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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**

**AGREED MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING  
THE TRANSACTION TO PROCEED**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff) and files this Motion to Admit Evidence and Proposed Order Approving the Transaction to Proceed with agreement from the Gum Island Utility (Gum Island) and East Houston Utilities dba Krebs Utilities (Utilities) (collectively, the Parties). In support thereof, the Parties show the following:

**I. BACKGROUND**

On September 20, 2019, Gum Island and 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, 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. Staff timely recommended approval of the transaction. Order No. 6 also established a deadline of June 17, 2020, for the Parties to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed. Therefore, this pleading is timely filed.

**II. MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following items into the record of this proceeding: (a) the application filed on September 20, 2019 (AIS Item No. 1); (b) Applicants' response to Order

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No. 1 on October 8, 2019 (AIS Item No. 3); (c) Applicants' supplemental information filed on November 19, 2019 (AIS Item No. 6); (d) Applicants' historical financial information filed on February 3, 2020 (AIS Item No. 9); (e) Applicant's additional financial information filed on February 18, 2020 (AIS Item No. 13); (f) Staff's Third Supplemental Recommendation Administrative Completeness and Proposed Notice and Procedural Schedule (AIS Item No. 14); (g) Applicants' proof of notice filed on April 1, 2020 and April 15, 2020 (AIS Item Nos. 17 and 19); Applicant's response to Staff's First Request for Information filed on April 6, 2020 (AIS Item No. 18); (h) Staff's Recommendation on Sufficiency of Notice filed on April 24, 2020 (AIS Item No. 20); and (i) Staff's Recommendation on Approval of the Transaction filed on May 27, 2020 (AIS Item No. 22).

### **III. PROPOSED ORDER APPROVING TRANSACTION TO PROCEED**

The Parties have agreed on the attached Proposed Order Approving the Transaction to Proceed, which would grant Applicants' application for approval of the transfer of all of Gum Island's facilities and water service area, along with water CCN No. 12042, to Krebs Utilities. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from Proposed Order .

### **IV. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Order Approving the Transaction to Proceed be adopted.

Dated: June 17, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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Division Director

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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 June 17, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Eleanor D'Ambrosio  
Eleanor D'Ambrosio

**DOCKET NO. 50038**

<b>APPLICATION OF GUM ISLAND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITY AND EAST HOUSTON</b>	<b>§</b>	
<b>UTILITIES, INC. DBA KREBS</b>	<b>§</b>	<b>OF TEXAS</b>
<b>UTILITIES FOR A SALE, TRANSFER,</b>	<b>§</b>	
<b>OR MERGER OF FACILITIES AND</b>	<b>§</b>	
<b>CERTIFICATE RIGHTS IN LIBERTY</b>	<b>§</b>	
<b>COUNTY</b>		

**PROPOSED ORDER APPROVING TRANSACTION TO PROCEED**

This Order addresses the September 20, 2019 application of Gum Island Utility (Seller) and East Houston Utilities, Inc. dba Krebs Utilities (Purchaser) (collectively, applicants) for approval of a sale, transfer, or merger of facilities and certificate rights in Liberty County. The applicants seek to transfer all of Seller's facilities and service area under water certificate of convenience and necessity (CCN) number 12042, along with the CCN, to Purchaser. Commission Staff recommended that the transaction in this docket be allowed to proceed. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Seller, a wholly-owned subsidiary of Malley Corporation (Malley), obtained water CCN number 12042 in 1987.
2. Seller subsequently forfeited its corporate charter and water CCN number 12042 and the associated facilities and land reverted to Malley.
3. Through a series of conveyances starting in 1997 and ending in 2014, water CCN number 12042 and the associated land and facilities were conveyed to Purchaser. None of these transactions received the required regulatory approval.

4. Purchaser is the legal owner of the public water system (PWS) subject to this transaction that is registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 1460061.
5. Purchaser is a domestic corporation registered with the Texas secretary of state under file number 32044712753.
6. Purchaser is a retail public utility that provides water service under CCN number 11984 and sewer service under CCN number 20781 in Harris County.

#### **Application**

7. On September 20, 2019, the applicants filed an application for sale, transfer, or merger of facilities and certificate rights in Liberty County. Specifically, Purchaser seeks approval to acquire facilities and transfer water service area and CCN number 12042 currently held by Seller.
8. The applicants supplemented the application on October 8, 2019, November 19, 2019, February 3, 2020, and February 18, 2020.
9. The requested service 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 486, and on the west by a line approximately 3,000 feet west of CR 48.
10. The total area affected by the transfer comprises approximately 86 acres and 28 current customers.
11. In Order No. 5 issued on March 13, 2020, the ALJ deemed the application administratively complete.

#### **Notice**

12. On April 1, 2020, the applicants filed a copy of the notice and map provided to current customers, neighboring utilities, and affected parties and a list of the customers and other entities who received notice.

13. On April 15, 2020, the applicants filed the affidavit of Stephen Krebs, owner of Krebs Utilities, attesting that notice was provided to current customers, neighboring utilities, and affected parties on March 26, 2020.

14. In Order No. 6 issued on April 28, 2020, the ALJ deemed the notice sufficient.

**Evidentiary Record**

15. On June 17, 2020, Commission Staff filed a motion to admit evidence on behalf of the parties.

16. In Order No. 7 issued on \_\_\_\_\_, 2020, the ALJ admitted the following into evidence: (a) the application filed on September 20, 2019; (b) applicants' response to Order No. 1 on October 8, 2019; (c) applicants' supplemental information filed on November 19, 2019; (d) applicants' historical financial information filed on February 3, 2020; (e) applicant's additional financial information filed on February 18, 2020; (f) Commission Staff's Third Supplemental Recommendation Administrative Completeness and Proposed Notice and Procedural Schedule; (g) Applicants' proof of notice filed on April 1, 2020 and April 15, 2020; Applicant's response to Staff's First Request for Information filed on April 6, 2020; (h) Commission Staff's Recommendation on Sufficiency of Notice filed on April 24, 2020; and (i) Commission Staff's Recommendation on Approval of the Transaction filed on May 27, 2020.

**Adequacy of Existing Service—TWC § 13.301(c)(1), 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)**

17. The area to be transferred is currently served by PWS No. 1460061 (Whitewing Subdivision) that is registered with the TCEQ.

18. Purchaser currently operates and maintains PWS No. 1460061.

19. Seller and Purchaser do not have any violations listed in the TCEQ database.

**Need for Additional Service—TWC § 13.246(c)(2), 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)**

20. There are approximately 28 existing customers in the requested area to be transferred; therefore, there is a need for service.

21. Purchaser has received no new requests for service and is not requesting to add additional uncertificated area.
22. The application is to transfer only existing facilities, customers, and service area.

**Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3), 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)**

23. Purchaser is already operating and maintaining the water system; therefore, there will be no effect on any other retail public utility servicing the proximate area.
24. The area is already certificated; therefore, there will be no effect on landowners.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.301(b), (e)(2); 16 TAC § 24.227(a), (d)(4), 24.239(g), (j)(5)(E)**

25. Purchaser has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
26. Purchaser owns and operates multiple PWses registered with the TCEQ, including PWS No. 1460061 (Whitewing Subdivision), and does not have any violations listed in the TCEQ database.
27. PWS No. 1460061 has sufficient capacity to serve the customers and no additional construction is necessary to provide continuous and adequate service.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)**

28. The area to be transferred has existing facilities and is currently being served by Purchaser.
29. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
30. It is not feasible for an adjacent utility to provide service to the requested area.



**Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.103(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)**

31. East Houston Utilities, Inc. has pledged to cover any temporary cash shortages.
32. East Houston Utilities, Inc. has no debt and meets the leverage test with a debt to equity ratio of less than one.
33. Through its affiliation with East Houston Utilities, Inc., Purchaser has demonstrated the financial capability and stability to provide continuous and adequate sewer service.

**Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)**

34. East Houston Utilities, Inc. has pledged to cover any losses in the first five years following the sale and transfer.
35. There is no need to require Purchaser to provide a bond or other financial assurance to ensure continuous and adequate service.

**Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H) and Effect on Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)**

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

**Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)**

37. Purchaser is already operating and maintaining the system; therefore, the level of service to customers will be maintained.
38. All customers will be charged the same rates they were charged before the transaction.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. After consideration of the factors in TWC § 13.246(c), Purchaser has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).

2. Seller and Purchaser have demonstrated that transferring the water service area held under CCN number 12042 from Seller to Purchaser will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that CCN number 12042 will be held by Seller until the sale and transfer transaction is complete in accordance with the Commission's rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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ADMINISTRATIVE LAW JUDGE