



## Filing Receipt

**Received - 2023-03-14 04:20:05 PM**

**Control Number - 54171**

**ItemNumber - 45**

**DOCKET NO. 54171**

<b>APPLICATION OF TEXAS WATER UTILITIES, L.P. AND CS WATER CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BOSQUE COUNTY</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
--	--	--

**TEXAS WATER UTILITIES, L.P.'S OBJECTIONS AND RESPONSE TO OFFICE OF PUBLIC UTILITY COUNSEL'S STATEMENT OF POSITION**

Texas Water Utilities, L.P. (TWU) objects to the Office of Public Utility Counsel's (OPUC) Statement of Position (Statement) filed on March 13, 2023.

**I. EXECUTIVE SUMMARY**

OPUC's Statement is untimely and should be struck. At the time OPUC's Statement was filed, the only remaining deadline in the procedural schedule adopted in Order No. 6 was the deadline for the parties to this proceeding to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed. The deadline to file a response to the Staff of the Public Utility Commission of Texas's (Staff) recommendation on the transaction passed 26 days ago on February 15, 2023.<sup>1</sup> OPUC's Statement, which is the only filing OPUC has made since intervening in this proceeding, opines on TWU's request under Texas Water Code (TWC) § 13.3011 regarding the initial rates to be charged customers acquired from CS Water Corporation (CS Water). This change in rates was addressed in Staff's recommendation filed on January 31, 2023.<sup>2</sup>

**II. ARGUMENT**

**A. OPUC's Statement of Position is Untimely**

Pursuant to Order No. 6, parties were required to file a response to Commission Staff's Recommendation on the Approval of the Sale and on the CCN Amendment on or before February 15, 2023. Commission Staff filed its recommendation on January 31, 2023, recommending approval of the transaction and certificate of convenience and necessity (CCN)

---

<sup>1</sup> Order No. 6 Establishing Procedural Schedule (Jan. 3, 2023). OPUC did not request an extension of this deadline.

<sup>2</sup> Commission Staff's Recommendation on Approval of the Sale and on the CCN Amendment, Memorandum of James Harville at 4 (Jan. 31, 2023) (Staff Recommendation).

amendment. The only party that filed a response was TWU, which was unopposed to Staff's recommendation. OPUC did not file a response to Staff's January 31, 2023 filing. Under the procedural schedule established in Order No. 6, and 16 Texas Administrative Code (TAC) § 22.71(h), any comments filed after February 15, 2023, are untimely.

OPUC's Statement is a late-filed response to Staff's recommendation, which directly addressed the initial rates to be charged to the customers TWU will acquire from CS Water, stating: "The customers' rates will be higher than the current rates for CS Water as the rates will be changing to the current approved rates for Texas Water. Reliability and quality of water service is expected to improve under Texas Water's management."<sup>3</sup> These statements were made as part of Staff's analysis of the factors for granting a CCN under TWC § 13.246(c).<sup>4</sup> Overall, Staff recommended that the transaction between TWU and CS Water will serve the public interest and should proceed without a public hearing.<sup>5</sup>

OPUC's Statement addresses this recommendation in two ways. First, it urges the Commission to exercise its discretion to determine which of the rates in TWU's Commission-approved tariff that were in effect on the date the application was filed in this proceeding should be charged to the CS Water customers acquired through the proposed transaction.<sup>6</sup> Second, it argues that TWU should be directed to charge the "phase-2 rates in effect at the time it filed the instant STM application."<sup>7</sup> Therefore, OPUC's Statement is a response to Staff's final recommendation and was due on February 15, 2023.

OPUC's Statement is filed pursuant to 16 TAC § 22.124, which is inapplicable to this stage of the proceeding. Under 16 TAC § 22.124(a), "[e]ach party that has not prefiled direct testimony and, insofar as its prefiled direct testimony does not address issues that a party intends to litigate, each party that has prefiled direct testimony shall file a statement of position no later than three working days before the start of a hearing." This proceeding has not been referred to the State Office of Administrative Hearings for an evidentiary hearing, and in fact, the deadline for Commission Staff to request a hearing was January 31, 2023. OPUC's reliance on 16 TAC

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Staff's Recommendation at 1.

<sup>6</sup> OPUC's Statement of Position at 8 (Mar. 13, 2023).

<sup>7</sup> *Id.*

§ 22.124, is merely an attempt to circumvent Order No. 6's February 15, 2023 deadline for parties to file a response to Commission Staff's Recommendation.

OPUC's Statement is untimely and should be struck.

**B. OPUC's Position on the Filed Rate Doctrine Contradicts Its Intent**

Under Texas Water Code (TWC) § 13.3011, a person who files an application for a sale, transfer, or merger (STM) under TWC § 13.301 may request approval to charge the customers of the system it will acquire as result of the transaction initial rates that are shown in a tariff on file with the Commission and in effect on the date the STM application is filed.<sup>8</sup> The Commission is prohibited from requiring a transferee who requests rates pursuant to TWC § 13.3011 to initiate a rate proceeding to establish the initial rates.<sup>9</sup>

The statute does not affirmatively state how the Commission should evaluate a request under TWC § 13.3011 when the transferee has a tariff on file that contains more than one rate schedule or phased-in rates. Accordingly, the Commission should look to the other statutes governing the review of STM applications and filing of rate change applications for guidance in the instant case.

Subsection (e) of TWC § 13.301 establishes a 120-day statutory deadline for the Commission to notify the parties to an STM whether it will hold a public hearing to determine if the transaction will serve the public interest. The Commission may hold a hearing on an STM application if certain conditions are met, including if there are concerns that the transaction may not serve the public interest, after weighing the factors set forth in TWC § 13.246(c).<sup>10</sup> The factor in TWC § 13.246(c) most relevant to a request to charge initial rates pursuant to TWC § 13.3011 is "the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment."<sup>11</sup>

The statutes addressing the filing of an application to change rates for Class A and B utilities are found in TWC §§ 13.187 and 13.1871. Both statutes require that the application to change rates include cost and rate schedules supporting the requested rate *increase*.<sup>12</sup> The

---

<sup>8</sup> TWC § 13.3011(a).

<sup>9</sup> TWC § 13.3011(b).

<sup>10</sup> TWC § 13.301(e)(5).

<sup>11</sup> TWC § 13.246(c)(8).

<sup>12</sup> TWC § 13.187(c) and § 13.1871(d) (emphasis added).

statute governing an application to change rates for a Class C utility requires compliance with the procedures described in TWC § 13.1871.<sup>13</sup>

Reading TWC § 13.3011 considering TWC §§ 13.187, 13.1871, and § 13.18715, it is clear this statute is intended to permit the transferee in an STM application to request initial rates that are higher than the current rates charged to the customers it will acquire, and to prevent the Commission from requiring the transferee to file an application for approval of a rate increase. Reading TWC § 13.3011(b) to prevent the Commission from requiring a rate change application to approve an initial rate that would result in a rate decrease for the acquired customers leads to an absurd result.

Adding TWC § 13.301(e) and § 13.246(c) to the mix, the Commission can hold a hearing on the application if it finds that the rate increase resulting from the rates requested pursuant to TWC § 13.3011 raises concerns that the transaction is not in the public interest after considering the probable improvement of service or lowering of costs to customers. Staff addressed this criterion in its January 31, 2023, recommendation and concluded that the application should proceed without a hearing. Therefore, this application has been reviewed and processed consistent with applicable statutes.

OPUC's Statement should be stricken from the record because it was not timely filed; however, if it remains in the record, the recommendations therein should be rejected because they amount to little more than bare assertions regarding why the Commission should not approve the rates requested by TWU under TWC § 13.3011.

### **III. CONCLUSION**

TWU respectfully requests the entry of an order finding that OPUC's Statement of Position is a late-filed response to Staff's recommendation and striking it from the record in this proceeding. Additionally, TWU requests any further relief to which it has shown itself entitled.

---

<sup>13</sup> TWC § 13.18715(b).

Respectfully submitted,

SPENCER FANE, LLP  
816 Congress Avenue  
Suite 1200  
Austin, TX 78701  
Telephone: (512) 840-4550  
Facsimile: (512) 840-4551

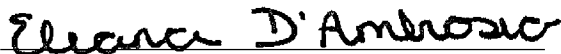
William A. Faulk, III  
State Bar No. 24075674  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
Rashmin J. Asher  
State Bar No. 24092058  
[rasher@spencerfane.com](mailto:rasher@spencerfane.com)

  
Eleanor D' Ambrosio  
Eleanor D' Ambrosio  
State Bar No. 24097559  
[edambrosio@spencerfane.com](mailto:edambrosio@spencerfane.com)

**ATTORNEYS FOR TEXAS WATER  
UTILITIES, L.P.**

**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 14, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
Eleanor D' Ambrosio  
Eleanor D' Ambrosio