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

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

**INITIAL BRIEF
OF
TEXAS WATER UTILITIES, L.P.**

AUGUST 9, 2024

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**SOAH DOCKET NO. 473-24-13127
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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	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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TEXAS WATER UTILITIES, L.P.'S INITIAL BRIEF

Texas Water Utilities, L.P. (TWU), on behalf of itself and Southern Horizons Development, Inc. (Southern Horizons) (collectively, Applicants), files this Initial Brief. Pursuant to the briefing schedule agreed to at the conclusion of the hearing on the merits, this Initial Brief is timely filed on or before August 9, 2024.

I. EXECUTIVE SUMMARY

The proposed transaction between TWU and Southern Horizons, including TWU's request for initial rates under Texas Water Code (TWC) § 13.3011, is in the public interest. Based on the record evidence, the only contested issues are issues related to the request for initial rates. The criteria used to evaluate a request for initial rates will be determined on a case-by-case basis.¹ Specific to this proceeding, the record supports a finding that granting TWU's requested initial rates is in the public interest for the following reasons:

- The requested initial rates comply with TWC § 13.3011(a) because they are rates that were shown in a tariff for certificate of convenience and necessity (CCN) number 12983 filed with the Public Utility Commission of Texas (Commission), and they were in effect for the vast majority of TWU's water systems at the time the application was filed in this proceeding.
- Because the requested initial rates comply with TWC § 13.3011(a), the Commission has determined that the initial rates are just and reasonable; are not unreasonably

¹ Preliminary Order at 3 (Mar. 7, 2024).

preferential, prejudicial, or discriminatory; and are sufficient, equitable, and consistent in application to each class of customers.²

- Because the requested initial rates comply with TWC § 13.3011(a), the Commission has determined that the initial rates permit TWU a reasonable opportunity to earn a reasonable return on its used and useful invested capital and preserve TWU's financial integrity.³
- The application of the requested initial rates to the Southern Horizons customers is equitable because it ensures that they will be charged a rate that recovers TWU's cost of providing the service (as established in its most recent general rate case) and is commensurate with the rate paid by the vast majority of the other TWU customers receiving the same service.
- At 5,000 and 10,000 gallons of usage, the requested initial rates result in a lower monthly bill than the monthly bill calculated using: (1) TWU's operations and maintenance cost per customer derived from its 2022 Annual Report; and (2) the capital cost per customer derived from the uncontested ratemaking rate base for Southern Horizons.
- The requested initial rates will not cause TWU to earn above its authorized rate of return.
- The requested initial rates comply with TWC § 13.190(a), which prohibits a utility from charging or collecting a rate that is greater or lesser than that prescribed in the utility's tariff on file with the Commission.

Commission Staff is the only party to offer testimony addressing specific initial rates that differ from those requested by TWU. However, this proposal is an "alternative solution" and "not a recommendation" that was presented by a witness with essentially no experience in setting or designing water rates.⁴ Commission Staff witness James Harville was emphatic that his initial July 17, 2023 remains unchanged and that he "recommend[s] that the Commission

² See TWC § 13.182(a)–(b).

³ See TWC § 13.183(a).

⁴ Tr. at 60:18–61:4, 63:14–19, 65:10–12, 66:15–19, 73:4–7, and 84:11–13 (Harville Cross) (Jul. 23, 2024).

find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction.”⁵

Aside from calculating a bill comparison, no party has presented arguments or evidence that a rate is not just and reasonable simply because it causes customer bills to increase. If that were the case, then no rates approved by the Commission in a proceeding under TWC §§ 13.187, 13.1871, or 13.18715 that result in an increase to customer bills could ever be found just and reasonable.

In short, the bulk of the evidence in the record supports a finding that Commission approval of the initial rates requested by TWU is in the public interest.

II. ARGUMENT ON CONTESTED ISSUES

The central inquiry in this case is whether the proposed transaction between TWU and Southern Horizons, including approval of the initial rates TWU has requested under TWC § 13.3011, will serve the public interest.⁶ Under the plain language of TWC § 13.3011, there are only two criteria that requested initial rates must meet,⁷ and the Commission has concluded that the criteria to be used to determine whether to grant a request for initial rates will be addressed on a case-by-case basis.⁸ Though the question regarding how best to evaluate TWU’s request for initial rates is a matter of first impression, there is one caveat: TWC § 13.3011(b) requires that the evaluation may not resemble the type of comprehensive review that occurs in a general rate case.

The pro se intervenor testimony admitted as evidence addresses only the request for initial rates and is silent as to the other issues identified in the Commission’s Preliminary Order.⁹ Commission Staff admitted the direct testimony of two witnesses who opined on many of the issues identified in the Preliminary Order¹⁰ but has agreed to a set of stipulated findings

⁵ Tr. at 101:19–102:7 (Harville Cross) (Jul. 23, 2024); Rebuttal Testimony of Brian D. Bahr, Ex. TWU-5, Attachment BDB-R-1 at bates p. 20.

⁶ Preliminary Order at Issue No. 7.

⁷ TWC § 13.3011(a).

⁸ Preliminary Order at 3.

⁹ *See generally* Direct Testimony of Cecil Fairfax, Fairfax Ex. 1; Direct Testimony of Anna Miller, Miller Ex. 1; and Direct Testimony of Constance Stover, Stover Ex. 1.

¹⁰ *See generally* Direct Testimony of Fred Bednarski, II, Staff Ex. 1A and Confidential Staff Ex. 1B; Direct Testimony of James Harville, Staff Ex. 2.

of fact and conclusions of law that addresses all but the issues related to the request for initial rates. Consequently, TWU will address the following contested issues:¹¹

7. Will approving the proposed transaction, including the charging of initial rates, serve the public interest under TWC § 13.301(d), (e), and (g) and 16 Texas Administrative Code (TAC) § 24.239(g)–(h)?
 - xi. Is there a probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction under TWC § 13.246(c)(8) and 16 TAC § 24.239(h)(5)(H)?
18. What are the initial rates Texas Water Utilities is requesting to charge the customers to be acquired from Southern Horizons?
19. Were the initial rates requested by Texas Water Utilities shown in a Texas Water Utilities' tariff filed with the Commission for another water system owned by Texas Water Utilities under TWC § 13.3011(a)(1)?
20. Were the initial rates Texas Water Utilities seeks to implement in force for a different Texas Water Utilities water system on February 2, 2023, the date the application was filed in this proceeding, under TWC § 13.3011(a)(2)?
21. Should the Commission approve the initial rates requested by Texas Water Utilities? If not, what rates should the Commission approve?

TWU reserves the right to address any issues that are not listed above and are raised in the initial briefing of any other party to this proceeding.

A. The initial rates requested by TWU satisfy the requirements of TWC § 13.3011.

The initial rates requested by TWU were approved by the Commission in Docket No. 50944¹² on February 23, 2022, and are as follows:¹³

¹¹ To minimize confusion, TWU is including Issue Nos. 18–20 because they are specific to the request for Initial Rates and not necessarily because it anticipates disagreement as to the answers to these questions.

¹² *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022). The Commission approved the name change from Monarch Utilities I L.P. to Texas Water Utilities, L.P. about 9 months after Docket No. 50944 was completed. *See Application of Monarch Utilities I L.P. for a Certificate of Convenience and Necessity Name Change*, Docket No. 53636, Notice of Approval (Nov. 15, 2022).

¹³ Direct Testimony of Brian D. Bahr, Ex. TWU-1 at 12:11 and Attachment BDB-4.

Minimum Monthly Charge	
5/8" Meter	\$48.37
Gallage Rates (per 1,000 gallons)	
0 – 2,000 gallons	\$6.48
2,001 – 10,000 gallons	\$7.98
10,001 – 20,000 gallons	\$9.05
20,001 gallons or more	\$9.64

At the time the application was filed in this proceeding on February 2, 2023, TWU's current Commission-approved tariff for CCN number 12983 was the tariff approved by the Commission in Docket No. 52201, which included the rates listed above.¹⁴ Accordingly, the rates were shown in a TWU tariff filed with the Commission and in-force for other systems served by TWU, as required by TWC § 13.3011(a). At the time the application was filed, TWU's tariff also included a water pass-through rate of \$2.34 per 1,000 gallons applicable to the majority of systems,¹⁵ however, this pass-through is not included in TWU's request for initial rates.¹⁶

B. The requested initial rates are based on TWU's cost of providing service, which is the service the Southern Horizons customers will receive upon the Commission's Final Order.

Approving the requested initial rates is in the public interest because it will result in the customers transferred from Southern Horizons receiving the same level of water service as all other TWU customers in exchange for paying the Commission-approved rates currently paid by the vast majority of TWU's customers.¹⁷ TWU is the second largest investor-owned water and wastewater utility in Texas and has been serving Texas customers for many years.¹⁸ Its mission is to provide life-sustaining water service to its customers, empowering the

¹⁴ Ex. TWU-1 at 13:8–16 and Attachment BDB-4.

¹⁵ *Id.*, Attachment BDB-2 at 88.

¹⁶ *Id.* at 13:1–7.

¹⁷ At this point in time, there are only four public water systems with customers served under a rate schedule that phases in the rates approved in Docket No. 50944. Ex. TWU-1, Attachment BDB-4 at 90–92, 101–02, 104–05, and 107–09.

¹⁸ Ex. TWU-1 at 15:15–17.

communities it serves.¹⁹ To that end, TWU's core values include: safety, environmental stewardship, customer care, employee engagement, integrity, and community partnership.²⁰

TWU utilizes a centralized customer care department and invests in the people and systems needed to make high quality customer service a priority.²¹ Only three formal complaints have been filed against TWU in the last three years—two of which were withdrawn.²² The majority of the 165 informal complaints filed with the Commission in 2023 were related to summer or winter outages, and 93% of these informal complaints were resolved in TWU's favor.²³

TWU employs water and wastewater operators licensed by the Texas Commission on Environmental Quality (TCEQ) who are responsible for over 140 public water systems located in 34 Texas counties.²⁴ These operators are dedicated to providing high quality water and wastewater service in an environmentally compliant manner.²⁵ To ensure compliance with TCEQ regulations, which encompass both federal and state standards for water and wastewater, TWU routinely performs internal reviews of its systems to identify, prioritize, and resolve deficiencies, if any.²⁶

The requested initial rates were designed using a revenue requirement that is based on a test year ending December 31, 2019 and the operating and service model described above.²⁷ They are rates that are applicable to TWU's single comprehensive customer class,²⁸ and they are the rates the Commission approved based on a comprehensive review of TWU's revenue requirement including its reasonable and necessary expenses and capital investment, which included a contested case process to which both Commission Staff and the Office of Public

¹⁹ *Id.* at 15:9–11.

²⁰ *Id.* at 15:11–13.

²¹ *Id.* at 16:12–15.

²² *Id.* at 16:15–18. The pending complaint cited to by Mr. Bahr was withdrawn after he filed his direct testimony. See *Complaint of Preston and Sandra Coldewey Against Texas Water Utilities, L.P.*, Docket No. 56490, Order No. 2 Granting Withdrawal, Dismissing Complaint, and Closing Docket (Apr. 29, 2024).

²³ Ex. TWU-1 at 16:18–20.

²⁴ *Id.* at 15:17–18.

²⁵ *Id.* at 15:19–20.

²⁶ *Id.* at 15:1–2.

²⁷ *Id.* at 15:1–3.

²⁸ Docket No. 50944, Order at Finding of Fact No. 59.

Utility Counsel (OPUC) were parties.²⁹ Establishing the rates approved in Docket No. 50944 as the initial rates for the Southern Horizons customers is in the public interest because it creates an equitable rate structure whereby these customers are paying rates that are: based on the actual cost of providing the service they will be receiving from TWU; and (2) are the same as rates charged to nearly all of TWU's other customers.

C. Continuing to use Southern Horizons' current rates is not in the public interest.

Southern Horizons' current rates were approved in 2020 via a Class D rate adjustment.³⁰ A Class D rate adjustment is an automatic increase of up to 5% and does not entail any review whatsoever of the utility's cost of service.³¹ Therefore, Southern Horizons' cost of service has not been comprehensively reviewed since 2009 when it filed its last rate case with the TCEQ.³² Southern Horizons' witness Steve Sullivan testified that operating costs since then have risen with inflation.³³ He also opined that the current rates have not generated revenues sufficient to cover his costs in years when a substantial repair or improvement was needed for one of the Southern Horizons' water systems.³⁴

Approving rates that are based on a cost of service that was last reviewed 15 years ago using a test year for a utility that is not TWU and does not operate under a service model that is comparable to TWU's is not in the public interest.

D. The provisions of TWC § 13.3011 already incorporate the ratemaking criteria found in TWC §§ 13.182 and 13.183.

Initial rates that satisfy the requirements of TWC § 13.3011(a), i.e., rates found in a Commission-approved tariff that are in force at the time an STM application is filed, also satisfy the requirements of TWC §§ 13.182 and 13.183. Stated another way, the rates in a Commission-approved tariff have been reviewed by the Commission using the ratemaking criteria found in subchapter F of TWC chapter 13. A statute must be interpreted using its plain

²⁹ See Docket No. 50944, Order at Findings of Fact Nos. 64, 80–81, 85, 96 and Conclusions of Law Nos. 13–17.

³⁰ Direct Testimony of Steve Sullivan, Ex. TWU-3 at 6:12–14.

³¹ 16 TAC § 24.49(c); Tr. at 48:8–16 (Bahr Re-Direct) (Jul. 23, 2024).

³² Ex. TWU-3 at 7:1–6 and Attachment SCS-1.

³³ *Id.* at 7:7–10.

³⁴ *Id.* at 7:10–13.

language and considering the larger statutory scheme.³⁵ Under TWC §§ 13.301(e) and 13.246(c), there are no criteria specifically addressing the rates charged by the transferor or the transferee. Moreover, these provisions are found in subchapters G and H of TWC chapter 13, which address CCN amendments and sale of property or mergers, respectively. In contrast, TWC §§ 13.182 and 13.183 are found in subchapter F, which addresses proceedings before a regulatory authority to change rates.

Under TWC § 13.182(a) and (b), a utility's rates must be just and reasonable, cannot be unreasonably preferential, prejudicial, or discriminatory, and must be sufficient, equitable, and consistent in application to each class of consumers. Overall, rates must recover a level of revenue that not only permits the utility "a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses" but also preserves the utility's financial integrity.³⁶ A rate that satisfies the criteria in TWC § 13.3011(a) automatically meets these statutory requirements for rates.

- TWC § 13.182(a) is satisfied because the rates in TWU's tariff filed with the Commission and in effect for some or all its other water systems have already been reviewed and found just and reasonable in Docket No. 50944.³⁷
- TWC §§ 13.182(b) is satisfied because, as explained above, the Southern Horizons customers will receive the same level of service provided to all TWU customers under a rate schedule that is applicable to the majority of TWU's systems.
- TWC § 13.183(a) is satisfied because the initial rates were part of a holistic rate design approved by the Commission to recover a revenue requirement that permits TWU the opportunity to earn a reasonable return on its investment and preserves its financial integrity.³⁸

³⁵ *State v. Terrell*, 588 S.W.2d 784, 786 (Tex. 1979).

³⁶ TWC § 13.183(a).

³⁷ *See* Docket No. 50944, Order at Conclusion of Law No. 8 ("The rates approved in this proceeding are just and reasonable under TWC § 13.182(a).").

³⁸ *See* Docket No. 50944, Order at Conclusion of Law No. 13 ("As required by TWC § 13.183, the rates approved in this Order will permit Monarch a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses and will preserve Monarch's financial integrity.").

Interpreting the criteria in TWC § 13.3011(a) as subsuming the criteria in TWC § 13.182 and 13.183(a) is also consistent with TWC § 13.3011(b). Approving initial rates that satisfy subsection (a) allows the Commission to establish the initial rates to be charged to the Southern Horizons customers without requiring TWU to file a general rate case. It also obviates the need for a review that is as time- and resource-intensive as a rate case. Accordingly, the initial rates requested by TWU are in the public interest because, by virtue of their compliance with TWC § 13.3011(a), they also satisfy the ratemaking standards found in TWC §§ 13.182 and 13.183(a).

E. The requested initial rates are reasonable and in the public interest when compared to rates based on the ratemaking rate base for Southern Horizons and TWU's 2022 Annual Report.

The record demonstrates that using the ratemaking rate base for Southern Horizons and the operating expenses per customer from TWU's 2022 Annual Report would result in an estimated bill that is higher than what a Southern Horizons customer would pay at TWU's requested initial rates. To support this conclusion, Mr. Bahr divided TWU's total water operations and maintenance (O&M) expense for 2022 by its normalized water customer count, to calculate a monthly O&M cost per customer.³⁹ He then used the requested ratemaking rate base for Southern Horizons, including the amount requested for the fees paid to the utility valuation experts,⁴⁰ the current customer count of 461,⁴¹ and TWU's pre-tax weighted average cost of capital to calculate a monthly capital cost of service per customer.⁴² When added together, these per-customer amounts would result in an estimated monthly bill that is higher than the \$85.27 (5,000 gallons) or \$125.17 (10,000 gallons) a Southern Horizons customer would pay⁴³ at TWU's requested initial rates.⁴⁴

The issues related to TWU's request to determine the ratemaking rate base for Southern Horizons using the fair market valuation process set forth in TWC § 13.305 and 16 TAC

³⁹ Rebuttal Testimony of Brian D. Bahr, Confidential Ex. TWU-6 at 4:14–20 and Attachment BDB-R-2 at lines 18–21.

⁴⁰ Confidential Ex. TWU-2, Attachment BDB-2a at 3.

⁴¹ Ex. TWU-3 at 5:18–21.

⁴² Confidential Ex. TWU-6 at 4:20–5:3 and Attachment BDB-R-2 at lines 5–16 and 24.

⁴³ Staff Ex. 2, Attachment JH-2 at 1.

⁴⁴ Confidential Ex. TWU-6 at 5:3–5.

§ 24.238 are uncontested in this case. In addition, no party challenged the information provided in TWU's 2022 Annual Report. Consequently, these undisputed facts further support a finding that the initial rates are reasonable and in the public interest.

F. The requested initial rates will not cause TWU to earn more than a reasonable return on its used and useful invested capital.

Approving the initial rates requested by TWU will not cause TWU to earn above its authorized rate of return. Under TWC § 13.183, the Commission must fix rates that generate an overall level of revenue that will: “(1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and (2) preserve the financial integrity of the utility.” In Docket No. 50944 that case the Commission found:

As required by TWC § 13.183, the rates approved in this Order will permit Monarch a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses and will preserve Monarch's financial integrity.⁴⁵

The Commission also authorized an overall rate of return of 7.73% for TWU.⁴⁶

Because the rates approved in Docket No. 50944 included phased-in rate schedules for 16 systems, TWU will not be charging the rates designed to collect the full revenue requirement of \$34,950,000 (water and sewer) approved by the Commission until all sixteen systems have reached the final phase.⁴⁷ Some systems are not scheduled to reach the final phase until June 1, 2027.⁴⁸ As explained by Mr. Bahr, TWU's 2022 Annual Report shows that it earned less than its Commission-authorized 7.73% rate of return.⁴⁹ If you assume that every Southern Horizons customer used 5,000 gallons per month, the initial rates requested by TWU would generate annual revenue of \$471,716.64.⁵⁰ Even if TWU realized this entire amount as net revenue (which would not be the case because it would be offset by the cost of serving the Southern

⁴⁵ Docket No. 50944, Order at Conclusion of Law No. 13.

⁴⁶ Docket No. 50944, Order at Finding of Fact No. 84.

⁴⁷ Ex. TWU-1 at 14:18–15:8.

⁴⁸ *Id.*, Attachment BDB-2 at 92, 109.

⁴⁹ Confidential Ex. TWU-2 at 14:7–17.

⁵⁰ Ex. TWU-1 at 14:1–7.

Horizons customers) it would not result in TWU earning more than its authorized return.⁵¹ Therefore, the requested initial rates are in the public interest.

G. Approving the requested initial rates is consistent with TWC § 13.190 and the Third Court of Appeals' interpretation of a similar provision of the Gas Utility Regulatory Act (GURA).

A decision to approve initial rates that differ from the initial rates requested by TWU would contravene TWC § 13.190 and the holding in *Entex, a Division of Reliant Energy Resources Corp. v. Railroad Commission of Texas*.⁵² Statutes are presumed to be enacted by the Legislature with full knowledge of the common law.⁵³ At the time TWC § 13.3011 was enacted, the Third Court of Appeals had long recognized the common law concept known as the “filed rate doctrine.”⁵⁴ As described by the Third Court, the filed rate doctrine “prohibits regulated utilities from ‘charging rates for their services other than those properly filed with the appropriate regulatory authority.’”⁵⁵

The *Entex* decision directly addressed a situation where gas utility customers were transferred as the result of an acquisition.⁵⁶ The Third Court held that the acquiring utility must charge rates according to the schedule of rates approved and found reasonable for the acquiring utility and not the rates of the utility that was serving the customers prior to the acquisition.⁵⁷ The Third Court reasoned that the acquiring utility was not increasing its rates, it was extending the rates it was authorized to charge to new customers.⁵⁸

The *Entex* decision interpreted GURA § 104.005,⁵⁹ which is very similar to TWC § 13.190.⁶⁰ GURA is part of the Texas Utilities Code, and both GURA § 104.005 and TWC

⁵¹ *Id.* at 14:7-17.

⁵² *Entex, a Div. of Reliant Energy Res. Corp. v. R.R. Comm'n of Texas*, 18 S.W.3d 858 (Tex. App.—Austin 2000, pet. denied).

⁵³ *Phillips v. Beaber*, 995 S.W.2d 655, 658 (Tex. 1999).

⁵⁴ *See generally, Entex*, 18 S.W.3d 858.

⁵⁵ *Id.* at 862–63.

⁵⁶ *Id.* at 861.

⁵⁷ *Id.* at 862–66 (emphasis added).

⁵⁸ *Id.* at 866.

⁵⁹ *Id.* at 863–66.

⁶⁰ *Compare*, TWC § 13.190(a) (“A water and sewer utility may not directly or indirectly by any device or in any manner charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter, and a person may not knowingly receive or accept

§ 13.190 are designed to ensure equality of rates and services and prohibit a utility from charging a rate for a service that is more or less than the rate for that service shown in the utility's approved tariff. The *Entex* decision noted that GURA's purpose was "to assure rates, operations, and services that are just and reasonable to the *consumers* and to the *utilities*."⁶¹ It further noted that "[t]his policy does not dictate favoring the customer over the utility"⁶² The stated purpose of chapter 13 of the TWC is similar to GURA and references both consumers and retail public utilities.⁶³ Given these similarities, it is reasonable to apply *Entex* to acquisitions by water utilities.

Pursuant to the rules of statutory construction, the Legislature was presumed to know that Texas common law recognized the filed rate doctrine codified in TWC § 13.190. Thus, it is reasonable to conclude that the Legislature enacted TWC § 13.3011 to shore up TWC § 13.190 and require the Commission to apply the filed rate doctrine in STM proceedings.

H. Direct-to-customer assistance is a more effective tool for mitigating the bill impact resulting from a change in rates than phasing in the change.

The record evidence does not support the conclusion that approving a phased-in rate schedule for the Southern Horizons customers is the best or only solution available to mitigate the impact to customer bills. As discussed by Mr. Bahr, TWU has published communications encouraging customers to avail themselves of the Low-Income Household Water Assistance Program.⁶⁴ This program is particularly effective because it is administered by the Texas Department of Housing and Community Affairs, which then relies on community action

any service from a utility for a compensation greater or less than that prescribed in the schedules. . . ."), *with*, GURA § 104.005(a)-(b) ("(a) A gas utility may not directly or indirectly charge, demand, collect, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates filed under Section 102.151. (b) A person may not knowingly receive or accept a service from a gas utility for a compensation greater or less than the compensation prescribed by the schedules.").

⁶¹ *Entex*, 18 S.W.3d at 863 (quoting Tex. Util. Code § 101.002(a)).

⁶² *Id.*

⁶³ *Compare*, TWC § 13.001(c) ("The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities"), *with*, GURA § 101.002(a) ("This subtitle is enacted to protect the public interest inherent in the rates and services of gas utilities. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for gas utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.").

⁶⁴ Ex. TWU-5 at 8:21-9:1.

agencies and city and county governments to award funds.⁶⁵ These local administering agencies are entrenched in the communities they serve and often manage other funds such as Low-Income Energy Assistance Program funds; therefore, they are uniquely positioned to understand the needs of their clients and work with them to provide a comprehensive solution to utility costs.⁶⁶

TWU offers Elderly Assist Rates, which are specifically designed to provide qualifying customers over the age of 65 with a \$20 per month discount on both water and wastewater bills.⁶⁷ TWU customers can also apply for TWU's Water Assist program, which works through third-party agencies to provide qualified customers with a \$20 per month discount on both water and wastewater bills.⁶⁸ For customers requiring temporary assistance, TWU makes alternate payment arrangements available.⁶⁹

Programs that offer assistance directly to the customer are more effective and efficient because they result in the provision of payment assistance to those who need it most.⁷⁰ Conversely, artificially depressing the rates for a broad group of customers can result in assistance to those who don't actually need it and/or may use large amounts of water, resulting in inappropriate subsidization.⁷¹ Further, customer assistance programs avoid putting rates below the level needed to recover a utility's approved cost of service, which better balances the needs of the utility and the customers it serves.⁷²

On cross examination, Mr. Harville specifically stated: "I do not review initial rates. I look at the public interest aspects."⁷³ He also confirmed that he had read about the TWU programs available to mitigate bill impacts, but that he did not consider them directly as part of his analysis performed under 16 TAC § 24.239.⁷⁴ In looking at the public interest criterion

⁶⁵ *Id.* at 8:9–12.

⁶⁶ *Id.* at 8:12–15.

⁶⁷ *Id.* at 8:16–18.

⁶⁸ *Id.* 5 at 8:19–21.

⁶⁹ *Id.* at 9:1–2.

⁷⁰ *Id.*

⁷¹ *Id.* at 8:3–9.

⁷² *Id.* at 6:6–9.

⁷³ Tr. at 103:21–24 (Harville Redirect) (Jul. 23, 2024).

⁷⁴ Tr. at 83:25–84:10 (Harville Cross) (Jul. 23, 2024).

addressing the probable improvement of service of lowering of costs to customers, Mr. Harville opines that TWU's requested initial rates are higher than Southern Horizons' current rates,⁷⁵ but he provides almost no analysis regarding how this weighs against the probable improvement in service to customers. Accordingly, Mr. Harville's testimony suggesting that the Commission potentially adopt the Villas of Willowbrook rates to mitigate customer bill impacts amounts to little more than a bare assertion, and does not support the false conclusion that phasing in the initial rates requested by TWU is necessary for the approval of those rates to be in the public interest.

I. Commission Staff's alternative solution on rates does not change Commission's Staff recommendation that the transaction with TWU's requested initial rates is in the public interest.

During the hearing on the merits, Commission Staff witness James Harville stated that he "posed an alternative solution" on the initial rates to be charged to current Southern Horizons customers once the transaction is complete.⁷⁶ This proposed alternative solution was something Mr. Harville in his direct testimony only recommended the Commission "considering," when evaluating the proposed transaction and in no way contended that it was necessary to ensure the protection of the public interest.⁷⁷ TWU's requested initial rate has a base rate of \$48.37 for customers with a 5/8" meter and a tier-one gallonage charge of \$6.48, and Commission Staff's "alternative solution" proposed base rate of \$31.17 with a tier-one gallonage charge of \$3.70.⁷⁸ Mr. Harville was clear during the hearing that this phasing in of the initial rates was not a recommendation made by Commission Staff:

Q. You provide testimony in this case, your direct testimony which is in front of you, as to what rates should be charged as a result of this application. Correct?

A. Yes, I posed an alternative solution based on the information that came out in Mr. Bahr's testimony and Mr. Sullivan's testimony.

⁷⁵ Staff Ex. 2 at 12:2–6.

⁷⁶ Tr. at 66:7–14 (Harville Cross) (Jul. 23, 2024).

⁷⁷ Staff Ex. 2 at 15:3.

⁷⁸ *Id.* at 11–12, 13.

Q. Okay. And part of that recommendation, is it not to phase in the rate increase?

A. *It was not a recommendation. It was really just an alternative solution* that I had to address based on what I discovered in the testimony.⁷⁹

The phased-in rates posed as an alternative solution by Commission Staff is currently Phase 4 of TWU's Villas of Willowbrook rates, and Mr. Harville reiterated that he did the comparison between TWU's requested initial rates and those the Villas of Willowbrook rates "as a suggestion."⁸⁰ Although Mr. Harville proposes the Villas of Willowbrook rates as an "alternative solution," he noted during the hearing that all 398 customers had notice of the proposed increase and only six interventions and one protest were filed in this proceeding.⁸¹ Therefore, only about 1.5% of Southern Horizons' customers protested the proceeding along with the proposed increase in rates.⁸² This is significantly less than the 10% of protests from affected customers needed for a water rate case to automatically proceeding to a hearing under Commission rules.⁸³ Mr. Harville also clarified during the hearing that he was not claiming that using the Villas of Willowbrook rates was required by law.⁸⁴

Lastly, Mr. Harville's memorandum on the sale and approval of the CCN amendment recommended that the transaction that included TWU's request for initial rates will serve the public interest.⁸⁵ Mr. Harville confirmed during the hearing that his recommendation had not changed, stating "[i]f you look back to the prior sale [] memo and my testimony, that information will be the same, as my recommendation has not changed."⁸⁶

Overall, Mr. Harville was clear during the hearing that his recommendation was that the transaction with TWU's proposed initial rates met the public interest requirements of 16 TAC § 24.239, and that his proposal on rates was only an "alternative solution."

⁷⁹ Tr. at 66:8–19 (Harville Cross) (Jul. 23, 2024) (emphasis added).

⁸⁰ Tr. at 69:13–19 (Harville Cross) (Jul. 23, 2024).

⁸¹ Tr. at 96:25–98:2 (Harville Cross) (Jul. 23, 2024).

⁸² Tr. at 98:3–8 (Harville Cross) (Jul. 23, 2024).

⁸³ 16 TAC § 24.35(c)(2).

⁸⁴ Tr. at 71:10–12 (Harville Cross) (Jul. 23, 2024).

⁸⁵ TWU Ex. 5, Attachment BDB-R-1 at bates p. 20.

⁸⁶ Tr. at 101:19–24 (Harville Cross) (Jul. 23, 2024).

J. Recent Commission precedent supports consolidation and not using phased-in rates.

The Commission recently considered CSWR-Texas Utility Operating Company's (CSWR-Texas) Class B Water and Sewer Rate Application.⁸⁷ Through its rate change application, CSWR-Texas sought to increase water rates and consolidate the tariffs of 62 water systems.⁸⁸ In this proceeding, OPUC's witness testified that "based on his experience, 'a rate increase of 10% or more causes rate shock for customers,' and that, in this case, 'many customers on the acquired systems would experience acute rate shock.'"⁸⁹ If CSWR-Texas' request for consolidation was approved along with its proposed revenue requirement, the acquired customers would experience changes in their monthly bills ranging from an 11% decrease to a 717% at the 5,000-gallon monthly usage level.⁹⁰ In comparison, Southern Horizons customers would experience a 100% increase at the 5,000 gallon level.⁹¹

In the CSWR-Texas proceeding, OPUC proposed both a five- and three-year phase-in to mitigate rate-shock, that way customers would experience an annual increase of no more than \$10 a month to their average monthly bill.⁹² CSWR-Texas opposed the phase-ins and argued that certain systems were charging inadequate rates and those customers benefited from those lower rates.⁹³ The Proposal for Decision denied OPUC's phase-in proposals stating that there was insufficient evidence that phase-ins were necessary and agreeing with CSWR-Texas that it would delay the recovery of capital investment.⁹⁴ In the final order, the Commission agreed that phase-ins were not necessary and held that, though a proposal for phased-in rates was not unreasonable as an alternative ratemaking mechanism, "[c]onsolidation of systems identified in the application sufficiently mitigates rate shock while ensuring customers are

⁸⁷ *Application of CSWR-Texas Utility Operating Company, LLC for Authority to Change Rates*, Docket No. 54565, Order (Jun. 13, 2024).

⁸⁸ Docket No. 54565, Proposal for Decision at 1 (Nov. 29, 2023).

⁸⁹ *See* Docket No. 54565, Proposal for Decision at 95 (Nov. 29, 2023); *see also* Docket No. 54565, Direct Testimony of Mark E. Garrett at 28 (Jul. 14, 2023).

⁹⁰ Docket No. 54565, Proposal for Decision at 96.

⁹¹ Staff Ex. 2 at Attachment JH-2.

⁹² Docket No. 54565, Proposal for Decision at 96–97.

⁹³ *Id.* at 98.

⁹⁴ *Id.* at 99–100.

paying their actual cost of service.⁹⁵ In short, the Commission held that consolidation of systems sufficiently mitigates rate shock and that phased-in rates are not necessary, even in the face of rate increases up to 717%.

Applying the Commission's logic in the CSWR proceeding justifies a finding that the requested initial rates are in the public interest.

K. Commission Staff's witness is not an expert on water rates and ratemaking, and his "alternative solution" for the initial rates should be given no weight.

Mr. Harville provided testimony in this proceeding as a member of Commission Staff's Infrastructure Division.⁹⁶ During the hearing, Mr. Harville acknowledged that there was no reference to rates or ratemaking in his resume, and that ratemaking is not a primary function of his role at the Commission.⁹⁷ In fact, out of the 75 cases assigned to Mr. Harville at the time of the hearing, none of those cases were water rate cases,⁹⁸ and in none of the cases in which Mr. Harville previously filed testimony did he address rate increases and their effect on customers.⁹⁹ According to Mr. Harville's direct testimony, his current role at the Commission does not involve water ratemaking or reviewing water rate cases.¹⁰⁰ Despite Mr. Harville not being a water ratemaking expert for the Commission, he acknowledged during the hearing on the merits that he is providing testimony on what initial rates should be charged as part of this transaction.¹⁰¹

Mr. Harville also acknowledges that as part of his testimony, he offered an "alternative solution" on the rates that involved phased-in rates but was unaware of recent Commission decisions involving phased-in rates, including the rate decision for CSWR-Texas discussed above.¹⁰² Particularly, Mr. Harville was not aware that, in a recent Commission Order for a water rate case, the Commission held that while a proposal for phased-in rates was not unreasonable as an alternative ratemaking mechanism, "[c]onsolidation of systems identified

⁹⁵ Docket No. 54565, Order at 7, 24.

⁹⁶ Staff Ex. 2 at 3:2–5.

⁹⁷ Tr. at 60:15–61:4 (Harville Cross) (Jul. 23, 2024).

⁹⁸ Tr. at 61:24–63:19 (Harville Cross) (Jul. 23, 2024).

⁹⁹ *Id.*

¹⁰⁰ Staff Ex. 2 at 3:8–11.

¹⁰¹ Tr. at 66:7–14 (Harville Cross) (Jul. 23, 2024).

¹⁰² Tr. at 66:24–68:19 (Harville Cross) (Jul. 23, 2024); Docket No. 54565, Order (Jun. 13, 2024).

in the application sufficiently mitigates rate shock while ensuring customers are paying their actual cost of service.”¹⁰³ In other words, the Commission held that consolidation of systems sufficiently mitigates rate shock and phased-in rates are not necessary.¹⁰⁴

During the hearing on the merits, Mr. Harville was clear about his review regarding the initial rates to be charged, and stated that his review centered on comparing the current rates for Southern Horizons’ customers and the initial rates proposed by TWU with TWU’s Villas of Willowbrook rates, as a suggestion.¹⁰⁵ However, in doing so, Mr. Harville did not review the final order in Docket No. 50944 in which TWU’s proposed initial rates were approved,¹⁰⁶ which stated “Monarch has only one comprehensive customer class and has developed a comprehensive cost of service and revenue requirement for providing water and sewer service for all its customers.”¹⁰⁷ In other words, TWU has one consolidated cost of service and one rate designed to recover that cost of service for all its water systems.

Overall, Mr. Harville proposed an “alternative solution” for the initial rates for Southern Horizons’ customers without any water ratemaking experience, without any review of important water ratemaking decisions including those involving phased-in rates or TWU’s last rate case, and without any analysis beyond a comparison of the rates proposed as “alternative solution” to the initial rates proposed by TWU. Mr. Harville is not a water ratemaking expert, and his “alternative solution” should not be given any weight in this proceeding.

III. CONCLUSION

For the reasons stated in this Initial Brief, TWU has established the proposed transaction between TWU and Southern Horizons, including TWU’s request for initial rates under TWC § 13.3011, is in the public interest. Accordingly, TWU respectfully requests that the Commission approve the sale, transfer, and merger as requested in the application and grant such other relief to which TWU has shown itself entitled.

¹⁰³ Docket No. 54565, Order at 7, 24.

¹⁰⁴ *Id.* at 24.

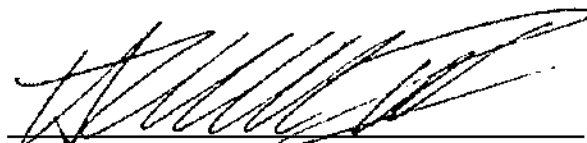
¹⁰⁵ Tr. at 69:3–19 (Harville Cross) (Jul. 23, 2024).

¹⁰⁶ Tr. at 76:4–10 (Harville Cross) (Jul. 23, 2024).

¹⁰⁷ Docket No. 50944, Order at 13.

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A handwritten signature in black ink, appearing to read 'William A. Faulk, III', written over a horizontal line.

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