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**DOCKET NO. 53920**

<b>APPLICATION OF TEXAS WATER UTILITIES, L.P. AND CREEK WATER UTILITY LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MARION COUNTY</b>	§ § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED**

COME NOW Texas Water Utilities, L.P. (TWU) and Creek Water Utility, LLC (Creek Water) (collectively, Applicants), together with Public Utility Commission of Texas (Commission) Staff (collectively, the Parties) and file this Joint Motion to Admit Evidence and Proposed Order Approving Sale and Transfer to Proceed. In support thereof, the Parties show the following:

**I. BACKGROUND**

On August 1, 2022, Monarch Utilities I L.P. (Monarch) and Creek Water Utility, LLC (Creek Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Marion County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. On November 28, 2022, the administrative law judge (ALJ) issued Order No. 6, recognizing that Monarch has changed its name to Texas Water Utilities, L.P. (TWU) on November 15, 2022, and restyling the application accordingly. The Applicants seek the transfer of all facilities and service area held under Creek Water’s water certificate of convenience and necessity (CCN) number 11028 to TWU, the cancellation of Creek Water’s CCN number 11028, and the amendment of TWU’s water CCN number 12983 to include the area previously included in Creek Water’s water CCN number 11028.

On February 21, 2023, the administrative law judge filed Order No. 11, directing the Parties to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed by March 6, 2023. Therefore, this pleading is timely filed.

## **II. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- (a) The application of Creek Water and TWU, and confidential attachments, filed on August 1, 2022 (Interchange Item Nos. 1 and 2);
- (b) TWU's Notice of Appearance of Counsel and Response to Commission Staff's Recommendation on Administrative Completeness, filed on September 2, 2022 (Interchange Item No. 5);
- (c) TWU's proof of notice and confidential mailing list, filed on November 21, 2022 (Interchange Item Nos. 13 and 14);
- (d) Commission Staff's Recommendation on Sufficiency of Notice, filed on December 28, 2022 (Interchange Item No. 17);
- (e) Maps provided as part of TWU's notice, filed on December 28, 2022 (Interchange Item No. 18);
- (f) TWU's Response to Commission Staff's First Request for Information and confidential attachments, filed on February 3, 2023 (Interchange Item Nos. 26 and 27);
- (g) TWU's Responses and Objections to Commission Staff's Third Request for Information and attachments, filed on February 17, 2023 (Interchange Item Nos. 32-34); and
- (h) Commission Staff's recommendation on the transaction, filed on February 22, 2023 (Interchange Item No. 37).

## **III. JOINT PROPOSED ORDER**

The attached Joint Proposed Order Approving Sale and Transfer to Proceed would grant Applicants' application for sale, transfer, or merger of facilities and certificate rights in Marion County.

## **IV. CONCLUSION**

The Parties respectfully request that the Commission grant the Joint Motion to Admit Evidence and adopt the attached Joint Proposed Order Approving Sale and Transfer to Proceed.

Respectfully submitted,

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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 March 6, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Eleanor D' Ambrosio

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Eleanor D' Ambrosio

**DOCKET NO. 53920**

<b>APPLICATION OF TEXAS WATER UTILITIES, L.P. AND CREEK WATER UTILITY LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MARION COUNTY</b>	§ § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Creek Water Utility LLC (Creek Water) and Texas Water Utilities, L.P. (TWU) (collectively, the Applicants) for the sale, transfer, or merger of facilities and certificate rights in Marion County. The Applicants seek approval to sell and transfer all of Creek Water’s facilities and certificated service area under water certificate of convenience and necessity (CCN) number 11028 to TWU’s water CCN number 12983, and to cancel Creek Water’s water CCN number 11028. The administrative law judge (ALJ) approves the transaction between TWU and Creek Water and the transaction may be completed as proposed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. TWU is a limited partnership registered with the Texas secretary of state under file number 800034797.
2. TWU is an investor-owned utility that owns, operates, and controls facilities for providing water service under CCN number 12983.
3. Creek Water is a limited liability company that registered with the Texas secretary of state under filing number 0801403833.
4. Creek Water is an investor-owned utility that owns, operates, and controls facilities for providing service under CCN number 11028.
5. Creek Water owns and operates one public water system (PWS) in Marion County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS

identification number 1580020. This public water system comprises both the Crystal Cove and Copeland Creek subdivisions.

**Application**

6. On August 1, 2022, the Applicants filed the application at issue in this proceeding.
7. On September 2, November 21, December 28, 2022 and February 3 and 17, 2023 the applicants filed supplemental information and responses to discovery requests.
8. In the application, the applicants seek approval for the following: (a) to sell and transfer all of Creek Water's facilities and certificated service area under water CCN number 11028 to TWU's water CCN number 12983; (b) to cancel Creek Water's water CCN number 11028; and (c) to amend TWU's water CCN number 12983 to include the area previously included in Creek Water's water CCN number 11028.
9. The requested area includes approximately 289.50 acres and 94 current customers.
10. The requested area consists of one water system, with two subdivisions and is located approximately 5 miles north of downtown Harleton, Texas, and is generally abounded on the north by Lake O' the Pines, on the east by Paul Conner Road, on the south by Old Jefferson Road, and on the west by Lake O' the Pines.
11. In Order No. 4 issued on October 7, 2022, the Commission ALJ found the application administratively complete.

**Notice**

12. On November 21, 2022, the Applicants filed the affidavit of George Freitag, Texas Regulatory Manager for TWU, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on November 18, 2022.
13. In Order No. 7 issued on December 29, 2022, the Commission ALJ found notice sufficient.

**Evidentiary Record**

14. On March 6, 2023, the Parties filed a joint motion to admit evidence and proposed order approving the sale and transfer to proceed.

15. In Order No. \_\_ issued on March \_\_, 2022, the ALJ admitted the following evidence into the record: (a) The application of Creek Water and TWU, and confidential attachments, filed on August 1, 2022; (b) TWU's Notice of Appearance of Counsel and Response to Commission Staff's Recommendation on Administrative Completeness, filed on September 2, 2022; (c) TWU's proof of notice and confidential mailing list, filed on November 21, 2022; (d) Commission Staff's Recommendation on Sufficiency of Notice, filed on December 28, 2022; (e) Maps provided as part of TWU's notice, filed on December 28, 2022; (f) TWU's Response to Commission Staff's First Request for Information and confidential attachments, filed on February 3, 2023; (g) TWU's Responses and Objections to Commission Staff's Third Request for Information and attachments, filed on February 17, 2023; and (h) Commission Staff's recommendation on the transaction, filed on February 22, 2023.

#### **Purchaser's Compliance History**

16. TWU has been subject to enforcement actions by the Commission, TCEQ, Texas Department of State Health Service, the Office of the Attorney General, or the Environmental Protection Agency in the past five (5) years for non-compliance with rules, orders, or state statutes. TWU has resolved the compliance issues related to the open TCEQ enforcement actions listed in the application.
17. TWU owns and operates 106 other public water systems. Some of TWU's other public water systems have minor unresolved TCEQ violations that are unrelated to capacity and will not affect TWU's ability to provide adequate service to the requested area.
18. TWU does not have a history of continuing mismanagement or misuse of revenues as a utility provider.
19. TWU demonstrated a compliance history that is adequate for approval of the proposed transaction.

#### **Adequacy of Existing Service**

20. Creek Water's public water system at issue in this proceeding is currently providing continuous and adequate service to the requested area.
21. The last TCEQ compliance investigation of Creek Water was on March 28, 2022. One violation was noted as a result of the investigation and has since been resolved. The



Commission's complaint records, which date back to 2017, show nine complaints against Creek Water.

22. There is no evidence in the record that Creek Water has failed to comply with any Commission or TCEQ order.
23. As the existing facilities and service are adequate, there is no further construction necessary for TWU to provide service to the requested area.

**Need for Additional Service**

24. There are 94 existing water customers in the requested area that are receiving service from Creek Water and have an ongoing need for service.
25. There is no evidence in the record indicating a need for additional service.

**Effect of Approving the Transaction and Granting the Amendment**

26. Approving the transaction obligates TWU to provide water service to current and future customers in the requested area.
27. Creek Water and TWU are the only utilities affected by this sale and transfer.
28. All retail public utilities in the proximate area were provided notice of the application.
29. There will be no effect on landowners in the vicinity of the requested area or adjacent utilities.

**Initial Rates**

30. TWU as an entity is entitled to request approval to charge initial rates and service charges that are shown in the water tariff issued to TWU at the time the application was filed.
31. TWU's tariff in force for its other water systems on the date the application described was approved in Docket No. 52494.<sup>1</sup>

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<sup>1</sup> *Application of Monarch Utilities I L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Cooke County, Docket No. 52494 (Sept. 1, 2022).*

**Ability to Serve: Managerial and Technical**

32. The operations, maintenance, management, and customer services will be provided by TWU through TCEQ-licensed operators who will operate the public water and wastewater systems.
33. Reliability and quality of water service are expected to improve under TWU's management.
34. TWU has access to an adequate supply of water and is capable of providing 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.
35. TWU has the technical and managerial capability to provide continuous and adequate service to the requested area.

**Ability to Serve: Financial Ability and Stability**

36. TWU has a debt-to-equity ratio of less than one and a debt-service ratio of greater than 1.25, satisfying the leverage test.
37. TWU has sufficient cash available to cover any projected operations and maintenance shortages during the first five years after the completion of the proposed sale and transfer, satisfying the operations test.
38. TWU has demonstrated the financial capability and stability to provide continuous and adequate water service.

**Financial Assurance**

39. There is no need to require TWU to provide a bond or other financial assurance to ensure continuous and adequate service.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

40. It is not feasible for an adjacent utility to provide service to the requested area because Creek Water's existing facilities possess sufficient capacity to provide continuous and adequate service.
41. Utilities within a two-mile radius were noticed and no protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility in this docket.

**Environmental Integrity and Effect on the Land**

42. The proposed transaction will not adversely affect the environmental integrity of the land.
43. The effect on the land should be minimal as facilities are repaired and new meters are installed to provide service to the requested area.

**Improvement of Service or Lowering Costs to Consumers**

44. The proposed transaction will improve reliability and quality of water service because the water system will be operated and maintained by a sufficient number of licensed operators.

**Regionalization or Consolidation**

45. The construction of physically separate systems is not necessary for TWU to serve the requested area; therefore, it is not necessary to consider regionalization or consolidation.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239(c).
2. After consideration of the factors in TWC § 13.246(c), TWU demonstrated that it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.
3. TWU demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. Creek Water and TWU demonstrated that the sale of Creek Water's water facilities and the transfer of all the service area held under water CCN number 11028 to TWU will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required TWC §§ 13.246(b) and 13.301(d) and (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 Creek Water and TWU 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 shall file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. The Applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The Applicants are notified that the corresponding service area will remain under water CCN number 11028 held by Creek Water until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the Applicants must 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 shall 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 March, 2023.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**CHRISTINA DENMARK  
ADMINISTRATIVE LAW JUDGE**