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DOCKET NO. 48753

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PETITION TO REVOKE KLEIMANN	Ş
ESTATES WATERWORKS'	§
CERTIFICATE OF CONVENIENCE	§
AND NECESSITY PURSUANT TO	8
TEX. WATER CODE § 13.254 AND 16	8
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PUBLIC TO YOF TEXAS
FILING CLERA

COMMISSION STAFF'S MOTION FOR ENTRY OF DEFAULT ORDER

Staff of the Public Utility Commission of Texas (Commission Staff) files this Motion for Entry of Default Order in the above-styled cause in accordance with 16 Texas Admin. Code (TAC) §§ 24.245(i) and 22.183.

I. Introduction

For the reasons discussed below, Commission Staff requests that the Commission grant this Motion for Entry of Default Order (Motion) and enter the attached Proposed Default Order granting the Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Convenience and Necessity (CCN)¹ regarding water CCN No. 12156. In support of this Motion, Commission Staff respectfully shows the following:

II. Procedural Background

On January 25, 2019 Commission Staff filed an Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Convenience and Necessity (petition). Commission Staff alleged in the petition that Kleimann Estates Waterworks (Kleimann) is not providing continuous and adequate service because the utility is no longer operating. Commission Staff sent a copy of the petition by certified mail, return receipt requested, to the address that Kleimann most recently had on file with the Commission.²

Kleimann has not requested a hearing since Commission Staff provided the petition. More than 30 days have passed since providing Kleimann with the petition.

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¹ Commission Staff's Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Convenience and Necessity Pursuant to Texas Water Code §13.254 and 16 Texas Administrative Code §24.245, Docket No. 48753 (Jan. 25, 2019).

² Commission Staff also sent a copy of the petition by certified mail, return receipt requested, to the addresses on file with the Texas Secretary of State for Carl Kleimann and Betty Gregurek, the registered agents for Kleimann Estates, Inc. and Kleimann Estates Water Co., Inc.

III. Jurisdiction and Legal Authority

The Commission has jurisdiction over this case under § 13.254 of the Texas Water Code (TWC).

Under 16 TAC § 24.245(i)(1)(A), the Commission may revoke a CCN after notice and a hearing if the CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. Under 16 TAC § 22.183, the Commission may issue a default order³ when the party having the burden of proof fails to appear for a hearing or fails to request a hearing within 30 days after service of notice and opportunity for a hearing.⁴

Adequate notice for a default requires disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default if the defaulting party fails to timely request a hearing.⁵ Adequate notice also requires that the disclosure be sent via certified mail to the party's last known address in the Commission's records if the party has a license, certificate, or registration approved by the Commission.⁶

IV. Conclusion and Prayer

Commission Staff provided Kleimann with the notice required in 16 TAC § 22.183 regarding the petition to revoke water CCN 12156.⁷ Kleimann did not request a hearing within 30 days of Commission Staff providing it notice of the opportunity for a hearing and the possibility of a default judgment. Accordingly, Commission Staff respectfully requests that the Commission grant this Motion and enter the attached Default Order granting the Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Convenience and Necessity for water CCN 12156.

³ 16 TAC § 22.183(b).

^{4 16} TAC § 22.183(a).

⁵ 16 TAC § 22.183(b)(1).

^{6 16} TAC § 22.183(b)(2)(A).

⁷ See Attachment 2, Affidavit of Tasha Lopez.

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 78711-3326

taylor.kilroy@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that on May 8, 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 address for Kleimann Estates Waterworks in the Commission's records:

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

Carl Kleimann d/b/a Kleimann Estates Water Works 305 Stewart Street Willis, Texas 77378

I additionally certify that on May 8, 2019, a copy of this document was sent certified mail, return receipt requested, to the following registered agents on file with the Secretary of State:

Carl Kleimann 302 Stewart Street Willis, Texas 77378

Betty Gregurek 14019 Waterview Street Willis, Texas 77378

Taylor Kilroy

Attachment One Proposed Default Order

DOCKET NO. 48753

PETITION TO REVOKE KLEIMANN	§	PUBLIC UTILITY COMMISSION
ESTATES WATERWORKS'	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY PURSUANT TO	§	
TEXAS WATER CODE § 13.254 AND 16	§	
TEXAS ADMINISTRATIVE CODE	§	OF TEXAS
§ 24.113	§	

PROPOSED DEFAULT ORDER

This Default Order addresses the amended petition of Commission Staff to revoke the certificate of public convenience and necessity of Kleimann Estates Waterworks (Kleimann) for violations of the Texas Water Code¹ and Commission rules.² The Commission grants Commission Staff's amended petition and revokes certificate of convenience and necessity 12156.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Background

- 1. Kleimann is a retail public utility that was granted certificate of convenience and necessity 12156 on June 21, 1989.
- 2. Kleimann is located in Montgomery County, Texas in the city of Willis.
- 3. On February 17, 1978, Carl Kleimann filed an application with the Secretary of State to create a Texas corporation known as Kleimann Estates, Inc.
- 4. On January 20, 1987, Kleimann Estates, Inc. ceased to exist.
- 5. 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.

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¹ Tex. Water Code Ann. § 13.254 (TWC).

² 16 Texas Admin. Code § 24.245 (TAC).

- 7. It remains unclear to which 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.
- 8. 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.

Application

- 9. On January 25, 2019, Commission Staff filed an amended petition and provided notice of opportunity for hearing seeking revocation of Kleimann's certificate 12156.
- 10. The petition disclosed, using a font size larger than 12-point, bold-face type, that the factual allegations in the petition could be deemed admitted and the relief requested could be granted by default if a timely hearing request was not made.

Notice

11. On January 25, 2019, Commission Staff sent a copy of the petition by certified mail, return receipt requested, to the addresses Commission Staff was able to find for Kleimann after reasonable investigation; specifically, the petition was sent by certified mail, return receipt requested, to the address that Kleimann most recently had on file with the Commission, as well as to the addresses on file with the Secretary of State for Kleimann's registered agents.

Default

- 12. More than 30 days have passed since service of the petition to Kleimann.
- 13. Kleimann did not request a hearing on the merits.

II. Conclusions of Law

- 1. The Commission has jurisdiction over this petition under § 13.254 of the Texas Water Code (TWC).
- 2. TWC § 13.242 provides that a "utility ... may not in any way render retail water ... utility service directly 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."
- 3. Under 16 Texas Administrative Code (TAC) § 24.3(14), a CCN is "[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 utility service to a specified geographic area."
- 4. Under 16 TAC § 24.3(59), 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."
- 5. TWC § 13.250 and 16 TAC § 24.247 require a retail public utility that possesses a certificate to provide "continuous and adequate service."
- 6. If the Commission finds that a retail public utility that possesses a certificate "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," the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.245.
- 7. Kleimann failed to meet the performance requirements for a certificate holder in TWC § 13.250 and 16 TAC § 24.247 when it ceased operating and ceased to provide continuous and adequate service.
- 8. Kleimann is incapable of providing continuous and adequate service in the area covered by certificate 12156.
- 9. Issuance of a default order against Kleimann is appropriate because Kleimann 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).
- 10. 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 order:

1. Commission Staff's amended petition is granted.

- 2. Kleimann's certificate 12156 is revoked.
- 3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations.
- 4. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas, th	e day of	, 2019.
PUBI	LIC UTILITY COMMIS	SION OF TEXAS
DEA	NN T. WALKER, CHAII	RMAN
ART	HUR C. D'ANDREA, CO	OMMISSIONER
SHE	LLY BOTKIN, COMMIS	SSIONER

Attachment Two Affidavit of Tasha Lopez

DOCKET NO. 48753

PETITION TO REVOKE KLEIMANN	§	PUBLIC UTILITY COMMISSION
ESTATES WATERWORKS'	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY PURSUANT TO	§	
TEXAS WATER CODE § 13.254 AND 16	§	
TEXAS ADMINISTRATIVE CODE	§	OF TEXAS
§ 24.113	8	

AFFIDAVIT OF TASHA LOPEZ

STATE OF TEXAS TRAVIS COUNTY

BEFORE ME, the undersigned authority, on this day personally appeared, Tasha Lopez, and being by me duly sworn, upon oath declared that the statements and capacity acted in are true and correct.

"My name is Tasha Lopez. I am the legal assistant in the Oversight & Enforcement Division of the Public Utility Commission of Texas (Commission). I am over the age of twenty-one and I am competent to make this Affidavit. In accordance with 16 TAC § 22.183(b), I mailed, by certified mail, a copy of Commission Staff's Amended Petition to Revoke Kleimann Estates Waterworks' Certificate of Public Convenience and Necessity filed on January 25, 2019, to Kleimann Estates Water Works, Carl Kleimann, and Betty Gregurek, on January 25, 2019, to the last known addresses. Please see the attached tracking information for each item and copy of the application.

1

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

Kleimann Estates
Betty Gregurek Waterworks
14019 Waterview St. P.O. Box 154
Willis, TX 7737 Willis, TX 7737

AFFIANT: Tasha Lopez/

SWORN TO AND SUBSCRIBED BEFORE ME this β

Notary Public for the State of Texas

day of May 2019.

CYNTHIA G. GUERRERO
NOTARY PUBLIC
10# 126711815
State of Texas
Comm. Exp. 11-03-2020
NOTARY WITHOUT BOND

CMRR- Carl Kleimann 305 Stewart St. Returned to Sender

Ship Request Form

Ship Request #: 199888



Sender

Name:

Tasha Lopez

Account #: Phone:

47300 PUC 512-936-7401

Email:

Company:

Public Utility Commission

eRR Track: 9171082133393862310367

Recipient

Attn To:

Carl Kleimann

Company:

DBA Kleimann Estates Water Works

Address:

305 Stewart Street

City:

Willis TX

State: Zip:

77378

Country: US

Shipping Instructions

Items

Units 0 00

Description

Code

Origin Unit Value Total Value

USPS Tracking®

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Track Another Package +

Tracking Number: 9171082133393862310367

Remove X

Your item has been delivered to the original sender at 8:29 am on February 8, 2019 in AUSTIN, TX 78711.

Oblivered

February 8, 2019 at 8:29 am Delivered, To Original Sender AUSTIN, TX 78711

Feedbac

Return Receipt Electronic



Tracking History



February 8, 2019, 8:29 am Delivered, To Original Sender

AUSTIN, TX 78711

Your item has been delivered to the original sender at 8:29 am on February 8, 2019 in AUSTIN, TX 78711.

February 8, 2019, 8:28 am Arrived at Unit AUSTIN, TX 78701

February 7, 2019, 5:54 am
Departed USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

February 6, 2019, 6:27 pm Arrived at USPS Regional Origin Facility AUSTIN TX DISTRIBUTION CENTER

February 6, 2019

In Transit to Next Facility

February 5, 2019, 11:30 am
Departed USPS Regional Destination Facility
NORTH HOUSTON TX DISTRIBUTION CENTER

February 2, 2019, 2:23 pm Moved, Left no Address WILLIS, TX 77378

February 2, 2019, 2:08 pm Unclaimed/Being Returned to Sender WILLIS, TX 77378

February 2, 2019, 1:46 pm Moved, Left no Address WILLIS, TX 77378

January 31, 2019, 12:16 pm Notice Left (No Authorized Recipient Available) WILLIS, TX 77378

January 31, 2019, 10:38 am Out for Delivery WILLIS, TX 77378

January 31, 2019, 10:28 am Sorting Complete WILLIS, TX 77378

January 31, 2019, 10:21 am Arrived at Unit WILLIS, TX 77378 January 29, 2019, 10:59 am

Arrived at USPS Regional Destination Facility

NORTH HOUSTON TX DISTRIBUTION CENTER

January 29, 2019, 2:54 am
Departed USPS Regional Facility
AUSTIN TX DISTRIBUTION CENTER

January 28, 2019, 9:26 pm
Arrived at USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

January 28, 2019, 8:11 pm Accepted at USPS Origin Facility AUSTIN, TX 78701

January 28, 2019
Pre-Shipment Info Sent to USPS, USPS Awaiting Item

edback

Product Information



See Less ∧

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CMRR- Betty Gregurek Returned to Sender

Ship Request Form

Ship Request #: 199753



Sender

Name:

Tasha Lopez

Account #:

47300 PUC

Phone:

512-936-7401

Email:

Company:

Public Utility Commission

eRR Track: 9171082133393862310381

Recipient

Attn To:

Betty Gregurek Betty Gregurek

Company: Address:

14019 Waterview Street

City:

Willis

State:

TX

Zip: Country: 77378 US

Shipping Instructions

Items

Units 0 00

Description

Code

Origin Unit Value Total Value

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Track Another Package +

Tracking Number: 9171082133393862310381

Remove X

Your item has been delivered to the original sender at 9:44 am on February 11, 2019 in AUSTIN, TX 78711.

⊘ Delivered

February 11, 2019 at 9:44 am Delivered, To Original Sender AUSTIN, TX 78711

recupact

Return Receipt Electronic



Tracking History



February 11, 2019, 9:44 am

Delivered, To Original Sender AUSTIN, TX 78711

Your item has been delivered to the original sender at 9:44 am on February 11, 2019 in AUSTIN, TX 78711.

February 11, 2019, 9:43 am Arrived at Unit AUSTIN, TX 78701

February 10, 2019

In Transit to Next Facility

February 9, 2019, 6:03 am

Departed USPS Regional Origin Facility

AUSTIN TX DISTRIBUTION CENTER

February 8, 2019, 1:20 pm
Arrived at USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

February 6, 2019, 2:03 am

Departed USPS Regional Destination Facility

NORTH HOUSTON TX DISTRIBUTION CENTER

January 29, 2019, 3:13 pm Return to Sender WILLIS, TX 77378

January 28, 2019, 6:59 pm Insufficient Address WILLIS, TX 77318

January 28, 2019, 6:57 pm Notice Left (No Authorized Recipient Available) WILLIS, TX 77318

January 28, 2019, 11:40 am Out for Delivery WILLIS, TX 77318

January 28, 2019, 11:30 am Sorting Complete WILLIS, TX 77318

January 28, 2019, 11:25 am Arrived at Unit WILLIS, TX 77378

January 26, 2019, 11:05 am

Arrived at USPS Regional Destination Facility
NORTH HOUSTON TX DISTRIBUTION CENTER

January 26, 2019, 4:24 am
Departed USPS Regional Facility
AUSTIN TX DISTRIBUTION CENTER

January 25, 2019, 9:01 pm
Arrived at USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

January 25, 2019, 7:46 pm Accepted at USPS Origin Facility AUSTIN, TX 78701

January 25, 2019
Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Product Information

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Feedback

CMRR- Carl Kleimann 302 Stewart St. Returned to Sender

Ship Request Form

Ship Request #: 199749



Sender

Name:

Tasha Lopez

Account #:

47300 PUC 512-936-7401

Phone: Email:

Company:

Public Utility Commission

eRR Track: 9171082133393862310374

Recipient

Attn To:

Carl Kleimann

Company:

Carl Kleimann

Address:

302 Stewart Street

City:

Willis

State:

TΧ 77378

Zip: Country:

US

Shipping Instructions

Items

Units 0.00

Description

Code

Origin Unit Value Total Value

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Tracking Number: 9171082133393862310374

Remove X

Your item has been delivered to the original sender at 9:44 am on February 11, 2019 in AUSTIN, TX 78711.

Oblivered

February 11, 2019 at 9:44 am Delivered, To Original Sender AUSTIN, TX 78711

Return Receipt Electronic



Tracking History



February 11, 2019, 9:44 am Delivered, To Original Sender

AUSTIN, TX 78711

Your item has been delivered to the original sender at 9:44 am on February 11, 2019 in AUSTIN, TX 78711.

February 11, 2019, 9:43 am Arrived at Unit AUSTIN, TX 78701

February 10, 2019

In Transit to Next Facility

February 9, 2019, 6:03 am

Departed USPS Regional Origin Facility

AUSTIN TX DISTRIBUTION CENTER

February 8, 2019, 1:20 pm
Arrived at USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

February 6, 2019, 2:01 am

Departed USPS Regional Destination Facility

NORTH HOUSTON TX DISTRIBUTION CENTER

January 29, 2019, 3:13 pm Moved, Left no Address WILLIS, TX 77378

January 28, 2019, 12:12 pm Forward Expired WILLIS, TX 77378

January 28, 2019, 11:25 am Arrived at Unit WILLIS, TX 77378

January 26, 2019, 11:05 am

Arrived at USPS Regional Destination Facility

NORTH HOUSTON TX DISTRIBUTION CENTER

January 26, 2019, 4:24 am
Departed USPS Regional Facility
AUSTIN TX DISTRIBUTION CENTER

January 25, 2019, 9:01 pm
Arrived at USPS Regional Origin Facility
AUSTIN TX DISTRIBUTION CENTER

January 25, 2019, 7:46 pm Accepted at USPS Origin Facility AUSTIN, TX 78701

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CMRR- Kleimann Estates Waterworks
Refused and Returned to Sender

Ship Request Form

Ship Request #: 199748



Sender

Name:

Tasha Lopez

Account #: Phone:

Company:

47300 PUC 512-936-7401

Email:

Public Utility Commission

eRR Track: 9171082133393862310350

Recipient

Attn To:

Kleimann Estates Waterworks

Company:

Kleimann Estates Waterworks

Address:

PO Box 154

City:

Willis TX

State: Zip:

77378 US

Country:

Shipping Instructions

Items

Units 0 00

Description

Code

Origin Unit Value Total Value

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Track Another Package +

Tracking Number: 9171082133393862310350

Remove X

Your item has been delivered to an agent at 8:32 am on February 20, 2019 in AUSTIN, TX 78711.

Oblivered

February 20, 2019 at 8:32 am Delivered, To Agent AUSTIN, TX 78711

Return Receipt Electronic

Tracking History

February 20, 2019, 8:32 am

Delivered, To Agent

AUSTIN, TX 78711

Your item has been delivered to an agent at 8:32 am on February 20, 2019 in AUSTIN, TX 78711.

February 20, 2019, 8:31 am

Arrived at Unit

AUSTIN, TX 78701

February 20, 2019, 4:23 am

Departed USPS Regional Origin Facility

AUSTIN TX DISTRIBUTION CENTER

February 19, 2019, 12:20 pm

Arrived at USPS Regional Origin Facility

AUSTIN TX DISTRIBUTION CENTER

February 19, 2019
In Transit to Next Facility

February 17, 2019, 3:12 pm
Departed USPS Regional Destination Facility
NORTH HOUSTON TX DISTRIBUTION CENTER

February 14, 2019, 2:22 pm Unable to deliver item, problem with address WILLIS, TX 77378

February 14, 2019, 2:22 pm Refused WILLIS, TX 77378

Reminder to Schedule Redelivery of your item

January 29, 2019, 10:34 am Available for Pickup WILLIS, TX 77378

January 29, 2019, 10:34 am Arrived at Unit WILLIS, TX 77378

January 26, 2019, 11:05 am

Arrived at USPS Regional Destination Facility
NORTH HOUSTON TX DISTRIBUTION CENTER

January 26, 2019, 4:24 am
Departed USPS Regional Facility
AUSTIN TX DISTRIBUTION CENTER

January 25, 2019, 9:01 pm
Arrived at USPS Regional Origin Facility

January 25, 2019, 7:46 pm Accepted at USPS Origin Facility AUSTIN, TX 78701

January 25, 2019
Pre-Shipment Info Sent to USPS, USPS Awaiting Item

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