to lure these customers away. Therefore, the ALJ is unpersuaded by Ms. Roane's equitable arguments seeking to keep McCoy from being in a position to take over all of Campbellton's existing customers if Campbellton's CCN is canceled.

#### V. CONCLUSION

For all of the reasons set forth above, the ALJ finds that the evidence establishes that the Campbellton water system is unable to provide continuous and adequate service consistent with the Commission's water quality standards. Further, there are viable alternative sources of water service to those within Campbellton's CCN territory. Therefore, Campbellton's CCN should be revoked and it should be allowed to discontinue providing water service.

**SIGNED April 9, 2007.**



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**CRAIG R. BENNETT**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Regarding the Application of Campbellton Water Works, Inc., to Discontinue Water Utility Service and to Cancel Certificate of Convenience and Necessity No. 12581; TCEQ Docket No. 2004-0834-UCR; SOAH Docket No. 582-04-7557.

On \_\_\_\_\_, 2007, the Texas Commission on Environmental Quality (TCEQ or Commission)(as used herein, the designation TCEQ or Commission shall also refer to all predecessor agencies, including the Texas Natural Resource Conservation Commission) considered the application by Campbellton Water Works, Inc., to discontinue water utility service and to cancel Certificate of Convenience and Necessity (CCN) No. 12581. A Proposal for Decision (PFD) was presented by Craig R. Bennett, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who held a hearing in this contested case on January 24, 2007, in Austin, Texas. After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. Campbellton Water Works, Inc. (Campbellton), is a retail public utility providing water service in Atascosa County, Texas, pursuant to CCN No. 12581.
2. Campbellton was originally built and operated by the father of Joan Roane (Ms. Roane), and has provided water service in Atascosa County for approximately 50 years.

3. After Ms. Roane's father died, her brother, Ira Roane, took control of the utility.
4. On or about January 16, 1999, the TCEQ provided Campbellton notice of violations of statutes or rules governing retail public water service.
5. In May 2000, the TCEQ issued an agreed order requiring certain actions by Campbellton to bring its system into compliance with applicable water quality rules and standards.
6. Campbellton failed to comply with the agreed order and, on March 18, 2002, the TCEQ issued an emergency order appointing McCoy Water Supply Corporation (McCoy) as the temporary manager of the Campbellton system.
7. On April 25, 2003, William Thane (Applicant) was appointed receiver of Campbellton by the 53<sup>rd</sup> District Court of Travis County, Texas.
8. On March 29, 2004, Applicant submitted a petition requesting approval from the TCEQ for Campbellton to discontinue providing water service and cancellation of CCN No. 12581.
9. Notice of Applicant's petition was published on April 28, 2004, and May 5, 2004, in the *Pleasanton Express*, a newspaper of general circulation in Atascosa County, Texas, and was provided individually to McCoy and all customers of Campbellton on or about April 28, 2004.
10. On June 21, 2004, the TCEQ referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing on Applicant's petition.
11. A preliminary hearing was conducted in this case on October 5, 2004, at which the following four parties were admitted: (1) Applicant; (2) Ms. Roane; (3) the Executive Director (ED) of the Texas Commission on Environmental Quality; and (4) the Office of Public Interest Counsel (OPIC).
12. After the preliminary hearing, the case was abated for nearly two years by agreement of the parties.

13. The abatement was lifted in July 2006, a procedural schedule was adopted, and the case was set for evidentiary hearing.
14. The evidentiary hearing in this matter was conducted on January 24, 2007. Applicant was represented by attorney Robert Busselman. Ms. Roane appeared and was represented by attorney Mark Zeppa. The ED appeared and was represented by staff attorneys Gabriel Soto and Paul Tough. OPIC appeared and was represented by attorney Christina Mann.
15. The record closed on March 16, 2007, after the parties were given the opportunity to submit written closing arguments.
16. As of the time of the hearing, Campbellton had approximately 17 customers, down from 61 customers a few years ago.
17. Campbellton charges customers \$15 per month for unlimited water service, but many of its customers do not pay even that fee.
18. Campbellton is unable to provide continuous and adequate service in its CCN area, in accordance with the applicable water quality standards.
  - A. There are no meters on the Campbellton system, nor any other way to measure the amount of water used.
  - B. The Campbellton system has no storage facilities nor any treatment facilities to treat the water with chlorine.
  - C. The water lines for Campbellton's system are seriously deficient and degraded, suffering regular leaks.
  - D. The Campbellton system draws water from an artesian well and currently can provide only 22 pounds per square inch (psi) of water pressure, which is lower than the Commission's required minimum water pressure of 35 psi.

- E. If equipment were used to raise the water pressure, the existing water lines would not be able to handle it and would suffer additional leaks.
  - F. It would cost no less than \$45,000—or more than \$2,500 per current customer—to bring the Campbellton system into compliance with water quality standards and to a point where it could provide continuous and adequate water service.
  - G. Upgrading the Campbellton system would cost much more than \$45,000, and more than likely could cost at least \$230,000.
19. Feasible alternative sources of water service are available to consumers within Campbellton's CCN area.
- A. McCoy could begin providing service to Campbellton's customers upon termination of the CCN.
  - B. McCoy serves 2,200 customers, has a facility CCN in the area, and could easily hook up Campbellton customers into McCoy's system.
  - C. The current rates for McCoy customers is \$33.17 per month, which includes 3,000 gallons of water.
  - D. Campbellton customers would have to pay a hook-up fee of between \$1,000 and \$2,000, but McCoy is amenable to extending to Campbellton's customers a reasonable payment plan for the hook-up costs.
20. No other utilities have expressed an interest in either buying Campbellton's system or in serving those customers, and it unlikely that there would be any reasonable offer to purchase the assets of the system.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider an application to cancel a CCN, pursuant to TEX. WATER CODE ANN. §§ 13.250 and 13.254.
2. The State Office of Administrative Hearings has the authority to conduct evidentiary hearings and prepare proposals for decision on contested matters referred by the Commission, pursuant to TEX. GOV'T CODE ANN. § 2003.047.
3. Proper notice of Applicant's petition was given by Applicant, as required by TEXAS WATER CODE ANN. ch. 13, 30 TEX. ADMIN. CODE § 291.106, and TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Campbellton is a retail public utility pursuant to TEX. WATER CODE ANN. § 13.002.
5. A retail public utility that possesses a CCN must render continuous and adequate service to every consumer within its certified area. TEX. WATER CODE § 13.250(a).
6. The Commission may revoke or amend any CCN with the written consent of the certificate holder or if it finds that the certificate holder 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. TEX. WATER CODE § 13.254(a)(1).
7. In determining whether to cancel a CCN, the Commission is required to consider the factors set forth in 30 TEX. ADMIN. CODE § 291.115(i).
8. Based upon the above Conclusions of Law and Findings of Fact, Campbellton is unable to provide continuous and adequate service in its CCN area consistent with the Commission's water quality standards.

9. Because Campbellton is unable to provide continuous and adequate water service within its CCN area, and because there are viable alternative sources of water service to those within Campbellton's CCN territory, Campbellton should be allowed to discontinue providing water service under CCN No. 12581.
10. Based on the above Conclusions of Law and Findings of Fact, the application to cancel CCN No. 12581 should be granted.

**NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:**

1. The application by the receiver for Campbellton Water Works, Inc., to cancel CCN No. 12581 is granted, that CCN is hereby revoked, and Campbellton may discontinue providing water service in the area covered by CCN No. 12581.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
4. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to all parties.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Kathleen Hartnett White, Chairman  
For the Commission

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**SERVICE LIST**

**AGENCY:** TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
(TCEQ)

**STYLE/CASE:** APPLICATION OF CAMPBELLTON WATER WORKS, INC.,  
TO DISCONTINUE WATER UTILITY SERVICE AND CANCEL  
CERTIFICATE OF CONVENIENCE AND NECESSITY  
NO. 12581

**SOAH DOCKET NUMBER:** 582-04-7557  
**TCEQ DOCKET NUMBER:** 2004-0834-UCR

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**ADMINISTRATIVE COURT**

**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**CRAIG R. BENNETT  
PRESIDING ADMINISTRATIVE LAW JUDGE**

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**PARTIES**

**REPRESENTATIVE/ADDRESS**

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xc: Docket Clerk, State Office of Administrative Hearings  
Docket Clerk, Office of the Chief Clerk, TCEQ, Fax No. (512) 239-3311