



Control Number: 53220



Item Number: 8

Peter M. Lake
Chairman

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner

Kathleen Jackson
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

RECEIVED
2022 SEP 28 PM 3:11
PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

All Parties of Record

FROM: Stephen Journeay, Commission Counsel

DATE: 28 September 2022

RE: October 6, 2022 Open Meeting – Item No. XX
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 TAC § 24.245.*

A proposal for decision filed in the above-referenced docket is posted for consideration and action by the Commission. If the Commission adopts the proposal for decision, I recommend the following changes to the Commission's order.

Finding of fact 11 should be modified to remove language that is unnecessary and is not appropriate in a finding of fact.

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).~~

Conclusions of law 2 and 3 should be deleted, and conclusion of law 4 should be modified, to remove language that is unnecessary to the disposition of this proceeding. As long as Mr. Rathgeber holds a certificate of convenience and necessity (CCN), the Commission may revoke the CCN under Texas Water Code § 13.254(a)(1) if he is no longer providing, and is incapable of providing, continuous and adequate service. The fact that not providing continuous and adequate service violates other legal requirements is also irrelevant to this default disposition.



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).

Conclusion of law 5 should be modified to delete an unnecessary citation and to provide more specific citations.

5. Adequate notice was provided to Mr. Rathgeber in compliance with Texas Government Code §§ ~~2001.052~~ and 2001.054(c), and 16 TAC §§ 22.54(a) and 22.183(b).

Conclusion of law 6 should be rewritten as a proper conclusion of law.

6. The Commission may issue a default order under 16 TAC § 22.183(a) and (b) in this proceeding because Mr. Rathgeber failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing. ~~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).~~

The following new ordering paragraph should added for completeness.

- X. The Commission directs Commission Staff to update its records accordingly.

Additionally, the Commission should delegate to the Office of Policy and Docket Management the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

q:\cadm\memos\journeay's open meeting memos\2022-10-06 open meeting\53220 commission counsel memo.docx