



## **Filing Receipt**

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**Control Number - 54546**

**Item Number - 37**

**PUC DOCKET NO. 54546**

<b>APPLICATION OF TEXAS WATER UTILITIES, LP AND WOODLAND OAKS UTILITY LP FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS MONTGOMERY COUNTY</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION    OF TEXAS</b>
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**OFFICE OF PUBLIC UTILITY COUNSEL'S  
RESPONSE TO TEXAS WATER UTILITIES, L.P.'S RESPONSE TO OFFICE OF PUBLIC  
UTILITY COUNSEL'S STATEMENT OF POSITION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully disagrees with Texas Water Utilities, LP (“TWU”) assertions filed in response to OPUC’s Statement of Position and submits this Response to Texas Water Utilities, L.P.’s Response to Office of Public Utility Counsel’s Statement of Position pursuant to 16 Texas Administrative Code (“TAC”) § 22.78. TWU filed its response on May 1, 2023. Section 22.78 provides a party five working days after receipt of a pleading to respond. Thus, this response is timely filed.

**TWU’S ASSERTION THAT OPUC’S STATEMENT OF POSITION CONTAINS  
INACCURATE STATEMENTS IS MISLEADING AND MERITLESS**

TWU’s filing presents a number of inaccurate assertions that are wholly meritless. For instance, TWU suggests that by stating that “[s]ome systems utilize a seven-year phase-in schedule, whereas others have five-year schedules” that OPUC has conveyed in its Statement of Position that TWU’s tariff had phase-in periods of “only five and seven years.”<sup>1</sup> Nowhere in OPUC’s Statement of Position does it say that *only* five and seven years phase-in rates exist within

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<sup>1</sup> Texas Water Utilities, L.P.’s Response to Office of Public Utility Counsel’s Statement of Position at 2. (“TWU Response”).

TWU's tariffs; in fact, the word "only" is nowhere to be found in OPUC's Statement of Position, which specifically refers to TWU's tariff "contain[ing] a series of phased-in rates," with citation to the entire tariff.<sup>2</sup> In fact, all of OPUC's quoted text from TWU's application contain footnote citation references. TWU's claim is wholly argumentative, lacking evidence, and inaccurate.

Of note, TWU's support for its claim only serves to demonstrate the benefit of adopting a phase-in rate for its newly acquired systems that are the subject of this application, mitigating rate shock. By its own admission, over 1,000 of TWU's customers have phase-in tariffs born from a recognition of the need for a gradual increase for certain select customer groups. Insofar as TWU clarifies the intention behind the phased-in rates adopted for its "existing customers"<sup>3</sup> as of the date of filing of the instant application was to mitigate rate shock, OPUC would suggest that customers of its newly acquired systems are also entitled to a similar consideration.

To that end, OPUC is very much opposed to unduly limiting knowledgeable consideration as to the variety of phase-in regimens that customers may be afforded to avoid rate shock and supports TWU's efforts to offer consumers an opportunity to acclimate to the higher prices they charge, albeit only a small fraction of their customers, as per TWU's own admission.<sup>4</sup>

### **TWU'S POSITION CONTRADICTS LEGISLATIVE INTENT**

OPUC offered, as a practical recommendation to the Administrative Law Judge ("ALJ"), that consideration be given to adoption of at least one of the phased-in rate regimens applicable to TWU's Woodland Oaks Utility, LP ("WOU") consumers. TWU argued in its response that such action would be contrary to legislative intent<sup>5</sup> and notes "[t]he Commission is prohibited from

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<sup>2</sup> OPUC's Statement of Position at 1. ("Statement of Position").

<sup>3</sup> TWU Response at 2.

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

<sup>5</sup> TWU Response at 3.

requiring a transferee who requests rates pursuant to TWC §13.3011 to initiate a new proceeding to establish the initial rates or to charge the existing rates of the utility being acquired.”<sup>6</sup> The language of the relevant statute<sup>7</sup> utilizes the permissive term “may” in underscoring the Commission’s consideration for rate setting in this matter is responsive to an applicant’s “request.”<sup>8</sup> If the Texas Legislature intended to prohibit the Public Utility Commission of Texas (“Commission”) from establishing rates for a transferee’s newly acquired system that are in keeping with that grant of authority, it could have used compulsory language, such as “shall.” Per TWC §13.183, the Commission has authority to ensure that retail customers receive a more affordable water service and may use alternative ratemaking methodologies, such as phased and multi-step rate changes to achieve such goal. In fact, with the intention behind TWC §13.3011 being acquisition of smaller systems in disrepair by larger water utilities, it is easily conceivable that ratepayers of acquired systems may have depressed rates stemming from minimal cost recovery associated with the transferor’s lack of system maintenance and upkeep, and therefore adoption of a lower rate taken from a transferee’s phase-in regimen may be most fitting and an attribute that is innately in keeping with the legislative intent behind TWC §13.3011. OPUC’s Statement of Position supports that effort. Accordingly, OPUC proposes that the Commission

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<sup>6</sup> *Id.*

<sup>7</sup> Sec. 13.3011. INITIAL RATES FOR CERTAIN WATER OR SEWER SYSTEMS AFTER PURCHASE OR ACQUISITION.

(a) A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

(1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and  
(2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

(b) The regulatory authority may not require a person who makes a request under Subsection (a) to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.

<sup>8</sup> Statement of Position at 3.

utilizes a 3-year phase-in rate for the acquired systems beginning with the existing rate for water of \$36.28 for the first year, \$40.00 for the second year, \$44.00 for the third year, and the full rate of \$48.37 after the end of the third year phase-in rate. A similar phase-in rate for wastewater starting with the existing rate for the first year of \$35.53; second year, \$45.00; third year, \$55.00; and at the end of the third year, \$68.52.

### **TWU'S POSITION ASSERTION THAT IMPLEMENTING PHASE-RATE WOULD LEAD TO ABSURD RESULTS**

TWU claims that OPUC's "arbitrary and capricious recommendation . . . to categorically use the lowest effective phased-in rates in a utility's tariff would lead to absurd results which if implemented would lead to differing rates and rate schedules that would add costs to the utility, and ultimately customers."<sup>9</sup> OPUC notes that TWU's own tariff evidences the implementation of varying rates among its consumers. OPUC is recommending to the ALJ that a phase-in rate similar to the one proposed above be used to mitigate the rate shock newly acquired consumers will experience when confronted with TWU's proposed prices. As stated above, the Commission has authority to implement phased and multi-step rate which is not limited or abrogated by Sections 13.3011 of the Water Code.<sup>10</sup> OPUC is not suggesting a permanent injunction on raising the newly acquired systems rates, merely an approach that favors gradualism in an effort to mitigate rate shock. This does not constitute initiation of a new ratemaking proceeding as contemplated in TWC § 13.3011(b).

### **TWU'S PUNITIVE POSITION**

TWU alleges that "[s]hould OPUC's position be adopted by the Commission and lower rates be ordered for acquired customers, TWU would essentially be punished for proposing and

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<sup>9</sup> TWU Response at 7.

<sup>10</sup> TWC § 13.183(c).

agreeing to customer-friendly rates in its last rate case . . . .”<sup>11</sup> OPUC’s Statement of Position simply urges the Commission to implement one of the phased-in rates that mitigates the unfriendly rate TWU proposes to charge newly acquired residential and small commercial consumers.

**TWU’S CLAIM THAT OPUC’S POSITION WOULD RESULT  
IN NEGATIVE CONSEQUENCE FOR CUSTOMERS**

TWU claims that OPUC’s position would harm consumers.<sup>12</sup> This is far from the truth. Simply put, TWU’s response would yield a negative result upon the customers of the acquired systems because TWU’s proposal seeks to rapidly escalate rates at the expense of properly affording impacted consumers the ability upon acquisition to avoid the rate shock inherent in adoption of the utility’s higher rates.

**CONCLUSION**

OPUC underscores its position and recommends that the applicant be directed to use the phase-2 rates in effect at the time it filed the instant STM application. The Commission should then determine which of the respective water systems’ phase-2 rates may be charged by the applicant to the customers of WOU. Alternatively, the Commission could implement the following suggested phase-in rates for the customers of the acquired systems: OPUC proposes that the Commission utilizes a 3-year phase-in rate for the acquired systems beginning with the existing rate for water of \$36.28 for the first year, \$40.00 for the second year, \$44.00 for the third year, and the full rate of \$48.37 after the end of the third year phase-in rate. A similar phase-in rate for wastewater starting with the existing rate for the first year of \$35.53; \$45.00 for the second year; \$550.00 for the third year; and and the full rate of \$68.52 after the end of the third year phase-in rate

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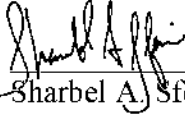
<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Date: May 8, 2023

Respectfully submitted,

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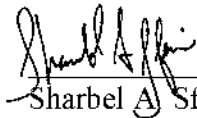
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**CERTIFICATE OF SERVICE**

PUC DOCKET NO. 54546

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 8th day of May 2023, by facsimile, electronic mail, and/or first class, U.S. Mail.



Sharbel A. Sfeir