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Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

A handwritten signature in blue ink, appearing to be "LB", written over the typed name of Hunter Burkhalter.

FROM: Hunter Burkhalter
Chief Administrative Law Judge

RE: **Docket No. 53220** – *Petition to Revoke Edward R. Rathgeber, Jr. dba River Timber Water Supply's Certificate of Convenience and Necessity Under Texas Water Code § 13.254 and 16 Texas Administrative Code § 24.245*

DATE: April 13, 2022

Enclosed is the Proposed Default Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Default Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Default Order by April 27, 2022.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 53220

PETITION TO REVOKE EDWARD R.	§	PUBLIC UTILITY COMMISSION
RATHGEBER, JR. DBA RIVER	§	
TIMBER WATER SUPPLY'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY UNDER TEXAS	§	
WATER CODE § 13.254 AND 16 TAC	§	
§ 24.245	§	

PROPOSED DEFAULT ORDER

This Default Order addresses the February 14, 2022 petition of Commission Staff to revoke the water certificate of convenience and necessity (CCN) of Edward R. Rathgeber, Jr. dba River Timber Water Supply for violations of the Texas Water Code (TWC) and Commission rules. The Commission grants the petition, by default, and revokes Mr. Rathgeber's CCN number 12293.

I. Findings of Fact

The Commission makes the following findings of fact.

CCN Holder

1. Mr. Rathgeber is an individual.
2. Multiple spellings of Mr. Rathgeber's name—Rathgerger, Rathgeber—appear in the Commission's records.
3. On January 11, 1993, the Commission issued CCN number 12293 to Mr. Rathgeber dba River Timber.
4. Under CCN number 12293, Mr. Rathgeber dba River Timber is obligated to provide continuous and adequate water service to customers within the boundaries of the CCN's certificated service area in Travis County.

Commission Staff's Petition

5. On February 14, 2022, Commission Staff filed its petition in this proceeding, in which it seeks to revoke Mr. Rathgeber's CCN number 12293 for failure to provide continuous and adequate water service.

6. The petition alleges that Mr. Rathgeber is no longer providing and is incapable of providing continuous and adequate water service and, therefore, the CCN should be revoked.
7. A Commission Staff review of records related to CCN number 12293 indicates Mr. Rathgeber dba River Timber is no longer providing water utility service to customers and any facilities previously used to provide continuous and adequate water service are no longer active.
8. Mr. Rathgeber dba River Timber does not provide and is not capable of providing continuous and adequate service to customers in its certificated service area.

Notice

9. Mr. Rathgeber's last known address in the Commission's records is:
2404 Rutland Drive Suite 104
Austin, Texas 78758
10. On February 14, 2022, Commission Staff sent a copy of the petition by certified mail to Mr. Rathgeber's last known address in the Commission's records identified above.
11. The petition notified Mr. Rathgeber of the legal authority and the Commission's jurisdiction over this matter, cited to particular sections of the statutes and rules involved, and provided a statement of the factual allegations, as provided under Texas Government Code § 2001.052(a).
12. The petition notified Mr. Rathgeber that he was entitled to request a hearing within 30 days after the filing of the petition, and included the following admonition, in at least 12-point, bold-face type:

In accordance with 16 TAC § 22.183, Commission Staff hereby notifies River Timber that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if River Timber fails to request a hearing within 30 days after service of this petition.

Evidentiary Record

13. On March 28, 2022, Commission Staff filed a motion to admit evidence.
14. In Order No. 2 filed on March 29, 2022 the administrative law judge granted the motion and admitted into evidence the affidavit of Rose Puente, and the documents that are

attached to Ms. Puente's affidavit, all of which are identified as attachment one to Commission Staff's March 28, 2022 motion.

Motion for Disposition by Default

15. On March 28, 2022, Commission Staff filed a motion for entry of a default order.
16. On March 28, 2022, Commission Staff sent a copy of the motion for default by certified mail to Mr. Rathgeber's last known address in the Commission's records identified above.

Grounds for Default

17. More than 30 days have passed since service of the petition to Mr. Rathgeber.
18. Mr. Rathgeber did not request a hearing on the merits and did not respond to the petition.
19. More than 15 days have passed since service of the motion for default.
20. Mr. Rathgeber did not respond to the motion for default.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC § 13.254.
2. Mr. Rathgeber is the owner of a retail public utility under TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Under TWC § 13.250(a) and 16 TAC § 24.247, Mr. Rathgeber, as the holder of water CCN number 12293, is obligated to provide water service to every customer and applicant for service within its certificated area who requests water service and meets the terms of Mr. Rathgeber's water service policies, and such service must be continuous and adequate.
4. Because Mr. Rathgeber is no longer providing and is incapable of providing continuous and adequate service in the certificated service area, in violation of TWC § 13.250(a) and 16 TAC § 24.247, the Commission is entitled to revoke CCN number 12293 under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A).
5. Adequate notice was provided to Mr. Rathgeber in compliance with Texas Government Code §§ 2001.052 and 2001.054, and 16 TAC §§ 22.54 and 22.183.

6. Mr. Rathgeber failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing, as provided in 16 TAC § 22.183(a).
7. 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. The Commission deems the allegations in Commission Staff's petition as true.
2. The Commission grants Commission Staff's motion for default order and revokes Mr. Rathgeber's CCN number 12293.
3. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
4. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the ____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER