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DOCKET NO. 50197

APPLICATION OF TIMBERCREST
PARTNERS LLC FOR AUTHORITY
TO CHANGE RATES

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PUBLIC UTILITY COMMISSION
BY
FILING CLERK
OF TEXAS



**COMMISSION STAFF'S REPLY TO TIMBERCREST PARTNERS LLC'S RESPONSE
TO COMMISSION STAFF'S REQUEST TO DECLASSIFY AND SUPPLEMENTAL
RECOMMENDATION ON THE APPLICATION AND NOTICE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Reply to Timbercrest Partners LLC's Response to Commission Staff's Request to Declassify and Supplemental Recommendation on the Application and Notice. In support thereof, Staff shows the following:

I. BACKGROUND

On January 17, 2020, Timbercrest Partners, LLC (Timbercrest) filed an application for a Class C annual rate adjustment for its water and sewer customers under Texas Water Code (TWC) § 13.1872 and 16 Texas Administrative Code (TAC) § 24.49.

On February 20, 2020, the administrative law judge (ALJ) issued Order No. 2, finding the application incomplete and deficient and directing Timbercrest to supplement the application to cure the deficiencies by March 9, 2020. On April 16, 2020, and April 20, 2020, Timbercrest filed supplemental information to its application in response to the deficiencies cited in Staff's recommendation, including confidential information.

On May 8, 2020, Staff filed a Motion to Declassify Confidential Materials. On May 15, 2020, Timbercrest filed its Response to Commission Staff's Request to Declassify.

On May 21, 2020, the ALJ issued Order No. 4, establishing a deadline of June 8, 2020, for Staff to file a reply to Timbercrest's response and to file a supplemental recommendation on the application and notice. Therefore, this pleading is timely filed.

**II. REPLY TO TIMBERCREST PARTNERS LLC'S RESPONSE TO COMMISSION
STAFF'S REQUEST TO DECLASSIFY**

On April 16, 2020, Timbercrest filed Item No. 8 in this docket titled "Timbercrest Partner's Response to Order No. 2 (Infrastructure Division)." In that filing, Timbercrest filed portions of its

original cost trending study confidentially. Timbercrest justified filing the information confidentially by stating that, “The related Excel file is Confidential pursuant to the Protective Order issued in Docket 50197.”¹ However, no protective order was yet issued in this docket. Staff requested the confidential materials be declassified.

On May 15, Timbercrest filed its response to Staff’s request to declassify, arguing that “[c]ounsel for Timbercrest has routinely filed this information as confidential without any concern from Staff or other parties,” and that “this information is proprietary trade secret information of Handy and Whitman, which Timbercrest cannot disclose without confidentiality agreements.”² While Staff is aware of the fact that Handy Whitman is a copyrighted publication, Staff would point to other Commission dockets, namely Docket No. 43069, in which the Handy Whitman indexes in the worksheet for the trending study were not filed confidentially.³ Timbercrest, however, confidentially filed the Handy Whitman indexes in the worksheet for the trending study, and also redacted information within them. Staff’s position remains that Timbercrest has not met its burden of proof under the Public Information Act (PIA) to show that this information should be filed confidentially. Staff requests that Timbercrest be required to file this information publicly and unredacted, and that Timbercrest reference the content of the Handy Whitman index it used to prepare its utility plant trending study.

Timbercrest also stated in its response that “[t]his information is not available to the general public without purchasing it from Handy and Whitman.”⁴ While Staff acknowledges this, it requests that Timbercrest be required to provide a link to the location where the Handy Whitman Indexes can be purchased and viewed by the public, if they so choose, as was done in Docket No. 43069.⁵

¹ Timbercrest Partners LLC’s Response to Order No. 2 (Infrastructure Department Memorandum) at 1 (April 16, 2020).

² Timbercrest Partners LLC Response to Commission Staff’s Request to Declassify, Request for Entry of Protective Order and Request for Electronic Service of Pleadings at 1 (May 15, 2020).

³ *Application of Inline Development LLC for a Rate/Tariff Change*, Docket No. 43069, Inline Development LLC’s Supplemental Application Information, Request to Remove Abatement, and Revised Procedural Schedule (Feb 2, 2016).

⁴ Timbercrest Partners LLC Response to Commission Staff’s Request to Declassify, Request for Entry of Protective Order and Request for Electronic Service of Pleadings at 2 (May 15, 2020).

⁵ “The Handy-Whitman Index is through a copyrighted, subscription service available at <https://www.wrallp.com/aboutus/handy-whitman-index>.” *Application of Inline Development LLC for a Rate/Tariff Change*, Docket No. 43069, Inline Development LLC’s Supplemental Application Information, Request to Remove Abatement, and Revised Procedural Schedule at 21 (Feb 2, 2016).

III. SUPPLEMENTAL RECOMMENDATION ON THE APPLICATION AND NOTICE

Staff has reviewed the application and supplemental information filed by Timbercrest, and, as detailed in the attached memoranda of Leila Guerrero, Rate Regulation Division and Heidi Graham, Infrastructure Division, recommends that Timbercrest's application be found sufficient and administratively complete. However, as detailed in Ms. Guerrero's memorandum, Staff recommends suspension of the proposed effective date and that the Commission order Timbercrest to provide notice to all of the affected ratepayers with an updated effective date to satisfy the notice requirements in 16 TAC § 24.27(d) to provide notice at least 35 days before the effective date of the proposed rate change. In addition, Staff recommends that the Commission order Timbercrest to refund any increases charged for services rendered prior to the Commission-approved effective date.

IV. CONCLUSION

Staff respectfully requests that the ALJ order Timbercrest to file the confidential information publicly and unredacted and order Timbercrest to provide a link to the location where the Handy Whitman Indexes can be purchased and viewed by the public. In addition, Staff respectfully requests that the ALJ find the application administratively complete, order that the effective date of rates be suspended, order Timbercrest to provide notice to affected ratepayers with an updated effective date that satisfies the notice requirements in 16 TAC § 24.27(d), and order Timbercrest to refund any increases charged for services rendered prior to the Commission-approved effective date.

Dated: June 8, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on June 8, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Taylor P. Denison
Taylor P. Denison

Public Utility Commission of Texas

Memorandum

TO: Taylor Denison, Attorney
Legal Division

FROM: Heidi Graham, Program Specialist VII
Infrastructure Division

DATE: June 8, 2020

SUBJECT: **Docket No. 50197:** *Application of Timbercrest Partners LLC for Authority to Change Rates*

On January 17, 2020, Timbercrest Partners LLC (Timbercrest or Applicant) filed a Class C Rate Change Application with the Public Utility Commission of Texas (Commission) for water and sewer service provided in Harris County under Certificate of Convenience and Necessity Nos. 11744 and 20583. An administrative review of the application has been made according to Texas Water Code (TWC) §§ 13.1871, 13.18715, 13.1872, and 16 Texas Administrative Code (TAC) §§ 24.25 through 24.33.

After review of the application and the supplemental information filed by the Applicant on April 16, 2020, Staff recommends that the application be found administratively complete.

Public Utility Commission of Texas

Memorandum

TO: Taylor Denison, Attorney
Legal Division

FROM: Leila Guerrero, Regulatory Accountant/Auditor
Rate Regulation Division

DATE: June 8, 2020

SUBJECT: **Docket No. 50197:** *Application of Timbercrest Partners LLC for Authority to Change Rates*

On January 17, 2020, Timbercrest Partners LLC (Timbercrest or Applicant) filed a Class C Rate Change Application with the Public Utility Commission of Texas (Commission) for service provided in Harris County under Certificate of Convenience and Necessity (CCN) Nos. 11744 and 20583, for water and sewer respectively. An administrative review of the application and notice has been made pursuant to Texas Water Code (TWC) §§ 13.1871, 13.18715, 13.1872, and 16 Texas Administrative Code (TAC) §§ 24.25 through 24.33.

Timbercrest provides water and sewer utility service to less than 500 connections and is considered a Class D utility in Texas. However, Timbercrest filed using the Class C rate change application due to the size of the increase.

After review of the application and the supplemental information filed by the Applicant on April 16, 2020, Staff recommends that the application be found administratively complete and sufficient pursuant to 16 TAC §§ 24.8(a) and 24.27(d).

In addition, the Applicant provided notice of the proposed rate change to the ratepayers on January 15, 2020, with an effective date of February 7, 2020, which is less than the required 35 days.¹ Staff recommends suspension of the proposed effective date. Furthermore, Staff recommends that the Commission order the Applicant to provide notice to all the affected ratepayers with an updated effective date to satisfy the notice requirements in 16 TAC § 24.27(d) at least 35 days before the effective date of the proposed rate change. Finally, Staff recommends that the Commission order the Applicant to refund any increases charged for services rendered prior to the Commission-approved effective date.

¹ "In order to change rates, a Class B or C utility, or a Class D utility filing under TWC § 13.1872(c)(2), must comply with the following requirements at least 35 days before the effective date of the proposed change." 16 TAC § 24.27(d).