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DOCKET NO. 48753

PETITION TO REVOKE KLEIMANN	§	PUBLIC UTILITY COMMISSION
ESTATES WATERWORKS'	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY PURSUANT TO	§	
TEX. WATER CODE § 13.254 AND 16	§	
TEXAS ADMINISTRATIVE CODE	§	OF TEXAS
§ 24.245	§	

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PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S AMENDED PETITION TO REVOKE
KLEIMANN ESTATES WATERWORKS'S
CERTIFICATE OF CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING

Staff of the Public Utility Commission of Texas (Commission) files this Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Convenience and Necessity (Amended Petition) and hereby provides notice of the opportunity to request a hearing on the merits of this Amended Petition.

I. INTRODUCTION

For the reasons discussed below, the water service Certificate of Convenience and Necessity (CCN) No. 12156 for Kleimann Estates Waterworks (Kleimann) should be revoked. Upon investigation, Commission Staff has determined that the public water system associated with Kleimann is inactive, and that the CCN should be revoked.

In the event Kleimann fails to request a hearing within thirty days of service of this Amended Petition, a default order should be issued, without additional notice to Kleimann, granting all relief sought in this Amended Petition. In support of this Amended Petition, Commission Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

The Commission is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.¹ Pursuant to Tex. Water Code § 13.242 (TWC), a "water supply or sewer service corporation may not in any way render retail water or sewer utility service directly

¹ Tex. Water Code § 13.041 (TWC).

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 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.”² 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.”³

A retail public utility that possesses a CCN is required to provide continuous and adequate service.⁴ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁵ As part of this authority, the Commission, “after notice and hearing, may revoke or amend any” CCN if the Commission 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.⁶

Pursuant to the contested case provisions of the Administrative Procedure Act,⁷ 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.⁸ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a default occurs.⁹ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.¹⁰

III. FACTUAL ALLEGATIONS

Kleimann is located in Montgomery County, Texas in the City of Willis. On February 17, 1978, Carl Kleimann filed an application with the Secretary of State to create a Texas corporation

² 16 Tex. Admin. Code § 24.3(14) (TAC).

³ TWC § 13.002(19) and 16 TAC § 24.3(59).

⁴ See TWC § 13.250(a) and 16 TAC § 24.247.

⁵ TWC § 13.254(a)(1) and 16 TAC 24.245(i)(1)(A).

⁶ *Id.*

⁷ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁸ APA § 2001.051.

⁹ 16 TAC § 22.183.

¹⁰ APA § 2001.056(4) and 16 TAC § 22.183.

known as Kleimann Estates, Inc. On January 20, 1987, Kleimann Estates, Inc. ceased to exist. On April 5, 1989, Betty Gregurek filed an application with the Secretary of State to create a Texas corporation known as Kleimann Estates Water Co., Inc. Kleimann Estates Water Co., Inc. underwent a tax forfeiture on August 30, 2002, and was reinstated on November 7, 2003. Subsequently, on September 18, 2009, articles of dissolution were filed.

On June 21, 1989, Kleimann was granted CCN No. 12156. At this stage, it remains unclear as to what legal entity the CCN was granted. The registered agent for Kleimann Estates, Inc. was located at 302 Stewart St. in Willis, TX, while Kleimann is located at 305 Stewart St., indicating some connection. However, the CCN was granted more than two years after that entity ceased to legally exist. Kleimann Estates Water Co., Inc. has nearly the same name as the utility, is located in Willis, TX, and was in existence at the time of the granting of the CCN. In the interest of ensuring notice to all relevant parties, Commission Staff intends to provide notice to both entities.

Commission Staff's review of Commission's records indicate that neither Kleimann Estates, Inc. nor Kleimann Estates Water Co., Inc. is in business and the facilities Kleimann used to provide continuous and adequate service are inactive. Therefore, Kleimann is no longer providing and is incapable of providing continuous and adequate service.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Kleimann's CCN No. 12156 because Kleimann is no longer in business, and the facilities it used to provide continuous and adequate service are inactive.¹¹ As long as CCN No. 12156 continues to remain in effect, it may be a violation of Commission rules for another company to provide service in the certificated area.¹²

For the above stated reasons, Commission Staff recommends revocation of CCN No. 12156 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.245(i)(1)(A).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act. In license revocation proceedings, APA § 2001.054 requires that notice be given "by personal service or by

¹¹ See TWC § 13.254(a)(1) and 16 TAC 24.245(i)(1)(A).

¹² See TWC § 13.242.

registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action." In order to proceed on a default basis, 16 TAC § 22.183 requires Commission 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) to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Commission Staff will provide a copy of this Amended Petition by certified mail, return receipt requested, to Kleimann's last known addresses in the TCEQ's and Commission's records:

Kleimann Estates Waterworks
P.O. Box 154
Willis, TX 77378

Carl Kleimann dba Kleimann Estates Water Works
305 Stewart Street
Willis, TX 77378

Commission Staff will also provide a copy of this Amended Petition by certified mail, return receipt requested, to the address for a party identified after reasonable investigation. More specifically, Commission Staff will provide notice for the registered agents of both Kleimann Estates, Inc. and Kleimann Estates Water Co., Inc. for process on file with the Secretary of State:

Carl Kleimann
302 Stewart St.
Willis, TX 77378

Betty Gregurek
14019 Waterview St.
Willis, TX 77378

Pursuant to 16 TAC § 22.183, Commission Staff hereby notifies Kleimann that the factual allegations in this Amended Petition could be deemed admitted and the relief sought herein granted by default if Kleimann fails to request a hearing within 30 days after service of the Amended Petition and Notice of Opportunity for Hearing. The purpose of a hearing on the merits is to consider revocation of Kleimann's CCN No. 12156. If Kleimann fails to request a hearing, the

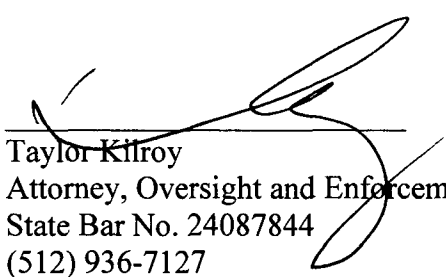
presiding officer may issue a default order on an informal basis without a hearing on the merits pursuant to APA § 2001.056(4) and 16 TAC § 22.183.

The factual allegations listed in Commission Staff's Amended 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

WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Commission grants Commission Staff's Amended Petition to revoke Kleimann's CCN No. 12156. In the event that Kleimann fails to request a hearing on the merits, Commission Staff requests that the Commission issue a default final order, with no further notice to Kleimann, revoking CCN No. 12156.

Respectfully Submitted,



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78701-3326

CERTIFICATE OF SERVICE

I certify that on January 25, 2019, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known addresses of Kleimann Estates Waterworks (Kleimann) in the Commission's records and to parties identified after reasonable investigation. More specifically, Commission Staff will provide notice to the address for the registered agent for process on file with the Secretary of State for Kleimann Estates, Inc. and Kleimann:

Kleimann's Last Known Address in Commission Records:

Kleimann Estates Waterworks
P.O. Box 154
Willis, TX 77378

Carl Kleimann dba Kleimann Estates Water Works
305 Stewart Street
Willis, Texas, 77378

Address for the registered agents for process on file with the Secretary of State:

Carl Kleimann
302 Stewart St.
Willis, TX 77378

Betty Gregurek
14019 Waterview St.
Willis, TX 77378



Taylor Kilroy

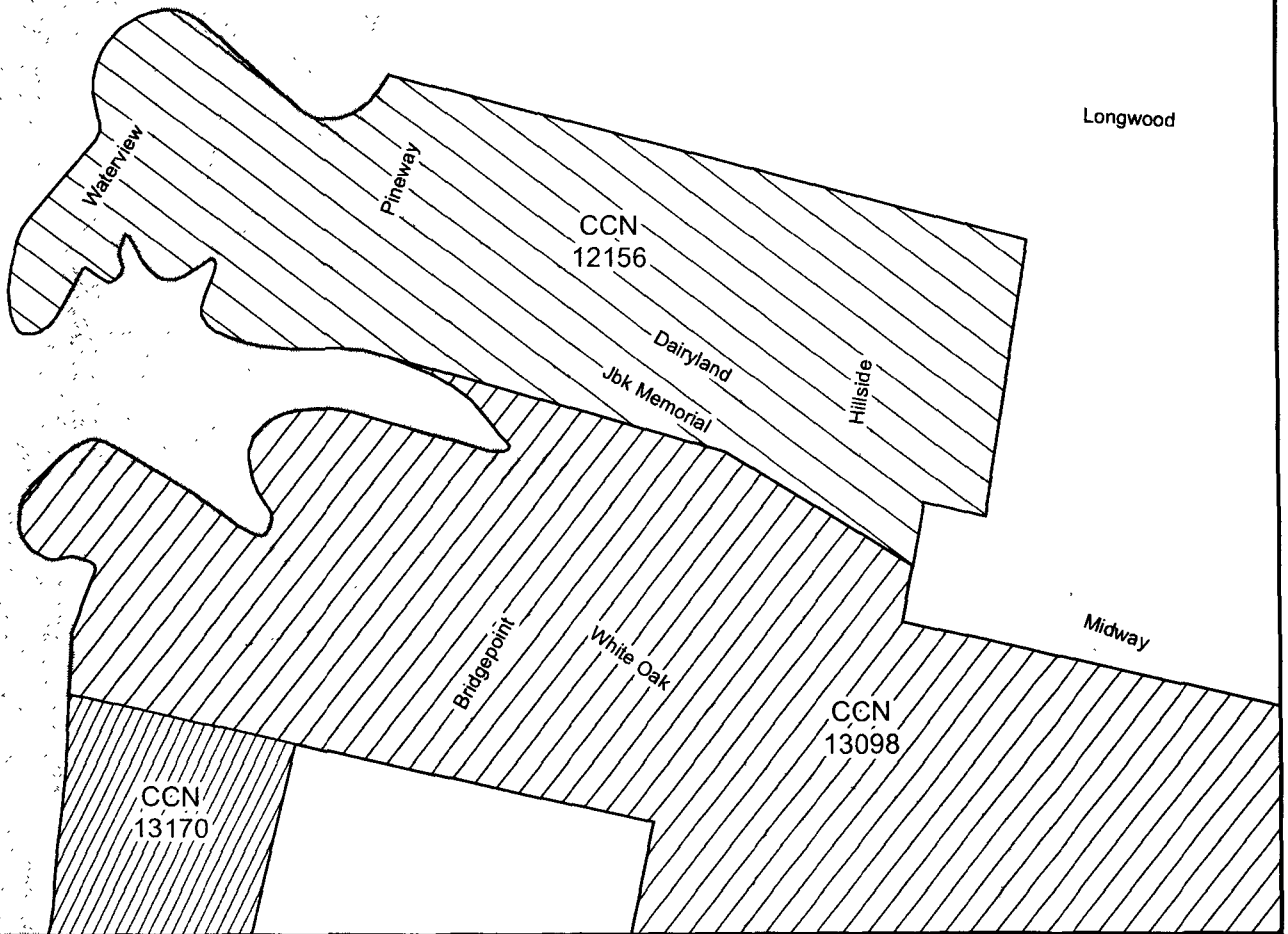
Attachment 1

Map of Water Service Certificate of Convenience and Necessity

No. 12156




Kleimann Estates Waterworks Water CCN No. 12156 in Montgomery County

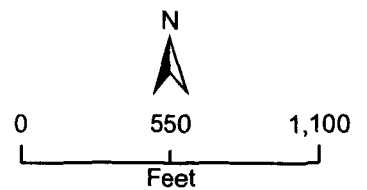
Lake
Conroe



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCNs

-  12156 - Kleimann Estates Waterworks
-  13098 - C&R Water Supply Inc
-  13170 - Lakewood on Lake Conroe POA



Map by: Kristy Nguyen
Date created: June 19, 2018
Project path: n:\12156 Kleimann Estates Waterworks

Attachment 2

Water Service Certificate of Convenience and Necessity

No. 12156

THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Water Commission document, the original of which is filed in the permanent records of the Commission.

TEXAS WATER COMMISSION

Given under my hand and the seal of office on JUN 21 1989



Brenda W. Foster
Brenda W. Foster, Chief Clerk
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 12156

I. Certificate Holder:

Name: Carl Kleimann dba Kleimann Estates Water Works

Address: 305 Stewart Street
Willis, Texas, 77378

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 10 miles north of Conroe, Texas and 1 mile north of Farm to Market Road 1097 on Dairyland Drive and is generally bounded on the south by Dairyland Drive and on the west by Lake Conroe in Montgomery County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-170, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

ISSUED this 21st day of June, 1989.

ATTEST: *Alena A. Varguez* *BW*
For the Commission