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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



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Governor

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PUBLIC UTILITY COMMISSION
CLERK

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Hunter Burkhalter 
Administrative Law Judge

RE: **Open Meeting of September 12, 2019**
Docket No. 48753 – *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*

DATE: September 3, 2019

On August 13, 2019, a proposed default order was issued in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Thursday, September 12, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas.

A revised proposed default order has been drafted and is attached. The revisions were made to conform with Default Orders issued on similar matters on the August 29, 2019 agenda. Specifically, a new ordering paragraph 4 has been added, and the subsequent ordering paragraphs have been renumbered.

4. The Commission directs Commission Staff to update its records accordingly.

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

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DOCKET NO. 48753

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

REVISED PROPOSED DEFAULT ORDER

This Default Order addresses the first amended petition of Commission Staff to revoke the water certificate of convenience and necessity (CCN) of Kleimann Estates Waterworks for violations of the Texas Water Code and Commission rules. The Commission grants the petition, by default, and revokes Kleimann Estates Waterworks' CCN number 12156.

I. Findings of Fact

The Commission makes the following findings of fact.

CCN Holder

1. Kleimann Estates Waterworks is registered with the Texas secretary of state as Kleimann Estates Water Co., Inc. a voluntarily terminated domestic for-profit corporation under file number 111013100.
2. Kleimann Estates Waterworks is authorized to provide water service under CCN number 12156 in Montgomery County.

Commission Staff's Petition

3. On January 25, 2019, Commission Staff filed its first amended petition in this proceeding, in which it seeks to revoke the CCN of Kleimann Estates Waterworks for failure to provide continuous and adequate water service.
4. The petition alleges that Kleimann Estates Waterworks is no longer providing and is incapable of providing continuous and adequate water service and, therefore, its CCN should be revoked under Texas Water Code (TWC) § 13.254(a)(1) and 16 Texas Administrative Code (TAC) § 24.245(i)(1)(A).

5. On February 17, 1978, Carl Kleimann filed with the Texas secretary of state an application to create a Texas corporation known as Kleimann Estates, Inc.
6. On January 20, 1987, Kleimann Estates, Inc. ceased to exist.
7. On April 5, 1989, Betty Gregurek filed with the Texas secretary of state an application to create a Texas corporation known as Kleimann Estates Water Co., Inc.
8. CCN number 12156 was issued on June 21, 1989, in the name Kleimann Estates Waterworks.
9. It is unclear whether CCN number 12156 was issued to Kleimann Estates, Inc. or Kleimann Estates Water Co., Inc.
10. Kleimann Estates Water Co., Inc. underwent a tax forfeiture on August 30, 2002, and was reinstated on November 7, 2003.
11. On September 18, 2009, articles of dissolution were filed with the Texas secretary of state for Kleimann Estates Water Co.
12. Kleimann Estates Waterworks' status with the Texas secretary of state is listed as inactive.
13. The Commission's records indicate that Kleimann Estates Waterworks is no longer in business and the facilities it used to provide water service are inactive.
14. Kleimann Estates Waterworks is no longer providing and is incapable of providing continuous and adequate water service.

Notice

15. The Commission's records list Kleimann Estates Waterworks' address as: PO Box 154, Willis, TX 77378.
16. On January 25, 2019, Commission Staff sent copies of the first amended petition, by certified mail, return receipt requested, to: (a) the address of Kleimann Estates Waterworks as shown in the Commission's records; (b) the address of Kleimann Estates Waterworks as shown in the Texas Commission on Environmental Quality's records; (c) the address for Kleimann Estates, Inc.'s registered agent for process, as shown in the records of the Texas secretary of state; and (d) the address for Kleimann Estates Water Co., Inc.'s registered agent for process, as shown in the records of the Texas secretary of state.

17. The first amended petition notified Kleimann Estates Waterworks that it 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:

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.

Evidentiary Record

18. In Order No. 3 issued on August 13, 2019, the ALJ admitted, as evidence in the record of this proceeding, the affidavit of Tasha Lopez and the documents that are attached to Ms. Lopez's affidavit, marked as Attachment Two to Commission Staff's motion for entry of default order filed on May 8, 2019.

The Motion for Default

19. On May 8, 2019, Commission Staff filed a motion for entry of a default order.
20. The motion for default was served upon Kleimann Estates Waterworks in the same way that the first amended petition was served.

Grounds for Default

21. More than 30 days have passed since service of the first amended petition to Kleimann Estates Waterworks.
22. Kleimann Estates Waterworks did not request a hearing on the merits, and did not respond to the first amended petition.
23. More than 30 days have passed since service of the motion for default.
24. Kleimann Estates Waterworks did not respond to the motion for default.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under TWC § 13.254.
2. Kleimann Estates Waterworks is a retail public utility under 16 TAC § 24.3(59).

3. As the holder of CCN number 12156, Kleimann Estates Waterworks is obligated to serve every consumer within its certified area and render continuous and adequate service within the area under TWC § 13.250 and 16 TAC § 24.247.
4. Because Kleimann Estates Waterworks is no longer providing and is incapable of providing continuous and adequate service in the area covered by its CCN in violation of TWC § 13.250 and 16 TAC § 24.247, the Commission is entitled to revoke the CCN under TWC § 13.254(a)(1) and 16 TAC § 24.245(i)(1)(A).
5. Adequate notice was provided to Kleimann Estates Waterworks in compliance with 16 TAC §§ 22.54 and 22.183, and Texas Government Code § 2001.054.
6. Kleimann Estates Waterworks' failure to request a hearing within 30 days of the notice of an opportunity for a hearing qualifies this proceeding for disposition by default under 16 TAC § 22.183.

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 takes official notice of its records that contain the address of Kleimann Estates Waterworks.
3. The motion for default is granted and Kleimann Estates Waterworks' CCN number 12156 is revoked.
4. The Commission directs Commission Staff to update its records accordingly.
5. The Commission is not constrained in any manner from requiring additional action or penalties for violations that are not raised here.
6. 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 September 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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