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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attention
Interim Chairman Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

July 14, 2023

RE: *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, Docket No. 53920*

Dear Interim Chairman Jackson and Commissioners,

The Texas Association of Water Companies, Inc. (TAWC) is a Texas non-profit corporation established by Texas investor-owned water and sewer utilities to be the Texas chapter of the National Association of Water Companies. TAWC currently has 11 members who operate water and sewer utilities throughout Texas. Texas Water Utilities, L.P. (TWU) is one of our members, and our organization has been monitoring the above-referenced sale, transfer, or merger (STM) proceeding for approval of the acquisition of Creek Water Utility LLC (Creek Water).

In this proceeding, the administrative law judge (ALJ) issued Order No. 20¹ in response to action taken by the Public Utility Commission of Texas (Commission) in another STM proceeding, Docket No. 51646.² The application under review by the Commission in Docket No. 51646 was an application for an STM plus an additional request for a certificate of convenience and necessity (CCN) amendment for 4,815 uncertificated acres.³ However, since the Commission's action in Docket No. 51646, TAWC understands that similar orders applying the decision in Docket No. 51646 were filed in a large number of pending STM dockets, including dockets like this one where the STM under review includes only the transfer of the service area currently certificated to the seller.

TAWC supports TWU's appeal of the ALJ's refusal to reconsider Order No. 20.⁴ The decision from Docket No. 51646 applied in this proceeding was the decision regarding what constitutes sufficient proof that notice of the application was provided to landowners of tracts of

¹ Order No. 20 Requiring Clarification on Notice and Supplemental Recommendation at 1 (Apr. 20, 2023).

² *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Order Remanding Proceeding to Docket Management (May 11, 2023) (Order on Remand).

³ *Id.*, Order No. 14 Approving Sale and Transfer to Proceed at Finding of Fact No. 10 (Nov. 18, 2021).

⁴ Order No. 21 Denying Motion for Reconsideration (Jun. 6, 2023).

25 acres or more that are wholly or partially located in an area proposed to be certificated.⁵ The Commission predicated its decision on Texas Water Code § 13.246(a-1) and 16 Texas Administrative Code (TAC) § 24.235(b)(2).⁶

Order No. 20 concerns TAWC because its underlying implication is that the more general notice requirements in 16 TAC § 24.235(b)(2) supersede the notice requirements in 16 TAC § 24.239(e) that are specifically tailored to an STM proceeding. TAWC is concerned about improper conflation of the Commission's CCN amendment/obtain and STM procedures. While 16 TAC § 24.239(e)(1) grants the Commission discretion to require notice to "affected parties,"⁷ TAWC supports the arguments offered by TWU illustrating why a landowner of a tract of 25 acres or more who is not a customer of the selling utility is *not* an affected party when an STM entails only the transfer of existing certificated area.⁸ The only practical reason to determine that these landowners are affected parties is so they can receive notice about the opportunity to opt out of the seller's CCN. However, there is nothing in TWC § 13.246(a-1) or § 13.301, or in 16 TAC § 24.235(b)(2) or § 24.239(e), to suggest that landowners should be provided a second opportunity to opt out of a CCN simply because the right to serve the area is transferring from one utility to another.

Further, TAWC strongly disagrees that a landowner of a tract comprised of 25 acres or more is permitted a second opportunity to opt out of a CCN. As TWU notes, the Texas Legislature has established the process to be used to remove a tract of this size from an area that is already certificated as well as criteria for determining if a landowner is eligible to use this process.⁹ A required part of the process is a determination on the amount of compensation due to the utility that holds the certificate from which a tract is released.¹⁰ Requiring landowner notice under 16 TAC § 24.239(e) ostensibly for the purpose of inviting opt outs undermines the streamlined expedited release process in TWC § 13.2541. Accordingly, TAWC respectfully requests that the Commission grant TWU's appeal of Interim Order No. 21 and direct the ALJ to reconsider and withdraw Order No. 20.

Respectfully submitted,



Ashley Myers, Executive Director
Texas Association of Water Companies

⁵ Docket No. 51646, Order on Remand at 2-3.

⁶ *Id.*, Order on Remand at 2.

⁷ The Commission's rules define "affected person" but do not define "affected party." 16 TAC § 24.3.

⁸ Texas Water Utilities, L.P.'s Appeal of Interim Order No. 21 at 5-6 (Jun. 15, 2023).

⁹ *Id.* at 7-8 (citing to TWC § 13.2541).

¹⁰ TWC § 13.2541(f)-(j).