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APPLICATION OF TEXAS WATER UTILITIES, L.P. AND WOODLAND OAKS UTILITY LP FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS AND FOR A NAME CHANGE TO CERTIFICATES OF CONVENIENCE AND NECESSITY IN MONTGOMERY COUNTY	§ § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**TEXAS WATER UTILITIES, L.P. AND WOODLAND OAKS UTILITY LP'S
REQUEST FOR CLARIFICATION OF ORDER NO. 12**

Texas Water Utilities, L.P. (TWU) and Woodland Oaks Utility LP (Woodland Oaks) (collectively, Applicants) respectfully request clarification of Order No. 12 Approving Sale and Transfer to Proceed issued on July 19, 2023.

I. EXECUTIVE SUMMARY

TWU has multiple sale, transfer, merger (STM) applications pending before the Public Utility Commission of Texas (Commission), with this docket being the largest transaction¹ currently under review. Order No. 12 has produced a level of regulatory uncertainty amongst the Parties that they need to resolve for the sake of the transaction.

When read with the terms set forth in the Agreement for Sale and Purchase of Water and Wastewater Utility Assets (Agreement) executed by TWU and Woodland Oaks,² ordering paragraphs 1 and 5 included in Order No. 12 are inconsistent. Under ordering paragraph 1, TWU and Woodland Oaks are authorized to complete the transaction “as proposed.”³ Under ordering paragraph 5, “Woodland Oaks must provide continuous and adequate service in its certificated service areas until a final order or notice of approval issued by the Commission transfers the requested water and sewer service areas.”⁴

¹ See Application for Sale, Transfer, or Merger at Confidential Attachment 1 (Jan 4, 2023) (stating the amounts of the proposed accounting entries to record the transaction, which together equal the purchase price).

² *Id.* at Confidential Attachment 2 (Attachment 2).

³ Order No. 12 Approving Sale and Transfer to Proceed at Ordering Paragraph No. 1 (Jul. 19, 2023) (Order No. 12).

⁴ *Id.* at Ordering Paragraph No. 5.

The Agreement sets forth the transaction “as proposed.” Upon completion of the transaction “as proposed,” Woodland Oaks will no longer hold legal title to, or be legally liable for the operation of, the water and wastewater facilities it currently relies on to satisfy its regulatory obligation to provide continuous and adequate service. Such ownership and control will reside solely with TWU. Accordingly, it is not possible from a legal standpoint for TWU and Woodland Oaks to both complete the transaction “as proposed” in the Agreement (ordering paragraph 1) *and* have Woodland Oaks continue to provide continuous and adequate service until a final order or notice of approval is issued in this proceeding (ordering paragraph 5).

Applicants seek clarification of Order No. 12 as it relates to this conflict. Specifically, Applicants seek clarification on whether ordering paragraph 5 of Order No. 12 allows TWU to operate the system and assets to provide service to the current customers of Woodland Oaks following the completion of the transaction pursuant to ordering paragraph 1 of Order No. 12.

II. REQUEST FOR CLARIFICATION

Ordering paragraph 5 of Order No. 12 states the following:

This Order does not transfer the water or sewer service areas at issue in this proceeding from Woodland Oaks or authorize Texas Water Utilities to provide service in Woodland Oaks’ certificated service areas. Woodland Oaks must provide continuous and adequate service in its certificated service areas until a final order or notice of approval issued by the Commission transfers the requested water and sewer service areas.

STM interim orders have historically contained similar but arguably less restrictive language: “The applicants are advised that the facilities and service area will remain under CCN number 12345 and will be held by Selling Utility until the final order or notice of approval is issued in this matter, in accordance with Commission rules.”⁵ Applicants are concerned this new ordering language as set forth in Order No. 12 can be read in a way that conflicts with the Texas Water Code (TWC), with the Commission’s rules, with other provisions of Order No. 12, and with historical practice, and that it would have unintended adverse effects on future acquisitions similar to the one in question. Applicants therefore seek clarification from the administrative law judge (ALJ) regarding the correct interpretation of ordering paragraph 5. Specifically, Applicants seek clarification on whether ordering paragraph 5 of Order No. 12 allows TWU to operate the system

⁵ See, e.g., *Application of Texas Water Utilities LP and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Marion County*, Docket No. 53920, Order No. 15 Approving Sale and Transfer to Proceed at Ordering Paragraph No. 5 (Mar. 15, 2023).

and assets, acquired pursuant to ordering paragraph 1 of Order No. 12, to provide service to the customers of Woodland Oaks following the completion of the transaction.⁶

Pursuant to the Agreement, both TWU and Woodland Oaks must execute a Bill of Sale, a Real Estate Assignment, and an Assignment and Assumption Agreement at closing, and Woodland Oaks must deliver a deed conveying good and indefeasible title to the property subject to the Agreement.⁷ In addition, TWU will assume and agree to pay, perform, and discharge all liabilities accruing, related to, or arising out of the operation of the systems or the ownership of the assets acquired from Woodland Oaks after closing.⁸ As such, upon completion of the transaction (conducted pursuant to ordering paragraph 1) TWU will have full ownership of and legal responsibility for the system and the assets. Woodland Oaks, in turn, will have no ownership in or legal responsibility for the system and the assets upon completion of the transaction.

Ordering paragraph 5 could be read to impose a situation in which TWU—the utility that owns and is legally responsible for the systems and assets pursuant to completion of the transaction—is prohibited from providing service in favor of Woodland Oaks—the utility that no longer owns and is no longer liable for the property or assets needed to provided service. Applicants do not believe that is what is intended, particularly when read in the context of the applicable statutory and regulatory provisions,⁹ and noting that pursuant to conclusion of law 2 of Order No. 12, the ALJ has found that TWU is “capable of rendering adequate and continuous service” pursuant TWC § 13.251.¹⁰ Applicants therefore seek this clarification—whether ordering paragraph 5 of Order No. 12 allows TWU to operate the system and assets to provide service to the current customers of Woodland Oaks following the completion of the transaction pursuant to ordering paragraph 1 of Order No. 12.

It appears that a Commissioner memorandum filed in Docket No. 54341 is the source of the change in the standard ordering paragraph in an STM interim order noted earlier in this

⁶ Applicants do not hereby seek an interpretation that conflicts with recent Commission discussion regarding STM interim orders and fair market value or initial rate approval, but only an interpretation regarding the provision of service to customers following the completion of the transaction.

⁷ Attachment 2 at Article VII.c.–d.

⁸ *Id.* at Article III.e.

⁹ Under both TWC § 13.301(f) and 16 Tex. Admin. Code (TAC) § 24.239(i), a transaction “may be completed as proposed” 120 days after the submittal of the application. Further, the rules require that the transaction be completed within 180 days following the date of the interim order or the approval is void. 16 TAC § 24.239(m).

¹⁰ Order No. 12 at Conclusion of Law No. 2.

pleading, to what was included as ordering paragraph 5 in Order No. 12.¹¹ The memorandum included a statement that the transferee had demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the area requested in the application. This statement was reflected in conclusion of law 2 in the Interim Order Approving the Sale and Transfer to Proceed as follows: “After consideration of the factors in TWC § 13.246(c), Aqua demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.”¹² The Order Approving the Sale and Transfer to Proceed in this case contains a nearly identical conclusion of law 2, confirming compliance with TWC § 13.251 and TWU’s ability to serve the area in the application.¹³ Applicants believe conclusion of law 2 supports an interpretation that ordering paragraph 5 allows for TWU’s operation of the system and assets following the completion of the transaction.

III. CONCLUSION

Applicants respectfully request clarification of the apparent contradiction between ordering paragraphs 1 and 5 of Order No. 12, and that the Commission provide certainty as to Applicants’ ability to close the transaction “as proposed” and allow TWU to operate the system and assets acquired pursuant to ordering paragraph 1 to provide service to the customers of Woodland Oaks following the completion of the transaction. Applicants further request any further relief to which they may be justly entitled.

¹¹ *Application of Aqua Texas, Inc. and Forest Grove, Inc. dba Southern Oaks Water Supply for Sale, Transfer or Merger of Facilities and Certificate Rights in Navarro and Freestone Counties*, Docket No. 54341, Commissioner Memorandum at 2 (Jun. 28, 2023).

¹² *Id.*, Interim Order Approving Sale and Transfer to Proceed at Conclusion of Law No. 2 (Jun. 29, 2023).

¹³ Order No. 12 at Conclusion of Law No. 2.

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 August 21, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

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