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PETITION TO REVOKE BERNARD
TIMBERS WATER SUPPLY
CORPORATION'S CERTIFICATES OF
PUBLIC CONVENIENCE AND
NECESSITY PURSUANT TO TEX.
WATER CODE ANN. § 13.254 AND 16
TAC § 24.113

PUBLIC UTILITY COMMISSION
OF TEXAS

2015 JUN 2 PM 12:45
PUBLIC UTILITY COMMISSION
FILING CLERK

DEFAULT ORDER

This Order addresses Commission Staff's petition to revoke Bernard Timbers Water Supply Corporation's water and sewer certificates of convenience and necessity for violations of the Texas Water Code¹ and Commission rules.² Commission Staff's petition is granted and Bernard Timbers' certificates are revoked.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On March 19, 1991; the Texas Water Commission (now, Texas Commission on Environmental Quality (TCEQ)) issued to Bernard Timbers water certificate 12486 and sewer certificate 20735.
2. In the Fall of 2015, Commission Staff sent a letter to all investor-owned water and sewer utilities regarding Water and Wastewater Annual Reports.
3. On November 30, 2015, a copy of the letter addressed to Bernard Timbers was returned to the Commission unopened.
4. During an investigation into the proper address for Bernard Timbers, Commission Staff discovered that the public water system associated with Bernard Timbers' certificates is inactive.
5. Bernard Timbers has ceased to operate and is listed as inactive on TCEQ's "Water System Summary Sheet."

¹ Tex. Water Code Ann. § 13.254 (West 2008 and Supp. 2016) (TWC).

² 16 Tex. Admin. Code § 24.113 (TAC).

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6. Bernard Timbers is a retail public utility that operated under certificate numbers 12486 and 20735.
7. Bernard Timbers is inactive and no longer in business.
8. The area covered by Bernard Timbers' certificates is now served by Wharton County Water Control and Improvement District 2.
9. On July 27, 2016, Commission Staff filed a petition and notice of opportunity for hearing seeking revocation of Bernard Timbers' certificates.³
10. The petition and notice of opportunity for hearing included the required disclosure in at least 12-point, bold-face type.⁴
11. The petition and notice of opportunity for hearing was sent by certified mail to the owner of Bernard Timbers' last known address in TCEQ's records, the last known address of the president of Bernard Timbers on file with TCEQ, the emergency contact address used in TCEQ records and to the address for the registered agent for process on file with the Secretary of State.⁵
12. Bernard Timbers did not request a hearing on the merits.
13. More than 30 days have passed since service of the petition and notice of opportunity for hearing.
14. Bernard Timbers is incapable of providing service and failed to provide continuous and adequate service in the areas covered by the certificates.
15. The factual allegations in the petition are deemed admitted.
16. On August 18, 2016, the Commission issued Order No. 1, requiring a proposed default order.
17. On October 27, 2016, Commission Staff filed a proposed default order including attachments.

³ Commission Staff's Petition to Revoke Bernard Timbers' Certificates of Public Convenience and Necessity and Notice of Opportunity for a Hearing (Jul. 27, 2016).

⁴ *Id.*

⁵ Commission Staff's Response to Order No. 1 and Attached Proposed Order, Attachment No. 2.

18. On November 10, 2016, Commission Staff filed proof of notice to (a) Bernard Timbers' last known address in TCEQ's records, (b) the President of Bernard Timbers, (c) the emergency contact address used in TCEQ's records; and (d) Bernard Timbers' agent for process on file with the Texas Secretary of State.

II. Conclusions of Law

1. TWC § 13.242 provides, in part, that a "utility ... may not in any way render ... water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension."
2. Under 16 TAC § 24.3(15), a certificate is defined as a permit issued by the Commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer service to a specified geographic area.
3. Under 16 TAC § 24.3(58), a retail public utility is defined as any person corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
4. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a certificate to provide "continuous and adequate service."
5. Bernard Timbers failed to meet the performance requirements for a certificate holder in TWC § 13.250 and 16 TAC § 24.114.
6. The notice requirements in § 2001.054 of the Administrative Procedure Act⁶ and in 16 TAC § 22.54 have been met in this proceeding.
7. Under 16 TAC § 22.183, the notice issued to Bernard Timbers properly disclosed that failure to timely request a hearing could render the factual allegations in the notice admitted.
8. Under 16 TAC § 22.183, a default occurred when Bernard Timbers failed to timely request a hearing within 30 days of the service of notice.

⁶ Tex. Gov't Code Ann. (West 2016) (APA).

- 9. Under 16 TAC § 22.183(a), issuance of a default order against Bernard Timbers is appropriate because Bernard Timbers failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing.
- 10. The requirements for disposition by default in 16 TAC § 22.183 have been met in this proceeding.

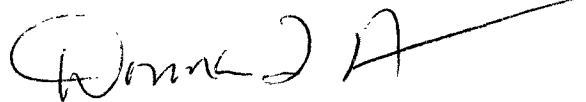
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

- 1. Commission Staff's petition is granted.
- 2. Certificates 12486 and 20735 are revoked.
- 3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
- 4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 12th day of January 2017.

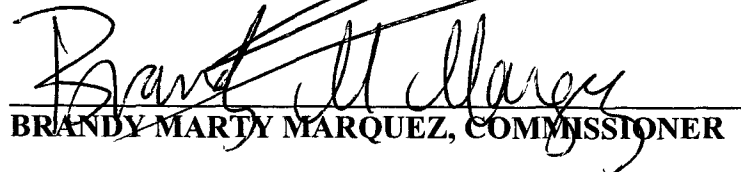
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