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**PUC DOCKET NO. 48342**

**APPLICATION OF GUM ISLAND  
UTILITY FOR AUTHORITY TO  
CHANGE RATES**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

2019 JUN 10 PM 3:31

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 9**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Response to Order No. 9 and would show the following:

**I. BACKGROUND**

On May 3, 2018, Gum Island Utility Company (Gum Island) filed an application as "Whitewing" utility for a Class B rate change. On May 30, 2018, the administrative law judge (ALJ) issued Order No. 2, finding the application and notice deficient and suspending the effective date of the requested rate change in accordance with Texas Water Code (TWC) § 13.1871(e) and 16 Texas Administrative Code (TAC) § 24.26(b)(1).

On August 8, 2018, the ALJ issued Order No. 6, finding the application administratively complete and suspending the effective date of the rate change to 265 days from the date of Gum Island Utility's new proposed effective date, April 1, 2019. On February 12, 2019, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). On March 13, 2019, the Commission issued a request that the SOAH ALJ dismiss the proceeding and remand it back to the Commission for further processing. On March 14, 2019, the SOAH ALJ issued Order No. 2 dismissing the proceeding from the SOAH docket and remanding it to the Commission. On April 25, 2019, the ALJ issued Order No. 9, requiring Commission Staff to file its own responses to the 10 questions listed in Commission Staff's status report and a recommendation on the further processing of this docket on or before June 5, 2019. On June 10, 2019, the ALJ issued Order No. 10, granting Staff an extension to June 19, 2019 to file its status report and recommendation. Therefore, this pleading is timely filed.

## **II. STATUS REPORT AND RECOMMENDATION**

As detailed in the attached memorandum from Emily Sears in the Commission's Water Utility Regulation Division, Staff has reviewed Gum Island's responses to the 10 questions listed in Commission Staff's April 24, 2019 status report and provided its comments on those responses. Staff recommends that this proceeding remain open for 120 days to October 17, 2019, during which time Gum Island and East Houston Utilities DBA Krebs Utilities (Krebs) be required to jointly submit an STM application under TWC §13.301 for review and approval by the Commission as any other transfer of ownership without Commission approval would be void under Texas Water Code (TWC) § 13.301(h). As part of the application process, Krebs should be required to provide information that demonstrates it has the financial, managerial, and technical capability to provide continuous and adequate service to the proposed CCN service area. Krebs should also be required to meet the nine criteria for obtaining or amending a CCN as outlined in TWC §13.246(c). Once an STM application is processed and approved, this proceeding can resume. On or before October 17, 2019, Staff would file an update on the status of the STM application and a recommendation with regard to the further processing of this docket, including a recommendation regarding the expiration of the rate change effective date suspension on December 22, 2019.

## **III. CONCLUSION**

Staff respectfully requests the issuance of an order consistent with the above recommendation.

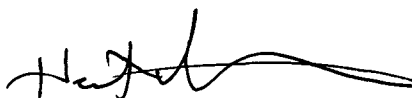
Date: June 18, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Stephen Mack  
Managing Attorney

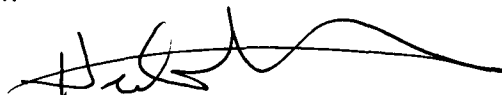


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**PUC DOCKET NO. 48342**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on June 18, 2019, in accordance with 16 TAC § 22.74.



Heath D. Armstrong

## ***PUC Interoffice Memorandum***

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**To:** Heath Armstrong, Attorney  
Legal Division

**Through:** Tammy Benter, Division Director  
Water Utility Regulation

**From:** Emily Sears, Financial Analyst  
Water Utility Regulation

**Date:** June 18, 2019

**Subject:** **Docket No.48342:** *Application of Gum Island Utility for Authority to Change Rates*

This memorandum addresses Commission Order No. 9, requiring Commission Staff to respond to the 10 questions listed in Commission Staff's status report and provide a recommendation for the further processing of this docket.

### ***Staff's Responses***

Question 1: What is the legal name of the utility making the application in this docket?

Staff Response: Gum Island Utility Company (Gum Island) responded to this question on May 16, 2019, stating that the legal name of the utility is "Gum Island Utility." Staff (Staff) of the Public Utility Commission of Texas (Commission) is unable to ascertain the legal name of the utility making the application in this docket because a sale, transfer, or merger (STM) application was never processed to completion. Stephen Krebs filed an STM application to acquire Gum Island, CCN 12042, on February 3, 2015. The application was assigned Docket No. 44404. On May 22, 2015, Stephen Krebs filed a request to withdraw the application, which was granted by the Commission on June 2, 2015. However, it is Staff's understanding that East Houston Utilities, Inc. dba Krebs Utilities completed a purchase of the utility without an STM application, making the sale void under Texas Water Code (TWC) § 13.301(h).

Question 2: If Gum Island is no longer authorized to conduct business in this state due to a forfeiture, should the Commission request that SOAH to abate the proceeding to allow the proper entity to file an amended application or request SOAH return the docket for further action by the Commission?

Staff Response: Gum Island responded that it is authorized to conduct business. However, Staff's review of the Secretary of State's website shows that Gum Island had a tax forfeiture on December 5, 1988. Therefore, Gum Island is no longer authorized to conduct business in this state. Staff notes that the application was dismissed from the State Office of Administrative Proceedings (SOAH) and remanded back to Commission on March 14, 2019. Staff recommends further action by Commission include requiring a Sale, Transfer, or Merger (STM) application be filed by the current owner.

Question 3: Are the customers for which the rate change is requested in this docket located within the service area included in CCN number 12042?

**Staff Response:** Gum Island responded in the affirmative. Staff agrees.

**Question 4:** What is the legal name of the utility that currently holds CCN number 12042? In answering this issue, please address who owns the equipment and facilities used to provide water service under CCN number 12042. Who operates such equipment and facilities?

**Staff Response:** Gum Island simply responded with “Gum Island Utility; East Houston Utilities is the operating company.” Staff is uncertain which entity Gum Island is stating owns the assets. However, Staff notes in response to question number seven, “Which entity (or entities) owns the assets used in providing water service to the customers for which the rate change is requested in this docket”, Gum Island responded East Houston Utilities owns the assets. While Staff cannot confirm who owns the assets in question, Staff’s records indicate that the CCN No. 12042 is currently held by Gum Island.

**Question 5:** If the legal name of the entity owning the equipment and facilities used to provide service under CCN number 12042 is not Gum Island Utility Company, should the Commission refrain from issuing a final order in this case until an application to transfer the CCN has been approved?

**Staff Response:** Gum Island responded in the negative. However, Staff recommends that the Commission refrain from issuing a final order until an STM application to transfer the CCN has been filed and approved. Only then can the tariff be issued under the current owner’s legal name.

**Question 6:** Is there a business or corporate relationship between Whitewing, Gum Island, East Houston Utilities, Inc., and Krebs Utilities? If so, describe the relationship and functions of the various entities in owning and operating the utility serving the customers for which the rate change is requested in this docket.

**Staff Response:** Gum Island Utility responded yes, stating Whitewing is the subdivision’s name and Krebs Utilities is doing business as (dba) East Houston Utilities, Inc. Staff reviewed the Secretary of State’s database and confirms that East Houston Utilities, Inc. is registered dba Krebs Utilities. Staff confirmed that the Texas Commission on Environmental Quality lists the public water system’s name as “Whitewing Subdivision.”

**Question 7:** Which entity (or entities) owns the assets used in providing water service to the customers for which the rate change is requested in this docket?

**Staff Response:** Gum Island responded that East Houston Utilities, Inc. owns the assets. Staff has not been able to confirm what entity owns the assets.

**Question 8:** Which entity (or entities) employs the individuals who perform the day-to-day operations used in providing water service to the customers for which the rate change is requested in this docket?

**Staff Response:** Gum Island responded that East Houston Utilities, Inc. employs the individuals who perform the day-to-day operations. Staff has not been able to confirm what entity employs the individuals who perform the day-to-day operations.

**Question 9:** Which entity (or entities) performs the day-to-day operations used in providing water service to the customers for which the rate change is requested in this docket?

Staff Response: Gum Island responded that East Houston Utilities, Inc. performs the day-to-day operations. Staff has not been able to confirm what entity performs the day-to-day operations.

Question 10: If a combination of entities constitutes the utility, which entities should be joined in this proceeding? 16 Texas Administrative Code (TAC) § 22.104(a).

Staff Response: Gum Island responded East Houston Utilities, Inc. dba Krebs Utilities should be joined in this proceeding. Staff agrees that if East Houston Utilities, Inc. dba Krebs Utilities is the legal entity that owns the Gum Island it should be a party to this proceeding. Staff recommends that Gum Island and East Houston Utilities dba Krebs Utilities be required to jointly submit an STM application under TWC §13.301 for review and approval by the Commission. As part of the application process, East Houston Utilities dba Krebs Utilities should be required to provide information that demonstrates it has the financial, managerial and technical capability to provide continuous and adequate service to the proposed CCN service area. East Houston Utilities dba Krebs Utilities should also be required to meet the nine criteria for obtaining or amending a CCN as outlined in TWC §13.246(c).

### ***Staff's Recommendation***

Staff recommends that this proceeding remain open for 120 days to October 17, 2019, during which time Gum Island and East Houston Utilities dba Krebs Utilities (Krebs) be required to jointly submit an STM application under TWC §13.301 for review and approval by the Commission as any other transfer of ownership without Commission approval would be void under Texas Water Code (TWC) § 13.301(h). As part of the application process, Krebs should be required to provide information that demonstrates it has the financial, managerial and technical capability to provide continuous and adequate service to the proposed CCN service area. East Houston Utilities DBA Krebs Utilities should also be required to meet the nine criteria for obtaining or amending a CCN as outlined in TWC §13.246(c). Once an STM application is processed and approved, this proceeding can resume.