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DOCKET NO. 50038

**APPLICATION OF GUM ISLAND
UTILITY AND EAST HOUSTON
UTILITIES, INC. DBA KREBS
UTILITIES FOR A SALE, TRANSFER,
OR MERGER OF FACILITIES AND
CERTIFICATE RIGHTS IN LIBERTY
COUNTY**

**§ PUBLIC UTILITY COMMISSION
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§ OF TEXAS
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FILING CLERK

**COMMISSION STAFF'S THIRD SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS, PROPOSED NOTICE,
AND PROCEDURAL SCHEDULE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 4, files this Third Supplemental Recommendation on Administrative Completeness, Proposed Notice, and Procedural Schedule. Staff recommends that the application be deemed administratively complete. In support thereof, Staff shows the following:

I. BACKGROUND

On September 20, 2019, Gum Island Utility (Gum Island) and East Houston Utilities, Inc. d/b/a Krebs Utilities (Krebs) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of water facilities and certificate rights in Liberty County. Specifically, Krebs seeks to acquire Gum Island's public water system and water service area held under Certificate of Convenience and Necessity (CCN) No. 12042. Applicants filed supplemental information on November 19, 2019, February 3, 2020, and February 20, 2020.

On February 13, 2020, Order No. 4 in this proceeding was issued, establishing a deadline of March 10, 2020, for Staff to file supplemental comments on the administrative completeness of the application and proposed notice and to propose a procedural schedule for further processing of the application. Therefore, this pleading is timely filed.

II. ADMINISTRATIVE COMPLETENESS

As detailed in the attached memorandum from Patricia Garcia in the Commission's Infrastructure Division, Staff has reviewed the application and supplemental information filed by Applicants and recommends that it be found administratively complete and accepted for filing. Staff's recommendation on administrative completeness is not a comment on the merits of the application, but only that it is complete for further processing.

III. WAIVER OF TRANSFEROR'S OATH

Staff recommends that Applicants' request for a waiver of the Transferor's Oath be granted. A utility is required to file a written application with the Commission before the "sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a certificate of public convenience and necessity."¹ The content of the application is not prescribed by the statute or the corresponding Commission rule.² However, the application adopted by the Commission to effect a transaction under TWC § 13.301 includes an affidavit for the transferor and the transferee. By signing the affidavit, the transferor is attesting to the fact that: the transferor is "qualified and authorized to file and verify [the] application" and "personally familiar with the documents filed with [the] application"; the transferor has complied with all the requirements contained in the application; and, "that all such statements made and matters set forth [in the application] with respect to [the Transferor] are true and correct."³

Included with the application was a special warranty deed executed by Fred G. McCoy on September 15, 2014. Mr. McCoy is now deceased. The deed conveys CCN No. 12042, Public Water System (PWS) ID No. 146006, the associated land (exclusive of mineral rights), the water rights associated with the service area under CCN No. 12042, and all customer files and accounts receivable to East Houston Utilities, Inc. a.k.a Krebs Utilities and recites the following chain of ownership leading up to the conveyance:

- David W. McCoy conveys 154.7 acres (Original Tract) to Malley Corporation (1977)
- Malley Corporation develops portions of the tract as the Whitewing subdivision

¹ TWC § 13.301(a)(1).

² 16 TAC § 24.239.

³ Application for Sale, Transfer, or Merger at Oath for Transferor (Transferring Entity).

- Gum Island Utility Company, a wholly-owned subsidiary of Malley Corporation is granted CCN No. 12042 to serve the Whitewing subdivision (1987)
- Gum Island Utility Company forfeits its charter; the facilities used to provide service to the Whitewing subdivision (PWS ID No. 146006) under CCN No. 12042 and the associated land revert to Malley Corporation
- Malley Corporation conveys PWS 146006 and the associated land and its remaining rights, titles, and interests in the Original Tract to David McCoy & Associates, Inc. (1997)
- David W. McCoy establishes the David W. McCoy Living Trust (1998)
- David W. McCoy dies and Paul A. McCoy and Fred G. McCoy (collectively, Co-Trustees) are appointed Successor Co-Trustees of the David W. McCoy Living Trust (1999)
- David McCoy & Associates, Inc. conveys the surface rights for the land associated with PWS 146006 and its remaining rights, titles, and interests in the Original Tract to Fred G. McCoy (2002)
- Barbara Z. McCoy, sole beneficiary of the David W. McCoy Living Trust, passes away and Paul A. McCoy and Ann McCoy are appointed Independent Co-executors of her estate (2012)
- David McCoy & Associates, Inc. conveys PWS 146006 to the Co-Trustees (2013)

Consistent with the foregoing, the special warranty deed lists the Co-Trustees, Paul A. McCoy, Ann McCoy, Fred G. McCoy, and Marilyn A. McCoy as the grantors. Accordingly, Staff recommends that the special warranty deed is a sufficient substitute for the Transferor's Oath because it is a notarized statement detailing the facts in the application relevant to the transferor. More specifically, it confirms the intent to convey the real property associated with CCN No. 12042 (along with the CCN itself) to Krebs.

Staff acknowledges that a CCN does not vest a CCN holder with exclusive property rights in and to the certificated area,⁴ which could raise questions about whether the transfer of the CCN via a deed has any binding legal effect. However, CCN No. 12042 is currently an active CCN despite the fact that the series of transfers detailed in the special warranty deed, including the final transfer to Krebs, did not receive the required regulatory approval. Thus, Staff believes that it is necessary for the accommodation, convenience, and safety of the public to accept the application

⁴ 16 TAC § 24.251.

as supplemented so the transfer to Krebs can continue to be processed and ultimately receive the required Commission approval. This is the most direct approach to bringing Gum Island into regulatory compliance.

IV. NOTICE

At this time, Staff recommends that Applicants proceed with providing public notice to all persons, political subdivisions, and other entities listed in the attached memorandum using the notice provided by Ms. Garcia. Along with each individual notice, Staff recommends that Applicants provide an accurate map delineating the requested service area.

Within 30 days of the provision of notice, Staff recommends that Applicants file proof of notice as described in the attached memorandum. Finally, it is recommended that Applicants use the attached affidavit to meet these requirements.

IV. PROCEDURAL SCHEDULE

Staff recommends that the application be found administratively complete. Therefore, Staff proposes the following procedural schedule:

Event	Date
Deadline for Applicants to file with the Commission signed affidavit that the notice was given along with a copy of the notice sent to the affected parties	April 10, 2020
Deadline for Staff to file a recommendation on sufficiency of notice	April 24, 2020
Deadline to intervene	Thirty (30) days after notice is issued

V. CONCLUSION

For the reasons detailed above, Staff recommends that the application as supplemented be found administratively complete, that Applicants be directed to provide notice as detailed in the attached memorandum, and that the proposed procedural schedule be adopted.

Dated: March 10, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

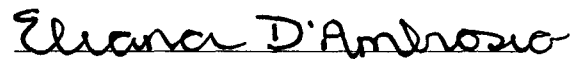
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**DOCKET NO. 50038
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 10, 2020, in accordance with 16 Texas Administrative Code § 22.74.



Eleanor D'Ambrosio

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Attorney
Legal Division

From: Patricia Garcia, Engineering Specialist
Infrastructure Division

Date: March 10, 2020

Subject: **Docket No. 50038**, *Application of Gum Island Utility and East Houston Utilities, Inc. dba Krebs Utilities for a Sale, Transfer, or Merger of Facilities and Certificate Rights in Liberty County*

On September 20, 2019, East Houston Utilities, Inc. dba Krebs Utilities (Krebs Utilities, Inc. or Purchaser) and Gum Island Utility (Gum Island or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Liberty County, Texas, under Texas Water Code § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

Specifically, the Purchaser seeks approval to acquire facilities and to transfer all of the Seller's water service area under certificate of convenience and necessity CCN no. 12042. The requested area includes approximately 86 acres and 28 connections.

On November 19, 2019, the Purchaser requested a waiver of the Oath for Transferor (Oath) for good cause. Staff recommends that the waiver of this requirement be granted as the owner of Gum Island, Fred McCoy, has passed away. In addition, Krebs Utilities, Inc. has been operating and maintaining the system since the special warranty deed for the water company, land, and assets located in Liberty County, Texas was signed by Mr. McCoy, as co-trustee of the David W. McCoy Living Trust, in September of 2014.

Staff from the Rate Regulation Division and Infrastructure Division have reviewed the additional information filed by the Applicants on November 19, 2019, February 3, 2020, and February 18, 2020, and recommend that the application be deemed administratively complete. Staff further recommends the Applicants be ordered to do the following:

1. Provide notice of the application by first-class mail to the following:
 - a. Cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or certificated service area are located within two miles from the outer boundary of the requested area:
 - Coastal Water Authority
 - Gulf Coast Waste Disposal Authority
 - Harris County FCD
 - Port of Houston Authority
 - South Central Water Company (CCN No. 13061)
 - Trinity River Authority of Texas
 - Woodland Hills Water LLC (CCN No. 12388)
 - b. The county judge of each county that is wholly or partially included in the requested area:
 - Liberty County Judge

- c. Each groundwater conservation district that is wholly or partially included in the requested area:
 - Harris Galveston Coastal Subsidence District
- d. Any affected customers, and other affected parties in the requested area.

Addresses can be obtained by the Applicant from the Water Utility Database at <http://www.puc.texas.gov/watersearch>. Information related to districts including addresses can be obtained from the Texas Commission on Environmental Quality's (TCEQ) web site located at <http://www14.tceq.texas.gov/iwud/>.

- 2. Provide notice and proof of notice using the attached notice and affidavit forms.
- 3. Provide a copy of map delineating the requested area with each individual notice to neighboring utilities, other affected parties, and customers.

Staff may determine that additional information is needed to make a final recommendation in this docket. If additional information is needed, Staff may send requests for information (RFI) to the Applicant. The Applicant will have 20 days from the date of the RFI to respond.

Notice to Current Customers, Neighboring Systems, and Cities

**EAST HOUSTON UTILITIES, INC. DBA KREBS UTILITIES, CERTIFICATE OF
CONVENIENCE AND NECESSITY (CCN) NO. 11984, NOTICE OF INTENT TO
PURCHASE WATER FACILITIES AND TO TRANSFER WATER SERVICE AREA UNDER
CCN NO. 12042 FROM GUM ISLAND UTILITY IN LIBERTY COUNTY, TEXAS**

To: _____ Date Notice Mailed: _____, 20____
(Name of Customer, Neighboring System, or City)

(Address)

(City) State Zip)

East Houston Utilities, Inc. dba Krebs Utilities 11015 Sheldon Rd, STE 102 Houston, TX 77044
(Purchaser's Name) (Address) (City), (State) (Zip Code)

has submitted an application with the Public Utility Commission of Texas (Commission) to purchase Gum Island Utility water facilities and to transfer water certificated service area under CCN No. 12042, in Liberty County, TX from:

Gum Island Utility 133 CR 4865 Dayton, TX 77535
(Seller's Name) (Address) (City), (State) (Zip Code)

The sale is scheduled to take place as approved by the Commission (V.T.C.A., Water Code § 13.301). The transaction and the transfer of the CCN includes the following subdivision:
Whitewing Subdivision

The requested area subject to this transaction is located approximately 8 miles southwest of downtown Dayton, Texas, and is generally bounded on the north by a line approximately 1,000 feet north of CR 4865; on the east by CR 486; on the south by a line approximately 1,000 feet south of CR 4865; and on the west by a line approximately 3,000 feet west of CR 486. The total requested area for the water CCN being transferred includes approximately 86 acres and 28 current customers. **See enclosed map showing the requested area.**

This transaction will not have an effect on the current customer's rates and services.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date.

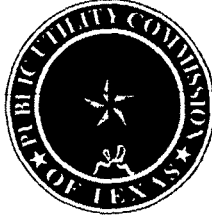
If a valid public hearing is requested, the Commission will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, SOAH will submit a recommendation to the Commission for final decision. An evidentiary hearing is a legal proceeding similar to a civil trial in state district court.

Si desea información en español, puede llamar al 1-888-782-8477.

Utility Representative

Utility Name

PUBLIC UTILITY COMMISSION OF TEXAS



AFFIDAVIT OF NOTICE TO CURRENT CUSTOMERS, NEIGHBORING UTILITIES AND AFFECTED PARTIES DOCKET NO. 50038

STATE OF TEXAS
COUNTY OF _____

_____ has provided individual
notice to the following entities and customers:

DATE OF NOTICE

OATH

I, _____, being duly sworn, file this form as
_____ (indicate relationship to applicant, that is,
owner, member of partnership, title of officer of corporation, or other authorized representative of
applicant); that in such capacity, I am qualified and authorized to file and verify such form, am
personally familiar with the notices given with this application, and have complied with all notice
requirements in the application and application acceptance letter; and that all such statements made
and matters set for therein are true and correct.

Applicant's Authorized Representative

If the applicant to this form is any person other than the sole owner, partner, officer of the applicant,
or its' attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this _____ day of _____, 20____,
to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

Print or Type Name of Notary Public

Commission Expires _____