

Control Number: 50038



Item Number: 34

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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**

### **NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Gum Island Utility and East Houston Utilities, Inc. dba Krebs Utilities, filed on September 20, 2019, for a sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Liberty County. The applicants seek to transfer all of Gum Island's facilities and service area under water certificate of convenience and necessity (CCN) number 12042, along with the CCN, to East Houston. The Commission approves the transaction and transfers facilities and service area as requested.

#### **I. Findings of Fact**

The Commission makes the following findings of fact.

##### **Applicants**

1. Gum Island is a wholly owned subsidiary of Malley Corporation and obtained water CCN number 12042 in 1987.
2. Gum Island 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 East Houston. None of these transactions received the required regulatory approval.<sup>1</sup>
4. East Houston is a domestic for-profit corporation registered with the Texas secretary of state under file number 801457298.

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<sup>1</sup> See. *Commission Staff's Third Supplemental Recommendation on Administrative Completeness, Proposed Notice, and Procedural Schedule*, Docket No. 50038 (March 10, 2020).

5. East Houston has two assumed names of Krebs Utilities and TriKay Environmental Services registered with the Texas secretary of state in
6. East Houston 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, East Houston seeks approval to acquire the Texas Commission on Environmental Quality (TCEQ)-registered public water system, identification number 1460061, and transfer water service area and CCN number 12042 currently held by Gum Island.
8. The applicants supplemented the application on October 8 and November 19, 2019, and February 3 and 18, 2020.
9. The requested service area subject to this transaction is located approximately eight miles southwest of downtown Dayton, Texas, and is generally bounded on the north by a line approximately 1,000 feet north of County Road (CR) 4865, on the east by CR, 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 filed 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 East Houston, attesting that notice was provided to current customers, neighboring utilities, and affected parties on March 26, 2020.
14. In Order No. 6 filed 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 filed on June 23, 2020, the ALJ admitted the following into evidence: (a) the application filed on September 20, 2019; (b) applicants' response to Order No. 1 filed on October 8, 2019; (c) applicants' supplemental information filed on November 19, 2019; (d) applicants' historical financial information filed on February 3, 2020; (e) applicants' additional financial information filed on February 18, 2020; (f) Commission Staff's third supplemental recommendation administrative completeness and proposed notice and procedural schedule filed on March 10, 2020; (g) applicants' proof of notice filed on April 1 and 15, 2020; (h) applicant's response to Commission Staff's first request for information filed on April 6, 2020; (i) Commission Staff's recommendation on sufficiency of notice filed on April 24, 2020; and (j) Commission Staff's recommendation on approval of the transaction filed on May 27, 2020.
17. On December 4, 2020, Commission Staff filed a supplemental motion to admit evidence on behalf of the parties.
18. In Order No. 11 filed on December 8th, 2020, the ALJ admitted the following additional evidence: (a) applicants' proof that the transaction was consummated filed on September 16, 2020; (b) Commission Staff's recommendation on sufficiency of closing documents filed on October 1, 2020; (c) East Houston's consent form filed on November 2, 2020; (d) Gum Island's consent form filed on December 3, 2020; and (e) the map, certificate and tariff attached to the supplemental motion to admit evidence filed on December 4, 2020.

**Sale**

19. In Order No. 8 filed on July 9, 2020, the ALJ approved the sale and transfer to proceed and required the applicants to file proof that the transaction had closed and customer deposits had been addressed.
20. On September 16, 2020, the applicants filed notice that the sale and transfer had been consummated and that customer deposits had been addressed.
21. In Order No. 10 filed on October 1, 2020, the ALJ found the closing documents sufficient.

**System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (h)(5)(A)**

22. Gum Island and East Houston have not been subject to any enforcement action by the Commission, TCEQ, the Texas Department of Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.
23. Gum Island and East Houston do not have any violations listed in the TCEQ database.
24. Gum Island and East Houston demonstrated a compliance status that is adequate for approval of the transaction.

**Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(B)**

25. East Houston is currently providing water service to 28 customers in the 86-acre requested area through public water system number 1460061, and such service has been continuous and adequate.

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

26. There is a need for service because East Houston is currently serving approximately 28 customers in the 86-acre requested area.
27. East Houston has received no new requests for service and is not requesting to add additional uncertificated area.
28. The application is to transfer only existing facilities, customers, and service area.

**Effect of Approving the Transaction—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(D)**

29. East Houston is already operating and maintaining the public water system; therefore, there will be no effect on any other retail public utility servicing the proximate area.
30. The 86-acre requested area is already certificated; therefore, there will be no effect on landowners.
31. Approving the transaction and granting the CCN amendment will allow East Houston to continue serving the approximately 28 customers and obligate East Houston to provide service to any future customers in the 86-acre area.

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

32. Public water system number 1460061, through which East Houston is currently providing service to approximately 28 customers in the 86-acre requested area, has adequate capacity to meet the demands in the requested area.
33. East Houston owns and operates multiple public water systems registered with the TCEQ and does not have any violations listed in the TCEQ database.
34. East Houston employs a sufficient number of TCEQ-licensed operators who will operate the public water system.
35. East Houston has access to an adequate supply of water and is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
36. East Houston has the managerial and technical capability to provide continuous and adequate service to the 86-acre requested area.

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

37. The 86-acre requested area is currently being served by East Houston through existing facilities.
38. Notice was provided to utilities within a two-mile radius and no protests or requests to opt out were received regarding the proposed transaction.
39. It is not feasible for an adjacent utility to provide service to the 86-acre requested area.

**Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (e)(6), 24.239(g), (h)(5)(G)**

40. East Houston has pledged to cover any temporary cash shortages and demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages for the first five years of operations after completion of the proposed sale and transfer, satisfying the operations test.
41. East Houston has a debt-to-equity ratio of less than one, satisfying the leverage test.

42. Through its affiliation with East Houston Utilities, Inc., East Houston DBA Krebs Utilities has demonstrated the financial capability and stability to provide continuous and adequate sewer service.
43. East Houston has pledged to cover any losses in the first five years following the sale and transfer.

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

44. There is no need to require East Houston to provide a bond or other financial assurances to ensure continuous and adequate service.

**Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7); 16 TAC §§ 24.227(e)(7) and (e)(9), 24.239(h)(5)(G)**

45. There will be no effect on environmental integrity and on the land because the 86-acre requested area is already receiving service and no additional construction is needed to continue providing service.

**Improvement in Service or Lowering Cost to Consumer—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8,) 24.239(h)(5)(H)**

46. East Houston is already operating and maintaining the public water system; therefore, following the proposed transaction, customers in the 86-acre requested area will continue to receive the same level of water service that is currently being provided.
47. The rates charged to customers will not change as a result of the proposed transaction.

**Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)**

48. East Houston already serves approximately 28 customers in the 86-acre requested area and East Houston does not need to construct a physically separate water system to continue serving the area. Accordingly, concerns of regionalization or consolidation do not apply.

**Maps, Certificates, and Tariffs**

49. On November 2, 2020, Commission Staff emailed to the applicants the final proposed map, tariff and certificate related to this docket.
50. On November 2, 2020, East Houston filed a consent form concurring with the proposed final map, tariff, and certificate.

51. On December 3, 2020, Gum Island filed a consent form concurring with the proposed final map, tariff, and certificate.
52. On December 4, 2020, the final map, tariff, and certificate were filed as an attachment to the parties' supplemental to motion to admit evidence and proposed Notice of Approval.

**Informal Disposition**

53. More than 15 days have passed since the completion of notice provided in this docket.
54. No person filed a protest or motion to intervene.
55. Gum Island, East Houston, and Commission Staff are the only parties to this proceeding.
56. No party requested a hearing and no hearing is needed.
57. Commission Staff recommends approval of the application.
58. This decision is not adverse to any party

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Gum Island and East Houston are retail public utilities as defined by TWC § 13.002(19) and 16 TAC 24.3(31).
3. Gum Island and East Houston provide notice of the application was provided as required by TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>2</sup> and Commission Rules.
5. Gum Island and East Houston complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
6. Gum Island and East Houston complied with the requirements of 16 TAC § 24.239(k) with respect to customers deposits.

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<sup>2</sup> Tex. Gov't Code §§ 2001.001–.903.



7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), East Houston demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the 197.47-acre requested area, as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
8. Gum Island and East Houston demonstrated that the sale of Gum Island's public water system number 1460061, transfer of the water service area held under CCN number 12042, and transfer of CCN number 12042 to East Houston is necessary for the service accommodation convenience and safety of the public. TWC § 13.301(d), (e).
9. East Houston must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Liberty County within 31 days of receiving this Notice of Approval and submit to the Commission of evidence of the recording. TWC § 13.257(r), (s).
10. The requirements for informal disposition under 16 TAC § 22.35 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 orders:

1. The Commission approves the sale and transfer of the requested area from Gum Island's public water system and the transfer of Gum Island's CCN number 12042 to East Houston, to East Houston, to the extent provided in this Notice of Approval.
2. The Commission approves the certificate, tariffs and maps attached to this Notice of Approval.
3. East Houston must serve every customer and applicant for service within the approved area under water CCN number 12042 that requests service and meets the terms of East Houston's service, and such service must be continuous and adequate.
4. East Houston must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Liberty County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.

5. The applicants have 180 days to complete the transaction.
6. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff book.
7. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

**Signed at Austin, Texas the 8th day of December 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read 'G. R. Siemankowski', written in a cursive style.

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**GREGORY R. SIEMANKOWSKI  
ADMINISTRATIVE LAW JUDGE**



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

**East Houston Utilities, Inc. dba Krebs Utilities**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, East Houston Utilities, Inc. dba Krebs Utilities is entitled to this

## **Certificate of Convenience and Necessity No. 12042**

to provide continuous and adequate water utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50038 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of East Houston Utilities, Inc. dba Krebs Utilities to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



Issued at Austin, Texas, this 8th day of December 2020.

East Houston Utilities, Inc. dba Krebs Utilities  
Water CCN No. 12042  
PUC Docket No. 50038  
Transferred all of Gum Island Utility, CCN No. 12042 in Liberty County



Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

### Water CCN

-  12042 - East Houston Utilities Inc
-  12388 - Woodland Hills Water LLC



Map by: Komal Patel  
Date created: October 28, 2020  
Project Path: n:\finalmapping\  
50038EastHouston.mxd



## **WATER UTILITY TARIFF**

### **Docket Number 50038**

East Houston Utilities, Inc. dba Krebs Utilities  
(Utility Name)

11015 Sheldon Rd, Ste 102  
(Business Address)

Houston, TX 77044  
(City, State, Zip Code)

281/456-0883  
(Area Code/Telephone)

This tariff is effective for utility operations under the following Certificate of Convenience and Necessity:

12042

This tariff is effective in the following county(ies):

Liberty

This tariff is effective in the following cities or unincorporated towns (if any):

None

This tariff is effective in the following subdivisions or systems:

Whitewing Subdivision: PWS ID #1460061

#### **TABLE OF CONTENTS**

The above utility lists the following sections of its tariff (if additional pages are needed for a section, all pages should be numbered consecutively):

SECTION 1.0 -- RATE SCHEDULE .....	2
SECTION 2.0 -- SERVICE RULES AND POLICIES .....	3
SECTION 3.0 -- EXTENSION POLICY .....	4

APPENDIX A – DROUGHT CONTINGENCY PLAN

APPENDIX B – APPLICATION FOR SERVICE

NOTE: Appendix A – Drought Contingency Plan (DCP) is approved by the Texas Commission on Environmental Quality (TCEQ); however, the DCP is included as part of your approved tariff pursuant to PUCT rules. If you are establishing a tariff for the first time, please contact the TCEQ to complete and submit a DCP for approval.

## SECTION 1.0 -- RATE SCHEDULE

Section 1.01 - Rates

<u>Meter Size</u>	<u>Monthly Minimum Charge</u> (Includes <u>3,000</u> gallons all meters)	<u>Gallonage Charge</u>
5/8" or 3/4"	<u>\$23.00</u>	<u>\$2.00</u> per 1,000 gallons over 3,000

FORM OF PAYMENT: The utility will accept the following forms of payment:

Cash X, Check X, Money Order X, Credit Card    , Other (specify)    

THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS. AT THE CUSTOMER'S OPTION, ANY BILLING TRANSACTION OR COMMUNICATION MAY BE PERFORMED ON THE INTERNET. THIS INCLUDES THE UTILITY SENDING PAPERLESS BILLS BY EMAIL.

REGULATORY ASSESSMENT..... 1.0%  
PUCT RULES REQUIRE THE UTILITY TO COLLECT A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL AND TO REMIT FEE TO THE TCEQ.

Section 1.02 – Miscellaneous Fees

TAP FEE .....\$310.00  
TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION OF 5/8" METER PLUS UNIQUE COSTS AS PERMITTED BY PUCT RULE AT COST.

## RECONNECTION FEE

THE RECONNECT FEE WILL BE CHARGED BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS:

- a) Non-payment of bill (Maximum \$25.00) .....\$25.00
  - b) Customer's request .....\$25.00
- or other reasons listed under Section 2.0 of this tariff

LATE CHARGE (EITHER \$2.00 OR 5%)..... 5%  
A ONE-TIME PENALTY MAY BE MADE ON DELINQUENT BILLS BUT MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE.....\$15.00

CUSTOMER DEPOSIT RESIDENTIAL (Maximum \$50).....\$0.00

METER TEST FEE (actual cost of testing the meter up to) .....\$25.00  
THIS FEE MAY BE CHARGED IF A CUSTOMER REQUESTS A SECOND METER TEST WITHIN A TWO-YEAR PERIOD AND THE TEST INDICATES THAT THE METER IS RECORDING ACCURATELY.

## SECTION 2.0 - SERVICE RULES AND REGULATIONS

The utility will have the most current Public Utility Commission of Texas (PUCT or commission) rules relating to Water and Wastewater Utility regulations, available at its office for reference purposes. The Rules and this tariff shall be available for public inspection and reproduction at a reasonable cost. The latest Rules or commission approved changes to the Rules supersede any rules or requirements in this tariff.

### Section 2.1 - Application for Service

All applications for service will be made on the utility's standard application or contract form and will be signed by the applicant before water service is provided by the utility. A separate application or contract will be made for each service at each separate location.

### Section 2.2 – Water Installation

After the applicant has met all requirements, conditions, and regulations herein set forth, the utility will then install a tap, meter, and cut-off valves and take all necessary actions to initiate service.

### Section 2.3 – Billing

Water utility bills shall be rendered monthly unless otherwise authorized by the Commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle may be billed with the following month's bill. Bills should be rendered as promptly as possible following the reading of meters.

Bills are considered late if not received at the Utility's postal address within 16 days of the billing date. Service can be disconnected for nonpayment of a bill only after a 10 day written notice.

## SECTION 3.0--EXTENSION POLICY

### Section 3.1 - Standard Extension Requirements

Contributions in aid of construction shall not be required of individual residential customers for production, storage, treatment, or transmission facilities.

The utility will bear the cost of the first 200 feet of water main necessary to extend service to an individual residential customer. The utility shall bear the full cost of any oversizing of water mains to serve other residential customers in the area.

### Section 3.2 – Specific Utility Extension Policy

- (1) Residential customers may be required to pay for additional main beyond the first 200 feet;
- (2) Residential customers who place unique or non-standard service demands on the system may be charged the actual costs of any additional transmission or storage required over and above the standard requirements;
- (3) Developers may be required to provide contributions in aid of construction in amounts to furnish the system with facilities compliant with Texas Commission on Environmental Quality (TCEQ) minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water.
- (4) Commercial customers may be required to pay the cost of the entire length of water main necessary to extend service to their point of use;
- (5) Commercial customers who place unique or non-standard service demands on the system may be charged the actual costs of any additional transmission or storage required over and above the standard requirements;
- (6) All extensions shall be negotiated with the utility on an individual basis, subject to the above extension policy rules, and taking into consideration additional demands on the system for water production, transmission, and storage.



## APPENDIX A - DROUGHT CONTINGENCY PLAN

(This page incorporates by reference the utility's Drought Contingency Plan, as approved and periodically amended by the Texas Commission on Environmental Quality.)

**APPENDIX B -- APPLICATION FOR SERVICE**  
**(Utility Must Attach Blank Copy)**