



Control Number: 52370



Item Number: 144

# **OPEN MEETING COVER SHEET**

## **COMMISSIONER MEMORANDUM**

PUBLIC UTILITY  
COMMISSION OF TEXAS

**MEETING DATE:** January 31, 2025

**DATE DELIVERED:** January 30, 2025

**AGENDA ITEM NO.:** 2

**CAPTION:** Docket No. 52370; SOAH Docket No. 473-22-07686.WS – Application of East Houston Utilities, Inc. for Authority to Change Rates

**DESCRIPTION:** Chairman Thomas Gleeson Memorandum

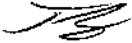
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# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Commissioner Kathleen Jackson  
Commissioner Courtney K. Hjaltman

**FROM:** Chairman Thomas J. Gleeson 

**DATE:** January 30, 2025

**RE:** January 31, 2025 Open Meeting – Item No. 2  
Docket No. 52370 – *Application of East Houston Utilities, Inc. for Authority to Change Rates*

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Before the Commission is a proposed order that authorizes East Houston Utilities, Inc. (East Houston Utilities) to change its water rates and associated tariff. I have found this to be one of the more difficult cases we have considered. Frankly, there are no good options to resolve this case. After considerable thought and consideration, however, I recommend that we decline to adopt the proposed order, deny the application, and issue an order with guidance on specific issues that East Houston Utilities should address in developing their next base-rate case.

### *Background*

East Houston Utilities represented in its application that it is a Class D utility; it is seeking revision to its rates and tariff for a system serving 35 connections.<sup>1</sup> The proposed order before us is based on an unopposed, black-box agreement between East Houston Utilities, Commission Staff, and four ratepayers. The agreement includes agreed rates, but does not specify other details that are necessary for the Commission to set rates, including, but not limited to, a revenue requirement and the amount of invested capital used and useful by the utility in the provision of service to the public over and above its reasonable and necessary operating expenses.<sup>2</sup>

This case was filed on July 29, 2021. The application was not deemed administratively complete until May 2022. The case was referred to SOAH in August 2022. SOAH referred the case to mediation in September 2022, and the parties announced in May 2023 that mediation had been unsuccessful. A hearing on the merits was held on June 12, 2023. Interim rates were implemented in June 2023, and the case was abated until September 2023 to allow staff to review East Houston Utilities' compliance with Water Code affiliate payment requirements. In February 2024, East Houston Utilities hired an attorney. The parties filed the unopposed agreement that is before the Commission on May 20, 2024. SOAH remanded the case back to the Commission in July 2024.

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<sup>1</sup> East Houston Utilities Application at 1 (Jul. 29, 2021); Supplemental Direct Testimony of Frederick Quijano at 5:15-16 (Nov. 18, 2022).

<sup>2</sup> See Texas Water Code (TWC) § 13.183(a).

*Lack of evidence to support agreed rates*

The settling parties propose that the interim rates approved by SOAH in June 2023 be implemented as final rates. However, there is not enough evidence in the record to support those rates.

Under Texas Water Code (TWC) § 13.183(a), in fixing rates, the Commission “shall fix its overall revenues at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses . . . .” Unfortunately, the agreement provides no information about the revenue requirement underlying the agreed rates. Additionally, there is no evidence in the record on the amount of operating expenses, rate of return, etc., that the agreed rates are expected to collect. Without a revenue requirement, rate of return, and rate base, at a minimum, there is simply not enough evidence in the record to support the agreed rates and for the Commission to comply with the statutory requirements. Further, the evidence in the record, specifically on affiliate expenses, supports denial of this application.

*Affiliate expenses*

Under TWC § 13.185(e), “[p]ayment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the [Commission] finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or unaffiliated persons or corporations.”

In their direct and supplemental direct testimony, Commission Staff raised a number of concerns regarding the affiliate expenses of East Houston Utilities. East Houston Utilities is owned by Stephen Krebs. Mr. Krebs also appears to own Krebs Utilities, Inc. and K Lake Water System and Padok Utility.<sup>3</sup> East Houston Utilities states that it operates eleven other water systems.<sup>4</sup> The office of East Houston Utilities is in a building owned by Krebs Development.<sup>5</sup> Krebs Development is a construction company owned by Mr. Krebs that has performed work for East Houston Utilities.<sup>6</sup> Mr. Krebs’s spouse, Hannah Krebs, operates a realty business that is also located in the building owned by Krebs Development. East Houston collects payments made by customers of another utility, Roving Meadows Utilities, and then pays that entity.<sup>7</sup> Commission Staff was unable to determine how or if Mr. Krebs allocated costs between his various affiliated interests.<sup>8</sup> Staff recommended that

...East Houston Utilities [be required] to demonstrate compliance with [TWC §] 13.185(e) by maintaining separate books and records for each utility, reducing all

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<sup>3</sup> Direct Testimony of Frederick Quijano at 12:6-15

<sup>4</sup> Supplemental Direct Testimony of Frederick Quijano at 2:14-17 (Feb. 12, 2024).

<sup>5</sup> Supplemental Direct Testimony of Frederick Quijano at 3:1-7.

<sup>6</sup> Supplemental Direct Testimony of Frederick Quijano at 3:3-5.

<sup>7</sup> Direct Testimony of Frederick Quijano at 12:15-17.

<sup>8</sup> Direct Testimony of Frederick Quijano at 12:16-24.

service agreements with Stephen Krebs to writing, providing a detailed cost allocation study, and demonstrating that costs billed to each utility meet the “no higher than” standard [under TWC § 13.185(e).]<sup>9</sup>

Staff also recommended removing all payroll, office rental expense, and various office supply, transportation and miscellaneous expenses from East Houston Utilities’ revenue requirement due to lack of supporting documentation.<sup>10</sup>

While the agreement requires East Houston Utilities to provide its affiliate services agreements, if any, and an organization chart illustrating East Houston Utilities relationship to its affiliates, it does not resolve or sufficiently address the deficiencies related to affiliate expenses raised by Staff for the rates sought in this proceeding.

Unfortunately, the record in this case does not support approval of either East Houston Utilities’ application or the agreement. Denial of this application is not a recommendation I take lightly. However, East Houston Utilities bears the burden of proof in this proceeding. It has been given more than a fair opportunity to prove up the reasonableness of its proposed rates and has failed to do so. I therefore reluctantly conclude that denial of this application is the appropriate outcome in this case. East Houston Utilities must get its books and records in order before filing another base-rate case. Toward that end, I recommend that East Houston Utilities take the following actions before it files another base-rate application.

1. All utilities owned or operated by Mr. Krebs should maintain separate books and records.
2. East Houston Utilities should produce a detailed organization chart illustrating the relationship of East Houston Utilities to each of its affiliates or affiliated interests with which it does business. For purposes of this requirement, the terms *affiliate* and *affiliated interest* are defined in TWC § 13.002(2).
3. East Houston Utilities should execute written agreements for services with each of its affiliates.
4. East Houston Utilities should provide documentation that shows how costs shared by East Houston Utilities and its affiliates were allocated.

Finally, I am concerned that it has taken 3.5 years to process this case. I do not blame Commission Staff for this. Commission Staff’s primary role is to review and assess applications and provide their input on whether the applicant has met its burden of proof. The responsibility for the deficiencies of the application in this proceeding rests with East Houston Utilities. While this proceeding involves only 35 connections, the owner of this utility owns and operates other utilities and operates other utility systems. It is my hope that East Houston Utilities will take immediate steps to address the concerns outlined in this memo.

I look forward to discussing this matter with you at the open meeting.

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<sup>9</sup> *Id.* at 13:4-8.

<sup>10</sup> Supplemental Direct Testimony of Frederick Quijano at 4:1-10:21.