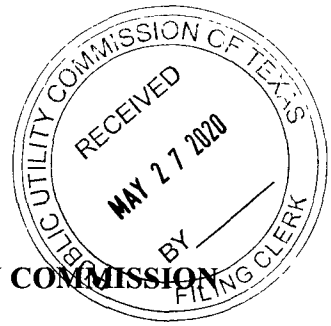


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DOCKET NO. 50038

**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** §
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§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE
TRANSACTION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on Approval of the Transaction and would show the following:

I. BACKGROUND

On September 20, 2019, Gum Island Utility (Gum Island) and East Houston Utilities, Inc. d/b/a Krebs Utilities (Krebs Utilities) (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.

Order No. 6, issued April 28, 2020, deemed Applicants’ notice sufficient and adopted a procedural schedule establishing May 27, 2020, as the deadline for Staff to request a hearing or file a recommendation on approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON APPROVAL OF THE TRANSACTION

As detailed in the attached memorandum from Patricia Garcia in the Commission’s Infrastructure Division, Staff recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors under to Texas Water Code § 13.246(c). In addition, Staff’s review indicates that Krebs Utilities has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction proceed. Staff and

Applicants will file a joint proposed order approving the sale and allowing the transaction to proceed on or before June 17, 2020.

III. CONCLUSION

For the reasons detailed above, Staff respectfully recommends the approval of the transaction.

Dated: May 27, 2020

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Rachelle Nicolette Robles
Division Director

/s/ Eleanor D'Ambrosio
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DOCKET NO. 50038 CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 27, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Eleanor D'Ambrosio
Eleanor D'Ambrosio

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Attorney
Legal Division

From: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

Emily Sears, Financial Analyst
Rate Regulation Division

Date: May 27, 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 (East Houston Utilities 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 (TWC) § 13.301 and 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.

Notice

The comment period ended April 27, 2020, and no protests or opt-out requests were received.

Criteria Considered

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider nine criteria when granting or amending a water or sewer CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The Seller has a Texas Commission on Environmental Quality (TECQ) approved public water system (PWS) registered as Whitewing Subdivision, PWS ID No. 1460061. The Seller does not have any violations listed in the TCEQ database.

No additional construction is necessary for the Purchaser to serve the requested area.

TWC § 13.246(c)(2) requires the Commission to consider the need for additional service in the requested area.

The purpose of the transaction is to transfer the service area and facilities serving the Whitewing Subdivision to the Purchaser. The customers are currently receiving water service from the Seller's water system.

There are currently 29 existing customers in the requested area; therefore, there is a need for service. No additional service is needed at this time.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area.

There will be no effect on any retail public utility servicing the proximate area as the Seller is already providing service to the area. There will be no effect on landowners as the area is currently certificated.

TWC §§ 13.241(b), 13.246(c)(4) require the Commission to consider the ability of the applicant to provide adequate service.

The Purchaser has several TCEQ approved public water systems. The Purchaser does not have any violations listed in the TCEQ database.

TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.

No additional construction is necessary for Purchaser to serve the requested area.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

Gum Island is currently serving customers and has sufficient capacity; therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service.

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.¹ The Purchaser must demonstrate that it meets one of the five tests.²

The following shows that the Purchaser meets one out of five leverage tests. This analysis is based on financial statements submitted by the Purchaser. The Purchaser is affiliated with East Houston Utilities, which has provided evidence in the form of a sworn statement that it is willing to cover temporary cash shortages. East Houston Utilities meets one out of five leverage tests. East Houston Utilities has no debt, and therefore, has a debt to equity ratio less than one.

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Purchaser did not submit projected financial statements in its application; however, the affiliate has stated they would cover any losses in the first five years. Also, East Houston Utilities currently has a rate application pending before the Commission in Docket No. 48342, which will increase rates to the necessary level to maintain a net income. No improvements are needed to provide continuous and adequate service to the requested area. Therefore, the Purchaser meets the operations test.

¹ 16 TAC § 24.11(e)(2).

TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

Staff does not recommend that the Purchaser be required to provide a bond or other financial assurance to ensure continuous and adequate service.

TWC §§ 13.246(c)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificated area.

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

The Purchaser will continue to provide water service to the existing customers in the area. There will be no change to the customer rates at this time.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area, the water service area of the water CCN, and the CCN No. 12042 to East Houston Utilities is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Staff recommends that the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes that no deposits are held by Seller for the customers being served by the Whitewing Subdivision. Staff further recommends that a public hearing is not necessary.