



Control Number: 46225



Item Number: 3

Addendum StartPage: 0

DOCKET NO. 46225

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PUBLIC UTILITY COMMISSION
REG. CLERK

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

STAFF'S RESPONSE TO ORDER NO. 1 AND ATTACHED PROPOSED ORDER

Staff of the Public Utility Commission of Texas (Commission Staff) files this Response to Order No. 1 and Attached Proposed Order granting revocation of Bernard Timbers Water Supply Corporation's (Bernard Timbers) Certificate of Public Convenience and Necessity (CCN) No. 12486 for water service and CCN No. 20735 for sewer service.

I. BACKGROUND

On July 27, 2016, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Bernard Timber's CCN Nos 12486 and 20735. The Petition and Notice of Opportunity for Hearing included the required disclosure in fourteen point bolded and underlined font.¹ Additionally, in license revocation proceedings, it is required that notice be given "by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action."² In order to proceed on a default basis, 16 TAC § 22.183 requires Commission Staff to provide notice by certified mail, return receipt requested: (a) to a certificate holder's last known address in the Commission's records; (b) to the person's registered agent for process on file with the Secretary of State; or (c) to an address for the party identified after reasonable investigation if the first two options are not applicable.

¹ See Staff's Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity and Notice of Opportunity for Hearing, (July 27, 2016). (Attachment 1).

² Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.054 (West 2008 & Supp. 2014) (APA).

In accordance with these provisions, Commission Staff sent a copy of the Petition and Notice of Opportunity for a Hearing by certified mail, return receipt requested, to the addresses listed below.³ Commission Staff sent a copy of the Petition and Notice of Opportunity for a Hearing by certified mail, return receipt requested, to Bernard Timbers owner's last known address in the TCEQ's records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Staff also provided a copy of the petition by certified mail, return receipt requested, to the address for the president of Bernard Timbers on file with the TCEQ:

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Staff also provided a copy of the petition by certified mail, return receipt requested, to the emergency contact address used in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

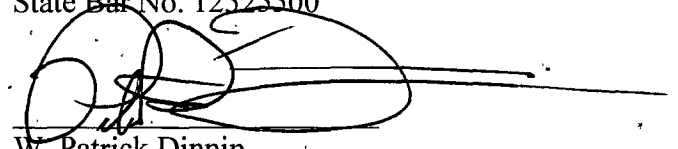
Staff also provided a copy of the petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435

³ See Affidavit of Tasha Lopez, Attachment 2.

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

A handwritten signature in black ink, appearing to read 'W. Patrick Dinnin', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

W. Patrick Dinnin
Attorney
Oversight and Enforcement Division
State Bar No. 24097603

CERTIFICATE OF SERVICE

I certify that on October 27, 2016, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Bernard Timbers Water Supply Corporation (Bernard Timbers) in the Commission's records, to addresses used in the Texas Commission on Environmental Quality (TCEQ) proceedings, to the address for the registered agent for process on file with the Secretary of State, and to the address for the director of Bernard Timbers on file with the Secretary of State:

Bernard Timbers owner's Last Known Address in Commission Records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Address used for the president in TCEQ records:

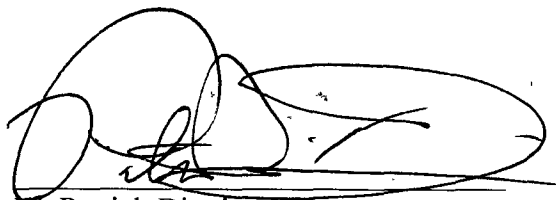
Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Address for the emergency contact for Bernard Timbers in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

Address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435



W. Patrick Dinnin

Attachment 1

Petition to Revoke and Opportunity for a Hearing

DOCKET NO. **46225**

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

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§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

PUBLIC UTILITY OF TEXAS
FILING CLERK

2016 JUL 27 PM 2:22

RECEIVED

**COMMISSION STAFF'S PETITION TO REVOKE
BERNARD TIMBERS WATER SUPPLY CORPORATION'S
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas (PUC) files this Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity (Petition) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

I. INTRODUCTION

For the reasons discussed below, the water service Certificate of Public Convenience and Necessity (CCN) No. 12486, and sewer service CCN No. 20735 for Bernard Timbers Water Supply Corporation (Bernard Timbers) should be revoked. On March 19, 1991, the Texas Water Commission issued Bernard Timbers water and sewer CCNs. Upon investigation, Staff has determined that the Public Water System associated with Bernard Timbers is inactive and that the CCNs should be revoked.¹

In the event Bernard Timbers fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Bernard Timbers, granting all relief sought in this Petition. In support of this Petition, PUC Staff respectfully shows the following:

¹Texas Commission on Environmental Quality Drinking Water Watch System Summary Sheet, http://dww2.tceq.texas.gov/DWW/JSP/DataSheet.jsp?tinwsys_is_number=6393&tinwsys_st_code=TX&wsnumber=TX2410014%20%20%20&DWWState=TX&begin_date=&end_date=&counter (Activity Status: "I - INACTIVE" as of 03/17/2014) (last visited July 27, 2016) [hereinafter *TCEQ DWW*].

II. JURISDICTION AND LEGAL AUTHORITY

The PUC is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.² Pursuant to Tex. Water Code Ann. § 13.242 (West Supp. 2014) (TWC), a “water supply or sewer service corporation may not in any way render retail 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.”

A certificate of convenience and necessity (CCN) 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 A retail public utility is “[a]ny 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

A retail public utility that possesses a CCN is required to provide “continuous and adequate service.”⁵ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁶ As part of this authority, the PUC, “after notice and hearing, may revoke or amend any” CCN if the PUC finds that “the certificate holder has never provided, 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.”⁷

Pursuant to the contested case provisions of the Administrative Procedure Act,⁸ a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, where the party may respond to and present evidence and argument on each issue involved in the case.⁹ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a

² Tex. Water Code Ann. § 13.041 (West Supp. 2014) (TWC).

³ 16 Tex. Admin. Code § 24.3(15) (TAC).

⁴ TWC § 13.002(19) and 16 TAC § 24.3(58).

⁵ See TWC § 13.250(a) and 16 TAC § 24.114.

⁶ TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

⁷ *Id.*

⁸ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁹ APA §§ 2001.051-.178.

default occurs.¹⁰ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.¹¹

III. FACTUAL ALLEGATIONS

On March 19, 1991, Bernard Timbers was granted CCN Nos. 12486 and 20735.¹² In the fall of 2015, Staff sent a letter to all investor owned water and sewer utilities regarding the Water and Wastewater Annual Reports. On November 30, 2015, the copy of this letter addressed to Bernard Timbers was returned to Staff unopened.

Staff opened an investigation into the proper address for Bernard Timbers. During the investigation, Staff discovered that the public water system (PWS) associated with the CCNs is inactive. The utility has ceased to operate and is listed as "Inactive" on the TCEQ's "Water System Summary Sheet."¹³ The area covered by CCN Nos. 12486 and 20735 is now served by the Wharton County Water Control and Improvement District (WCID) 2.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Bernard Timbers' CCN Nos. 12486 and 20735 because Bernard Timbers is no longer in business and the facilities it used to provide continuous and adequate service are inactive.¹⁴ Additionally, the customers are currently receiving service from the Wharton County WCID 2. For the above stated reasons, Staff recommends revocation of CCN Nos. 12486 and 20735 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.113(a)(1).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC § 22.54 requires Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.¹⁵ In license revocation proceedings, it is required that notice be given "by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action."¹⁶ In order to proceed on a default basis, 16 TAC § 22.183 requires Staff to provide notice by certified mail, return receipt requested: (a) to a certificate holder's last known address in the Commission's records; (b) to the person's registered agent for process on file with the Secretary of State; or (3)

¹⁰ 16 TAC § 22.183.

¹¹ APA § 2001.056(4) and 16 TAC § 22.183.

¹² CCN Nos. 12486 and 20735 covers an area approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive (*see* Attachments 1-4).

¹³ TCEQ DWW, *supra* note 1.

¹⁴ *See* TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

¹⁵ APA §§ 2001.001-.902.

¹⁶ *Id.* at § 2001.054

to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Staff will provide a copy of this petition by certified mail, return receipt requested, to the Bernard Timbers owner's last known address in the TCEQ's records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the president of Bernard Timbers on file with the TCEQ:

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the emergency contact address used in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435

Pursuant to 16 TAC § 22.183, Staff hereby notifies Bernard Timbers that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Bernard Timbers fails to request a hearing within 30 days after service of the Petition. The purpose of a hearing on the merits is to consider revocation of Bernard Timbers' CCN Nos. 12486 and 20735.

The factual allegations listed in Staff's Petition and Notice of Opportunity for a Hearing could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

VI. REQUEST

Staff respectfully requests that the Commission grant Staff's request to revoke Bernard Timbers' CCN Nos. 12486 and 20735. In the event that Bernard Timbers fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to Bernard Timbers, revoking CCN Nos. 12486 and 20735.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'W. Patrick Dinnin', is written over a horizontal line.

W. Patrick Dinnin
Attorney - Oversight and Enforcement Division
State Bar No: 24097603
(512) 936-7285
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on July 27, 2016, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Bernard Timbers Water Supply Corporation (Bernard Timbers) in the Commission's records, to addresses used in the Texas Commission on Environmental Quality (TCEQ) proceedings, to the address for the registered agent for process on file with the Secretary of State, and to the address for the director of Bernard Timbers on file with the Secretary of State:

Bernard Timbers owner's Last Known Address in Commission Records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Address used for the president in TCEQ records:

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Address for the emergency contact for Bernard Timbers in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

Address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435



W. Patrick Dinnin
Attorney - Oversight and Enforcement Division
State Bar No. 24097603
(512) 936-7285
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attachment 1

Sewer Service Certificate of Convenience and Necessity No.
20735

THE STATE OF TEXAS
COUNTY OF TRAVIS
TEXAS WATER COMMISSION



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on

APR 02 1991

Gloria A. Vasquez

Gloria A. Vasquez, Chief Clerk

CERTIFICATE OF CONVENIENCE AND NECESSITY
Texas Water Commission

To Provide Sewer Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 20735

I. Certificate Holder:

Name: Bernard Timbers Water Supply Corporation
(not Article 1434a sewer service corporation)
Address: P. O. Box 755
East Bernard, Texas 77435

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive. The service area is generally bounded on the east and south by the San Bernard River and on the west by West Bernard Drive in Wharton County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide sewer service in the area identified on the Commission's official sewer service area map, WRS-241, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: MAR 19 1991

ATTEST: *Gloria A. Vasquez* *BMW* — *JE*
For the Commission

Attachment 2

Map of Sewer Service Certificate of Convenience and Necessity
No. 20735

The map shows the Wharton, Texas area. A building is marked with a crosshair and labeled 'Kukri' at the intersection of Highway 60 and Highway 90A. The map includes labels for various streets such as Main St, East St, and Highway 60. The area is bounded by a dashed line, and the map is oriented with North at the top.

TxDOT Counties

Sources Esri, HERE, DeLorme, USGS, Intermap, increment P Corp.,
 NRCan, Esri Japan, METI, Esri China (Hong Kong), Swis (Thailand).

Attachment 3

Water Service Certificate of Convenience and Necessity No.
12486

THE STATE OF TEXAS
COUNTY OF TRAVIS

TEXAS WATER COMMISSION

I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
APR 02 1991



Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 12486

I. Certificate Holder:

Name: Bernard Timbers Water Supply Corporation
(not Article 1434a water supply corporation)
Address: P. O. Box 755
Fast Bernard, Texas 77435

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive. The service area is generally bounded on the east and south by the San Bernard River and on the west by West Bernard Drive in Wharton County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-241, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: MAR 19 1991

ATTEST: *Gloria A. Vasquez* *BW* *—*
For the Commission

Attachment 4

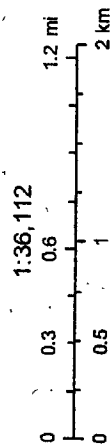
Map of Water Services Certificate of Convenience and
Necessity No. 12486

The map shows the Wharton area in Texas. Key features include:

- Highways:** US-90-ALT, TX-60 Highway 60, County Road 291, and Highway 90A.
- Streets:** Main St, East St, Bernard St, Church St, Franklin St, College St, and Second St.
- Location:** The Wharton State Prison is located near the intersection of US-90-ALT and Kirkland Rd.
- Other Labels:** Wharton, East Bernard Dr, and various other local roads and landmarks.

 CCN_WATERtrim

TxDOT Counties



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand).

Attachment 2

Affidavit of Tasha Lopez

DOCKET NO. 46225

**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**

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§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

AFFIDAVIT OF TASHA LOPEZ

STATE OF TEXAS §
TRAVIS COUNTY §

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

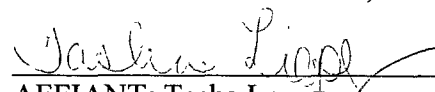
"My name is Tasha Lopez. I am the legal assistant in the Oversight & Enforcement Division of the Public Utility Commission of Texas (Commission). I am over the age of twenty-one and I am competent to make this Affidavit. In accordance with 16 TAC § 22.183(b), I mailed, by certified mail, return receipt requested, a copy of Commission Staff's Petition to Revoke Bernard Timbers Certificate of Public Convenience and Necessity and Notice of Opportunity for A Hearing on July 28, 2016, (filed on July 27, 2016 - filed after deadline for certified mail to be processed) to the last known addresses(s) of Bernard Timbers Water Supply Corporation, and were delivered, attached as Exhibit A:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Ed Vacek
P. O. Box 755
East Bernard, TX 77435

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639


AFFIANT: Tasha Lopez

SWORN TO AND SUBSCRIBED BEFORE ME this 27th day of October 2016.



Notary without Bond

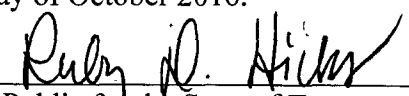

Notary Public for the State of Texas

Exhibit A

Receipt from Certified Mailing

Ship Request Form

Ship Request #: 058964



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804580

Recipient

Attn To: Bernard Timbers WSC
Company: Bernard Timbers WSC
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

Items

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Tracking Number: 917199999170 3104804580

On Time

Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

Postal Product:
First-Class Mail®Features:
Certified Mail™[Return Receipt Electronic](#)

DATE & TIME	STATUS OF ITEM	LOCATION
July 30, 2016 , 10:42 am	Delivered	EAST BERNARD, TX 77435

Your item was delivered at 10 42 am on July 30, 2016 in EAST BERNARD, TX 77435

July 30, 2016 , 8:37 am	Available for Pickup	EAST BERNARD, TX 77435
July 30, 2016 , 8 29 am	Arrived at Unit	EAST BERNARD, TX 77435
July 29, 2016 , 10:22 pm	Departed USPS Destination Facility	NORTH HOUSTON, TX 77315
July 29, 2016 , 11 01 am	Arrived at USPS Destination Facility	NORTH HOUSTON, TX 77315
July 29, 2016 , 3:58 am	Departed USPS Facility	AUSTIN, TX 78710
July 28, 2016 , 10:46 pm	Arrived at USPS Origin Facility	AUSTIN, TX 78710
July 28, 2016 , 9:31 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701
July 28, 2016	Pre-Shipment Info Sent to USPS, USPS Awaiting Item	

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Tracking (or receipt) number

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Ship Request Form

Ship Request #: 058974



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7086
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804610

Recipient

Attn To: Edward Vacek
Company: Edward Vacek
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

Items

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

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Tracking Number: 917199999170 3104804610

On Time

Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

Postal Product:
First-Class Mail®Features:
Certified Mail™

DATE & TIME

STATUS OF ITEM

LOCATION

July 30, 2016 , 10:42 am

Delivered

EAST
BERNARD, TX 77435

Your item was delivered at 10 42 am on July 30, 2016 in EAST BERNARD, TX 77435

July 30, 2016 , 8:37 am

Available for Pickup

EAST BERNARD, TX 77435

July 30, 2016 , 8:29 am

Arrived at Unit

EAST BERNARD, TX 77435

July 29, 2016 , 10 22 pm

Departed USPS Destination
FacilityNORTH
HOUSTON, TX 77315

July 29, 2016 , 11:01 am

Arrived at USPS Destination
FacilityNORTH
HOUSTON, TX 77315

July 29, 2016 , 3:58 am

Departed USPS Facility

AUSTIN, TX 78710

July 28, 2016 , 10:48 pm

Arrived at USPS Origin
Facility

AUSTIN, TX 78710

July 28, 2016 , 9:33 pm

* Accepted at USPS Origin
Facility

AUSTIN, TX 78701

July 28, 2016

Pre-Shipment Info Sent to
USPS, USPS Awaiting Item

Available Actions

[Return Receipt Electronic](#)

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Tracking (or receipt) number

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Ship Request Form

Ship Request #: 058967



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804597

Recipient

Attn To: Weldon Ferrell
Company: Weldon Ferrell
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

Items

Units	Description	Code	Origin	Unit Value	Total Value
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Tracking Number: 917199999170 3104804597

On Time

Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

Postal Product:
First-Class Mail®Features:
Certified Mail™**DATE & TIME****STATUS OF ITEM****LOCATION**

July 30, 2016 , 10:42 am

Delivered

EAST
BERNARD, TX 77435

Your item was delivered at 10 42 am on July 30, 2016 in EAST BERNARD, TX 77435

July 30, 2016 , 8:37 am

Available for Pickup

EAST BERNARD, TX 77435

July 30, 2016 , 8:29 am

Arrived at Unit

EAST BERNARD, TX 77435

July 29, 2016 , 10:22 pm

Departed USPS Destination
FacilityNORTH
HOUSTON, TX 77315

July 29, 2016 , 11:01 am

Arrived at USPS Destination
FacilityNORTH
HOUSTON, TX 77315

July 29, 2016 , 3:58 am

Departed USPS Facility

AUSTIN, TX 78710

July 28, 2016 , 10:46 pm

Arrived at USPS Origin
Facility

AUSTIN, TX 78710

July 28, 2016 , 9:31 pm

Accepted at USPS Origin
Facility

AUSTIN, TX 78701

July 28, 2016

Pre-Shipment Info Sent to
USPS, USPS Awaiting Item

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Ship Request Form

Ship Request #: 058972



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7086
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804603

Recipient

Attn To: Edward Vacek
Company: Edward Vacek
Address: PO Box 639
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

Items

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Available Actions

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July 28, 2016 , 9 33 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701
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Attachment 3

Proposed Default Order

DOCKET NO. 46225

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

PROPOSED DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke the Certificates of Public Convenience and Necessity (CCN) of Bernard Timbers Water Supply Corporation (Bernard Timbers) regarding Bernard Timbers' violations of the Texas Water Code and Commission rules. Commission Staff and Bernard Timbers are the only parties to this proceeding. Commission Staff's petition is granted and Bernard Timbers' CCNs is revoked.

I. Background

Bernard Timbers is a retail public utility that operated under water service CCN No. 12486 and sewer service CCN No. 20735. On March 19, 1991, the Texas Water Commission issued Bernard Timbers water and sewer CCNs.¹ In the fall of 2015, Staff sent a letter to all investor owned water and sewer utilities regarding the Water and Wastewater Annual Reports. On November 30, 2015, the copy of this letter addressed to Bernard Timbers was returned to Staff unopened.

Commission Staff opened an investigation into the proper address for Bernard Timbers. During the investigation, Commission Staff discovered that the public water system (PWS) associated with the CCNs is inactive. The utility has ceased to operate and is listed as "Inactive" on the TCEQ's "Water System Summary Sheet."² The area covered by CCN Nos. 12486 and 20735 is now served by the Wharton County Water Control and Improvement District (WCID) 2.

¹ CCN Nos. 12486 and 20735 cover an area approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive.

² Texas Commission on Environmental Quality Drinking Water Watch System Summary Sheet, http://dww2.tceq.texas.gov/DWW/JSP/DataSheet.jsp?tinwsys_is_number=6393&tinwsys_st_code=TX&wsnumber=TX2410014%20%20%20&DWWState=TX&begin_date=&end_date=&counter (Activity Status: "I – INACTIVE" as of 03/17/2014) (last visited October 21, 2016).

On July 27, 2016, Staff filed its Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity and Notice of Opportunity for a Hearing (Petition) pursuant to Tex. Water Code Ann. § 13.254 (TWC) and 16 TAC § 24.113. Staff alleged that Bernard Timbers was in violation of TWC § 13.250(a) and 16 TAC § 24.114 for failing to provide continuous and adequate service because Bernard Timbers is no longer in business. Additionally, the customers are currently receiving service from the Wharton County WCID 2.

Commission Staff's Petition also included the Notice of Opportunity for a Hearing and, pursuant to 16 TAC § 22.183, notified Bernard Timbers in at least 12 point, bolded font that the factual allegations in the petition could be deemed admitted and the relief sought granted by default if Bernard Timbers failed to request a hearing within 30 days after service of the Petition and Notice of Opportunity for a Hearing. Bernard Timbers did not request a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing was provided.

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

II. Findings of Fact

1. Bernard Timbers is a retail public utility that operated under water service CCN No. 12486 and sewer service CCN No. 20735.
2. Bernard Timbers is incapable of providing service and failed to provide continuous and adequate service in the area covered by CCN Nos. 12486 and 20735.
3. Bernard Timbers is no longer in business and is inactive.
4. On July 27, 2016, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Bernard Timbers' CCNs.³
5. The Petition and Notice of Opportunity for Hearing included the required disclosure in at least twelve-point, bold-face type.⁴
6. The Petition and Notice of Opportunity for Hearing was sent by certified mail to the owner of Bernard Timbers' last known address in the TCEQ's records, the last known address of the president of Bernard Timbers on file with the TCEQ, the emergency

³ Commission Staff's Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity and Notice of Opportunity for a Hearing, July 27, 2016.

⁴ See *id.*

contact address used in TCEQ records and to the address for the registered agent for process on file with the Secretary of State.⁵

7. More than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.
8. Bernard Timbers has not requested a hearing on the merits.

III. Conclusions of Law

1. TWC § 13.242 provides that a "utility ... may not in any way render ... 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. 16 TAC § 24.3(15) defines a CCN 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 utility service to a specified geographic area."
3. 16 TAC § 24.3(58) defines a retail public utility 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 CCN to provide "continuous and adequate service."
5. If the commission finds that a retail public utility that possesses a CCN "has never provided, 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" in violation of TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.113.
6. A presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.056(4) (West 2008 & Supp. 2014) (APA) and 16 TAC § 22.183 if the defaulting party fails to request a hearing within 30 days of the notice of an opportunity for a hearing.

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

7. Pursuant to 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

IV. Ordering Paragraphs

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

1. Commission Staff's Petition is granted.
2. Bernard Timbers' CCN Nos. 12486 and 20735 are revoked.
3. 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 on the _____ day of November, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET MANAGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

TEXAS WATER COMMISSION

I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
APR 02 1991



Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 12486

I. Certificate Holder:

Name: Bernard Timbers Water Supply Corporation
(not Article 1434a water supply corporation)
Address: P. O. Box 755
Fast Bernard, Texas 77435

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive. The service area is generally bounded on the east and south by the San Bernard River and on the west by West Bernard Drive in Wharton County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-241, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: MAR 19 1991

ATTEST: *Gloria A. Vasquez* *BW* *JH*
For the Commission

Attachment 4

Map of Water Services Certificate of Convenience and
Necessity No. 12486



The map displays the Wharton, Texas area, with the Wharton State Prison highlighted by a star. Key features include:

- Highways:** US-90, TX-60, and County Road 291 are shown.
- Streets:** Main St, East St, West St, and others are labeled.
- Location:** The prison is located near the intersection of US-90 and TX-60.
- Orientation:** North is indicated at the top of the map.

 CCN_WATERtrim

TxDOT Counties

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand).

Attachment 2

Affidavit of Tasha Lopez

DOCKET NO. 46225

**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**

AFFIDAVIT OF TASHA LOPEZ

STATE OF TEXAS
TRAVIS COUNTY

§
§

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

"My name is Tasha Lopez. I am the legal assistant in the Oversight & Enforcement Division 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 TAC § 22.183(b), I mailed, by certified mail, return receipt requested, a copy of Commission Staff's Petition to Revoke Bernard Timbers Certificate of Public Convenience and Necessity and Notice of Opportunity for A Hearing on July 28, 2016, (filed on July 27, 2016 - filed after deadline for certified mail to be processed) to the last known addresses(s) of Bernard Timbers Water Supply Corporation, and were delivered, attached as Exhibit A:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Ed Vacek
P. O. Box 755
East Bernard, TX 77435

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

AFFIANT: Tasha Lopez

SWORN TO AND SUBSCRIBED BEFORE ME this ____ day of October 2016.

Notary Public for the State of Texas

Exhibit A

Receipt from Certified Mailing

Ship Request Form

Ship Request #: 058964



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804580

Recipient

Attn To: Bernard Timbers WSC
Company: Bernard Timbers WSC
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

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DATE & TIME

STATUS OF ITEM

LOCATION

July 30, 2016 , 10:42 am

Delivered

EAST
BERNARD, TX 77435

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July 30, 2016 , 8:37 am	Available for Pickup	EAST BERNARD, TX 77435
July 30, 2016 , 8:29 am	Arrived at Unit	EAST BERNARD, TX 77435
July 29, 2016 , 10:22 pm	Departed USPS Destination Facility	NORTH HOUSTON, TX 77315
July 29, 2016 , 11:01 am	Arrived at USPS Destination Facility	NORTH HOUSTON, TX 77315
July 29, 2016 , 3:58 am	Departed USPS Facility	AUSTIN, TX 78710
July 28, 2016 , 10:46 pm	Arrived at USPS Origin Facility	AUSTIN, TX 78710
July 28, 2016 , 9:31 pm	Accepted at USPS Origin Facility	AUSTIN, TX 78701
July 28, 2016	Pre-Shipment Info Sent to USPS, USPS Awaiting Item	

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Ship Request Form

Ship Request #: 058974



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7086
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804610

Recipient

Attn To: Edward Vacek
Company: Edward Vacek
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

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Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Updated Delivery Day: Saturday, July 30, 2016

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Postal Product:

First-Class Mail®

Features:

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DATE & TIME

July 30, 2016 , 10:42 am

STATUS OF ITEM

Delivered

LOCATIONEAST
BERNARD, TX 77435

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Ship Request Form

Ship Request #: 058967



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7401
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

eRR Track: 9171999991703104804597

Recipient

Attn To: Weldon Ferrell
Company: Weldon Ferrell
Address: PO Box 755
City: East Bernard
State: TX
Zip: 77435
Country: US

Shipping Instructions

Docket 46225

Items

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Postal Product:
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STATUS OF ITEM

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Ship Request #: 058972



Sender

Name: Tasha Lopez
Account #: 47300 PUC
Phone: 512-936-7086
Email: tasha.lopez@puc.texas.gov
Company: Public Utility Commission

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Proposed Default Order

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PETITION TO REVOKE BERNARD	§	PUBLIC UTILITY COMMISSION
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CORPORATION'S CERTIFICATE OF	§	
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NECESSITY PURSUANT TO TEX.	§	
WATER CODE ANN. § 13.254 AND 16	§	
TAC § 24.113		

PROPOSED DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke the Certificates of Public Convenience and Necessity (CCN) of Bernard Timbers Water Supply Corporation (Bernard Timbers) regarding Bernard Timbers' violations of the Texas Water Code and Commission rules. Commission Staff and Bernard Timbers are the only parties to this proceeding. Commission Staff's petition is granted and Bernard Timbers' CCNs is revoked.

I. Background

Bernard Timbers is a retail public utility that operated under water service CCN No. 12486 and sewer service CCN No. 20735. On March 19, 1991, the Texas Water Commission issued Bernard Timbers water and sewer CCNs.¹ In the fall of 2015, Staff sent a letter to all investor owned water and sewer utilities regarding the Water and Wastewater Annual Reports. On November 30, 2015, the copy of this letter addressed to Bernard Timbers was returned to Staff unopened.

Commission Staff opened an investigation into the proper address for Bernard Timbers. During the investigation, Commission Staff discovered that the public water system (PWS) associated with the CCNs is inactive. The utility has ceased to operate and is listed as "Inactive" on the TCEQ's "Water System Summary Sheet."² The area covered by CCN Nos. 12486 and 20735 is now served by the Wharton County Water Control and Improvement District (WCID) 2.

¹ CCN Nos. 12486 and 20735 cover an area approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive.

² Texas Commission on Environmental Quality Drinking Water Watch System Summary Sheet, http://dww2.tceq.texas.gov/DWW/JSP/DataSheet.jsp?tinwsys_is_number=6393&tinwsys_st_code=TX&wsnumber=TX2410014%20%20%20&DWWState=TX&begin_date=&end_date=&counter (Activity Status: "I - INACTIVE" as of 03/17/2014) (last visited October 21, 2016).

On July 27, 2016, Staff filed its Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity and Notice of Opportunity for a Hearing (Petition) pursuant to Tex. Water Code Ann. § 13.254 (TWC) and 16 TAC § 24.113. Staff alleged that Bernard Timbers was in violation of TWC § 13.250(a) and 16 TAC § 24.114 for failing to provide continuous and adequate service because Bernard Timbers is no longer in business. Additionally, the customers are currently receiving service from the Wharton County WCID 2.

Commission Staff's Petition also included the Notice of Opportunity for a Hearing and, pursuant to 16 TAC § 22.183, notified Bernard Timbers in at least 12 point, bolded font that the factual allegations in the petition could be deemed admitted and the relief sought granted by default if Bernard Timbers failed to request a hearing within 30 days after service of the Petition and Notice of Opportunity for a Hearing. Bernard Timbers did not request a hearing on the merits and more than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing was provided.

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

II. Findings of Fact

1. Bernard Timbers is a retail public utility that operated under water service CCN No. 12486 and sewer service CCN No. 20735.
2. Bernard Timbers is incapable of providing service and failed to provide continuous and adequate service in the area covered by CCN Nos. 12486 and 20735.
3. Bernard Timbers is no longer in business and is inactive.
4. On July 27, 2016, Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Bernard Timbers' CCNs.³
5. The Petition and Notice of Opportunity for Hearing included the required disclosure in at least twelve-point, bold-face type.⁴
6. The Petition and Notice of Opportunity for Hearing was sent by certified mail to the owner of Bernard Timbers' last known address in the TCEQ's records, the last known address of the president of Bernard Timbers on file with the TCEQ, the emergency

³ Commission Staff's Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity and Notice of Opportunity for a Hearing, July 27, 2016.

⁴ See *id.*

contact address used in TCEQ records and to the address for the registered agent for process on file with the Secretary of State.⁵

7. More than 30 days have passed since service of the Petition and Notice of Opportunity for Hearing.
8. Bernard Timbers has not requested a hearing on the merits.

III. Conclusions of Law

1. TWC § 13.242 provides that a "utility ... may not in any way render ... 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. 16 TAC § 24.3(15) defines a CCN 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 utility service to a specified geographic area."
3. 16 TAC § 24.3(58) defines a retail public utility 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 CCN to provide "continuous and adequate service."
5. If the commission finds that a retail public utility that possesses a CCN "has never provided, 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" in violation of TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.113.
6. A presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.056(4) (West 2008 & Supp. 2014) (APA) and 16 TAC § 22.183 if the defaulting party fails to request a hearing within 30 days of the notice of an opportunity for a hearing.

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

7. Pursuant to 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

IV. Ordering Paragraphs

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

1. Commission Staff's Petition is granted.
2. Bernard Timbers' CCN Nos. 12486 and 20735 are revoked.
3. 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 on the _____ day of November, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET MANAGEMENT