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**SOAH DOCKET NO. 473-24-13127  
PUC DOCKET NO. 54617**

**APPLICATION OF TEXAS WATER § BEFORE THE STATE OFFICE  
UTILITIES, LP AND SOUTHERN §  
HORIZONS DEVELOPMENT, INC. FOR §  
SALE, TRANSFER, OR MERGER OF § OF  
FACILITIES AND CERTIFICATE §  
RIGHTS IN LIBERTY AND §  
MONTGOMERY COUNTIES § ADMINISTRATIVE HEARINGS**

**OFFICE OF PUBLIC UTILITY COUNSEL'S  
POST-HEARING INITIAL BRIEF**

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**August 9, 2023**

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**SOAH DOCKET NO. 473-24-13127  
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<b>APPLICATION OF TEXAS WATER UTILITIES, LP AND SOUTHERN HORIZONS DEVELOPMENT, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN LIBERTY AND MONTGOMERY COUNTIES</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**OFFICE OF PUBLIC UTILITY COUNSEL’S  
POST-HEARING INITIAL BRIEF**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this post-hearing initial brief and shows the following:<sup>1</sup>

**I. INTRODUCTION**

On February 2, 2023, transferee Texas Water Utilities, L.P. (“TWU”) and transferor Southern Horizons Development, Inc. (“Southern Horizons”) filed an application for sale, transfer, or merger (“STM”) of a retail public utility.<sup>2</sup> On March 27, 2023,<sup>3</sup> the Public Utility Commission of Texas (“Commission”) granted OPUC’s Motion to Intervene in the proceeding.<sup>4</sup> Thereafter, OPUC, along with TWU, Staff of the Public Utility Commission of Texas (“Staff”), and intervenor

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<sup>1</sup> The fact that the Office of Public Utility Counsel (“OPUC”) does not address an issue should not be interpreted as agreement with any particular position on the issue. All page number references are to the native page numbers unless indicated otherwise.

<sup>2</sup> Redacted Direct Testimony of Brian D. Bahr, TWU Ex 1 at Attachment BDB-2, the Application of Texas Water Utilities, L.P. and Southern Horizons Development, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Liberty and Montgomery Counties. (Application).

<sup>3</sup> Order No. 3 – Granting Motion to Intervene (Mar. 27, 2023).

<sup>4</sup> OPUC’s Motion to Intervene (Mar. 16, 2023).

ratepayer Anna Miller participated in the briefing of various threshold issues pertaining to Texas Water Code (“TWC”) § 13.3011, Initial Rates for Certain Water or Sewer Systems After Purchase or Acquisition.<sup>5</sup>

On March 7, 2024, the Commission filed its Preliminary Order, offering its threshold legal and policy determinations and a series of statements of position in consideration of the arguments of the parties.<sup>6</sup> Specifically, the Commission found that: (1) it is “not required to grant a utility’s request to charge its existing rates in a newly acquired utility’s service area,” given that the “language used in TWC § 13.3011 is discretionary and is distinguishable from nondiscretionary language in other statutes that require the Commission to grant a utility’s requested relief if certain criteria are met;”<sup>7</sup> (2) TWC § 13.3011 “does not specify the criteria for determining whether to grant a request under TWC § 13.3011;”<sup>8</sup> and (3) “a request for a hearing to determine whether an STM transaction, including a request for initial rates under TWC § 13.3011, is in the public interest constitutes proper grounds for a hearing.”<sup>9</sup> OPUC subsequently filed initial<sup>10</sup> and supplemental statements of position<sup>11</sup> and participated in the hearing on the merits held on July 23, 2024. Per the instructions provided by the State Office of Administrative Hearings (“SOAH”) administrative law judge (“ALJ”) at the close of the hearing, the deadline for parties to file initial briefs is August 9, 2024. Therefore, this brief is timely filed.

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<sup>5</sup> See OPUC’s Response to Order Requesting Briefing on Threshold Issues (Oct. 27, 2023); See also OPUC’s Reply Brief to Order Requesting Briefing on Threshold Issues (Nov. 11, 2023).

<sup>6</sup> Preliminary Order (Mar. 7, 2024).

<sup>7</sup> *Id.* at 3 (Commission’s answers to threshold issue number 1.).

<sup>8</sup> *Id.* (Commission’s answer to threshold issue number 2.).

<sup>9</sup> *Id.* (Commission’s answer to threshold issue number 4.).

<sup>10</sup> OPUC’s Statement of Position (May 9, 2024).

<sup>11</sup> OPUC’s Supplemental Statement of Position (Jul. 18, 2024).

## II. ARGUMENT

Foremost, OPUC contends that TWU should not be allowed to implement the proposed initial rates in this proceeding because doing so would result in the transaction failing to be in the public interest. OPUC has serious concerns with applying TWU's pre-existing tariff, which was never tailored to the Southern Horizons systems or Southern Horizons' customers, because of the rate shock it would invariably cause.

TWC § 13.301 requires the Commission to determine whether a transaction will be in the public interest when reviewing a sale, transfer, or merger application.<sup>12</sup> TWC § 13.301(e)(5) allows for the consideration of the factors outlined in TWC § 13.246(c) when determining if a transaction is in the public interest.<sup>13</sup> TWC § 13.246(c) explains:

Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;

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<sup>12</sup> TWC § 13.301(c)(5).

<sup>13</sup> *Id.*

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or *lowering of cost* to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.<sup>14</sup>

Section (h)(5)(H) of 16 TAC § 24.239, the rule implementing TWC § 13.301, essentially mirrors the statutory language of TWC § 13.246(c)(5), indicating that “[t]he commission may require a hearing if: there are concerns that the transaction does not serve the public interest based on consideration of the following factors: the probable improvement of service or *lowering of cost* to consumers in the requested area resulting from approving the transaction.”<sup>15</sup>

The application conveys a total of 472 existing water connections, across two systems,<sup>16</sup> are going to be affected by the proposed transaction.<sup>17</sup> Commission-approval of TWU's requested rates, as set forth in the application, would amount to a greater than 50% increase in impacted ratepayers' base rates,<sup>18</sup> with any consumer using 4,000 gallons or more in a given month paying *at least double* their current water bill.<sup>19</sup>

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<sup>14</sup> [Emphasis added.]

<sup>15</sup> [Emphasis added.]

<sup>16</sup> Southern Crossing Water (TCEQ PWS 146015) and Southern Oaks (TCEQ PWS 1460151).

<sup>17</sup> Application at 9-11.

<sup>18</sup> Application at Attachment 1.

<sup>19</sup> *Id.* (Southern Horizons' current rate of \$60.82 versus Texas Water's proposed \$134.22).

### Rate Comparison Chart<sup>20</sup>

Rate Type	SHDI rate	TWU rate
5/8" base	\$32.20	\$48.37
Usage (0-2 kgal)	\$0.00	\$6.48
Usage (2-5 kgal)	\$3.18	\$7.98
Usage (5-10 kgal)	\$3.18	\$7.98
Usage (10-20 kgal)	\$3.18	\$9.05
Usage (>20 kgal)	\$3.18	\$9.64

As can be seen from the Rate Comparison Chart, the base rate for customers of Southern Horizons will increase by \$16.17 per month. The gallonage rate under the initial rates proposed by TWU is astronomical – a customer using 0 to 2,000 gallons will see a price increase of up to 90% in their total bill; a customer using 2,001 to 5,000 gallons will see a price increase of up to 104% in their total bill; and a customer using 5,001 to 10,000 gallons will see an increase of up to 117% of their total bill. These exorbitant rates cannot be held to be just and reasonable under TWC § 13.182(a), which mandates that “The regulatory authority *shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.*”<sup>21</sup> Accordingly, the initial rates proposed by TWU must be rejected.

TWU states in the Direct Testimony of Mr. Brian D. Bahr that the initial rates requested were approved by the Commission in Docket No. 50944<sup>22</sup> pursuant to a settlement agreement.<sup>23</sup> As part of that settlement agreement, all of TWU’s systems were consolidated under the requested initial rate in this proceeding.<sup>24</sup> However, sixteen systems were put on phased-in rate schedules,<sup>25</sup>

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<sup>20</sup> Application at Attachment 1.

<sup>21</sup> [Emphasis added.]

<sup>22</sup> *Application of Monarch Utilities for Authority to Change Rates*, Docket No. 50944 (Feb. 23, 2022).

<sup>23</sup> Redacted Direct Testimony of Brian D. Bahr, TWU Ex 1 at 14:20-21 (Apr. 18, 2024). (Bahr Direct).

<sup>24</sup> *Id.* at 15:3-4.

<sup>25</sup> *Id.* at 15:5-6.



no doubt to alleviate the rate shock of consolidating such a large number of customers within unique systems into one rate. As contemplated by the application in the instant STM docket, the customers of the Southern Horizons system impacted by the transfer will not be given a similar opportunity to benefit from phased in rates despite being a small system that has only had two rate adjustments in the past fourteen years.<sup>26</sup> Additionally, TWU's requested initial rates were tailored to the systems included in its application in Docket No. 50944.<sup>27</sup> Because the customers of Southern Horizons were not considered in the Commission's review of TWU's requested initial rates and the customers of Southern Horizons have not had regular rate adjustments in the past fourteen years, the Commission should decline to adopt TWU's requested initial rates.

It is also worth noting that TWU "anticipates filin[g] a request for a System Improvement Charge and true-ups for purchased water pass-throughs, but does not anticipate filing a general rate case within the next 12 months."<sup>28</sup> Furthermore, TWU's witness Mr. Brian Bahr demonstrated in his testimony that the additional revenue generated from the Southern Horizons systems at TWU's requested initial rate would make up *less than 1%* of TWU's rate base.<sup>29</sup>

The direct testimony of intervenor ratepayers in this proceeding lends strong support for the public interest determination resulting in a denial of TWU's request for initial rates. As ratepayer Constance Stover, a retiree, explains:

The purpose of my direct testimony in this proceeding is to intervene in the TWU initial tariff rate that would put a burden on myself and people already struggling to pay their bills. We are mostly retired, low income, veterans, and working-class people. We are not a high-income subdivision. [We are]

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<sup>26</sup> Direct Testimony of Steven Sullivan, TWU Ex. 3 at 6-7 (Apr. 18, 2024). (Sullivan Direct).

<sup>27</sup> *Application of Monarch Utilities for Authority to Change Rates*, Docket No. 50944, Application to Change Rates (July 15, 2020).

<sup>28</sup> Application at 7.

<sup>29</sup> Bahr Direct at 14. [Emphasis added.]

[i]n great need of “Just and Reasonable” tariff rates that will be in the public interest”. . . . I felt the need to intervene on behalf of myself and our subdivision to the high rate TWU will impose on us. I feel it is a big burden on us since most of us are just above all of the low-income assistance programs. If we don’t speak up for ourselves who will[?] We are losing our rights and “just and reasonable” or for the “public interest” is being taken away.<sup>30</sup>

Similarly, the testimony of ratepayer Cecil Fairfax, a licensed electrician with forty years in the Petrochemicals industry, seeks to bring to light the fact that an “increase in water rates this much and without a yearly small increase or just small increase will burden low income and retired persons or someone who will be on social security soon . . . .”<sup>31</sup> Likewise, the testimony of ratepayer Anna Miller, a disabled veteran retiree, provides that “the consumers in our subdivisions are not very affluent and are struggling to make ends meet. The lack of evidence and justification for this increase, on the tariff rate, and the process of the application of the sale is of great concern. Even when a Class A utility applies for a tariff rate increase, the process is hard to fight. Any assistance to ensure that every rate made, demanded, or received is just and reasonable is welcome.”<sup>32</sup> Ms. Miller further notes, “Even on Docket No. 50944 TWU offered that rates be phased in using a multi-year approach to mitigate rate shock.”<sup>33</sup>

The quintessential rate-paying public have spoken in this matter, and it is imperative that the ALJ and the Commission listen to their plea. OPUC therefore maintains that TWU should *not* be allowed to implement the proposed initial rates in this proceeding because doing so would result in the transaction failing to be in the public interest. Accordingly, OPUC recommends keeping the

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<sup>30</sup> Direct Testimony of Constance Stover, Stover Ex. 1 at 2 - 3 (May 8, 2024). (Stover Direct).

<sup>31</sup> Direct Testimony of Cecil Fairfax, Fairfax Ex. 1 at 1 - 2 (May 5, 2024). (Fairfax Direct).

<sup>32</sup> Direct Testimony of Anna Miller, Miller Ex. 1 at 3 (May 9, 2024). (Miller Direct).

<sup>33</sup> Miller Direct at 2.

existing rates that the customers of Southern Horizons are currently paying under the existing tariff tailored to their system and approved for Southern Horizon by the Commission until TWU applies for and the Commission approves a new base rate for TWU.

In the event the ALJ believes allowing TWU to charge initial rates other than those currently in effect, to mitigate the unavoidable rate shock for customers of Southern Horizons, OPUC believes adoption of the Villas of Willowbrook Rates (Phase 4 of 7) as proposed in Staff witness Mr. James Harville's direct testimony would be reasonable.<sup>34</sup> Thus, OPUC supports Staff's "alternative solution" as to the initial rates proposed in this application.<sup>35</sup> OPUC also agrees with Mr. Harville's analysis of TWU's proposed rates in consideration of the lack of necessity for immediate improvements conditioned on the absence of any standing violations from the Texas Commission on Environmental Quality. Hearing testimony taken from Mr. Harville addressing this issue offers additional support for his "alternative solution:"

**A** In terms of public interest, I could not make sense of the increase in cost of customers, based on what has changed in the application, based on the prior testimony of Mr. Bahr and Mr. Sullivan.<sup>36</sup>

**Q** So you are changing your testimony and your recommendation?<sup>37</sup>

**A** No, sir.<sup>38</sup>

...

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<sup>34</sup> Direct Testimony of James Harville, Staff Ex. 2 at 12:5 – 14:2 (May 30, 2024). (Harville Direct).

<sup>35</sup> Tr. at 66:12-66:14 (Harville Cross) (July 23, 2024).

<sup>36</sup> Tr. at 89:24-90:2 (Harville Cross) (July 23, 2024).

<sup>37</sup> Tr. at 90:3-90:4 (Harville Cross) (July 23, 2024).

<sup>38</sup> Tr. at 90:5 (Harville Cross) (July 23, 2024).

Q Okay. I just want to get clear, Mr. Harville, you stated something changed in the application?<sup>39</sup>

A Yes, sir.<sup>40</sup>

Q What changed in the application?<sup>41</sup>

A From the initial TWU application, there was a capital improvements plan submitted with the application. There was also the review of the four violations. Those improvements in Mr. Bahr's testimony were later described as not immediately needed improvements; they were projected improvements. The violations after my testimony had been filed were actually cleared up through the Texas Commission on Environmental Quality's database.<sup>42</sup>

Q Okay. So how does that affect your recommendation on mitigating bill impacts?<sup>43</sup>

A For public interest, as I mentioned previously, I look at the adequacy of service for each system. I look at the probable improvement of service to the systems and/or the lowering of cost to these systems. *If the immediate improvements that were provided in the initial application are no longer necessary, and each system is receiving adequate service, that is what sparks the question to me, under public interest, are the rates as listed beneficial to the customers?*<sup>44</sup>

...

Q How does rate shock and mitigating bill impacts relate to the issues you just mentioned with regards to 2439?<sup>45</sup>

A If capital improvements aren't being required, either by immediate improvements based on the initial application, which I reviewed, if there are no violations or treatment issues that

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<sup>39</sup> Tr. at 90:17-90:19 (Harville Cross) (July 23, 2024).

<sup>40</sup> Tr. at 90:20 (Harville Cross) (July 23, 2024).

<sup>41</sup> Tr. at 90:21 (Harville Cross) (July 23, 2024).

<sup>42</sup> Tr. at 90:22-91:5 (Harville Cross) (July 23, 2024).

<sup>43</sup> Tr. at 91:6-91:7 (Harville Cross) (July 23, 2024).

<sup>44</sup> Tr. at 91:8 – 91:16 (Harville Cross) (July 23, 2024). [Emphasis added.]

<sup>45</sup> Tr. at 91:22-91:24 (Harville Cross) (July 23, 2024).

need to be resolved, that is part of my question as to as the customers of this system, *what is the immediate reason for the increase in cost aside from the initial rates?*<sup>46</sup>

In addition to Villas of Willowbrook Rates (Phase 4 of 7), OPUC believes the Dal-High Water System Rates (Phase 4 of 7) would also be reasonable, as they are substantially similar to those of Villas of Willowbrook.<sup>47</sup> Therefore, adoption of the Dal-High Water System (Phase 4 of 7) rates would also be in the public interest. While OPUC would suggest that an approved phase adoption of the acquired system may be held permanent until such time as TWU receives a subsequent Commission order approving its application for authority to change rates, OPUC is also supportive of Staff witness Mr. Harville's position that the subsequent rate phases of the initially adopted Phase 4 would be temporally phased in as well.<sup>48</sup>

### **III. CONCLUSION**

For the reasons stated above, it remains OPUC's position that TWU should not be allowed to implement its requested initial rates in this proceeding. The Commission should retain the existing rates that customers of Southern Horizons are currently paying under their existing tariff. However, should the Commission decide to modify the acquired systems' rates, based on the direct testimony of Staff witness, Mr. James Harville, OPUC believes adoption of the Villas of Willowbrook Rates (Phase 4 of 7) as recommended in Mr. Harville's testimony would be a reasonable alternative to mitigate the exorbitant rate shock. Additionally, OPUC believes the Dal-High Water System Rates (Phase 4 of 7) would also be reasonable, as they are substantially similar to those of Villas of Willowbrook. Therefore, adoption of the Dal-High Water System

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<sup>46</sup> Tr. at 91:25-92:6 (Harville Cross) (July 23, 2024). [Emphasis added.]

<sup>47</sup> Application at 91 and 108 (Water Tarriff Pages 11 [Villas] and 28 [Dal-High]).

<sup>48</sup> See Tr. at 74:13-74:20 (Harville Cross) (July 23, 2024).

(Phase 4 of 7) rates would be in the public interest. OPUC respectfully requests that the SOAH ALJs adopt and incorporate OPUC's recommendations into the Proposal for Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

Date: August 9, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**  
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 9<sup>th</sup> day of August 2024, by facsimile, electronic mail, and/or first class, U.S. mail.



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Sharbel A. Sfeir