



Control Number: 46225



Item Number: 6

Addendum StartPage: 0

DOCKET NO. 46225

PETITION TO REVOKE §
CERTIFICATES OF PUBLIC §
CONVENIENCE AND NECESSITY §
NOS. 12486 & 20735 PURSUANT TO §
TEX. WATER CODE § 13.254 AND 16 §
TEX. ADMIN. CODE § 24.113 §

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OF TEXAS

STAFF'S PROOF OF NOTICE

On July 27, 2016 Staff filed the Petition and Notice of Opportunity for Hearing seeking revocation of Bernard Timbers WSC'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 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 Tex. Admin. Code § 22.183 (TAC) 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 (c) to an address for the party identified after reasonable investigation if the first two options are not applicable.

The Commission does not have an address for Bernard Timbers WSC in its records, however, Commission Staff located the address on file with the Secretary of State. Additionally, after a reasonable investigation, the addresses Commission Staff have been able to find associated with Bernard Timbers WSC are those on file at TCEQ for its last known address, president, and emergency contact.

In accordance with these provisions, 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 Staff sent a copy of the Petition and Notice of Opportunity for a Hearing by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

¹ See attached Petition and Notice of Opportunity for Hearing (Attachment 1).

² Tex. Gov't Code § 2001.054.

³ See Affidavit of Tasha Lopez, Attachment 2; see also Attachment 3, Receipts from the Certified Mail Label.

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

Staff also provided 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

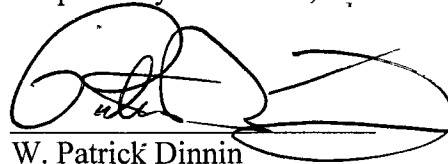
Staff also provided a copy of this petition by certified mail, return receipt requested, to the address for the president of Bernard Timbers on file with the TCEQ:

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

Staff also provided 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

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 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on November 10, 2016, pursuant to 16 Texas. Admin. Code § 22.183(b)(2), a copy of this document was sent 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 also provided a copy of this document 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 this document 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 this document 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



W. Patrick Dinnin
Attorney, Oversight and Enforcement Division
State Bar No. 24097603
(512) 936-7285 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attachment 1

Petition to Revoke and Notice and Opportunity for a Hearing

DOCKET NO. **46225**

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

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**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 dark ink, appearing to read 'W. Patrick Dinnin', with a long horizontal flourish extending to the right.

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 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

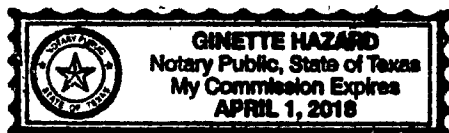
Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

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

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

Tasha Lopez
AFFIANT: Tasha Lopez

SWORN TO AND SUBSCRIBED BEFORE ME this 10 day of November 2016.



Notary without Bond

Ginette Hazard
Notary Public for the State of Texas

Attachment 3

Receipts from the Certified Mail Label

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

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Units	Description	Code	Origin	Unit Value	Total Value
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On Time

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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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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

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Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

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Certified Mail™

DATE & TIME

July 30, 2016, 10:42 am

STATUS OF ITEM

Delivered

LOCATION

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

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USPS, USPS Awaiting Item

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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

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Units	Description	Code	Origin	Unit Value	Total Value
0.00					

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Tracking Number: 9171999991703104804597

On Time

Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

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

Available Actions

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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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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

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0.00					

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On Time

Updated Delivery Day: Saturday, July 30, 2016

Product & Tracking Information

Postal Product:
First-Class Mail®Features:
Certified Mail™**DATE & TIME**

July 30, 2016 , 10:42 am

STATUS OF ITEM

Delivered

LOCATIONEAST
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

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