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

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 AND COMMISSION STAFF’S
JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Texas Water Utilities, L.P. (TWU), on behalf of itself and Southern Horizons Development, Inc. (Southern Horizons) (collectively, Applicants) and the Staff (Staff) of the Public Utility Commission of Texas (Commission), (collectively, Movants) file these Proposed Findings of Fact and Conclusions of Law addressing the uncontested issues in this proceeding. Movants will file separate Findings of Fact and Conclusions of Law addressing contested issues along with their reply briefs on August 23, 2024.

I. UNCONTESTED ISSUES

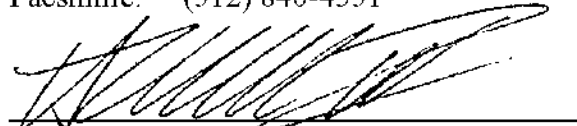
Based on the evidence admitted into the record for this proceeding, Movants have agreed to treat certain issues as uncontested. Movants further agree that a stipulated resolution of those uncontested issues is reasonable and in the public interest, and that the resolution of those issues through a proposed set of findings of fact and conclusions of law—provided as Attachment A—will conserve the resources of the parties, the State Office of Administrative Hearings (SOAH), and the Commission. Movants respectfully request the inclusion of their proposed findings of fact and conclusions of law addressing these issues in the Proposal for Decision that is ultimately issued in this proceeding.

II. CONCLUSION

Movants respectfully request the issuance of a Proposal for Decision that includes the attached findings of fact and conclusions of law for the uncontested issues.

Respectfully submitted,

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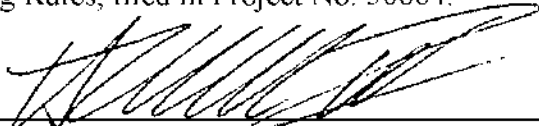
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CERTIFICATE OF SERVICE

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 9, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.



William A. Faulk, III

SOAH DOCKET NO. 473-24-13127
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APPLICATION OF TEXAS WATER § BEFORE THE STATE OFFICE
UTILITIES, L.P. AND SOUTHERN §
HORIZONS DEVELOPMENT, INC. §
FOR SALE, TRANSFER, OR § OF
MERGER- OF FACILITIES AND §
CERTIFICATE RIGHTS IN LIBERTY §
AND MONTGOMERY COUNTIES § ADMINISTRATIVE HEARINGS

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Movants propose the following finding of fact and conclusions of law for inclusion in the Proposal for Decision issued in this proceeding.:

I. Findings of Fact

Applicants

1. Texas Water Utilities, L.P. (TWU) is a Texas limited partnership registered with the Texas secretary of state under filing number 800034797.
2. TWU holds certificate of convenience and necessity (CCN) number 12983 which obligates it to provide retail water service in its certificated service areas in multiple counties, including Liberty and Montgomery counties.
3. Southern Horizons is a Texas corporation registered with the Texas secretary of state under filing number 144217300.
4. Southern Horizons holds CCN number 12863 which obligates it to provide retail water service in its certificated service areas in Montgomery and Liberty counties.
5. Southern Horizons owns and operates two public water systems registered with the Texas Commission on Environmental Quality (TCEQ) as Southern Crossing Water System Phase 2 (identification number 1460158) and Southern Oaks Water System Phase 2 (identification number 1460150).

Application

6. On February 2, 2023, the applicants filed the application at issue in this proceeding.
7. The applicants supplemented the application on February 16, 2023, March 15, 2023, and

June 23, 2023.

8. In the application, as supplemented, the applicants seek approval of the following transaction:
 - a. the sale and transfer of all the facilities and 527 acres of the service area held by Southern Horizons under water CCN number 12863 to TWU;
 - b. the decertification of the remaining 98.7 acres held by Southern Horizons under water CCN number 12863;
 - c. the cancellation of water CCN number 12863;
 - d. the amendment of TWU's water CCN number 12983 to include all the facilities and 527 acres of the service area previously held by Southern Horizons under water CCN number 12863; and
 - e. the amendment of TWU's water CCN number 12983 to include 102.5 acres of currently uncertificated area.
9. Additionally, in the application as supplemented, the applicants seek the following:
 - a. an order confirming the ratemaking rate base for the public water systems at issue in this proceeding; and
 - b. authorization for TWU to charge the customers served by the public water systems being acquired its most-recently approved water and sewer rates.
10. The requested area includes approximately 728.2 acres and 461 current customers, which is comprised of:
 - a. 527 acres to be transferred from Southern Horizons' CCN number 12863;
 - b. 98.7 acres to be decertified from CCN number 12863; and
 - c. 102.5 acres of uncertificated area.
11. The requested area is located approximately 2.4 miles northeast of downtown Splendora, Texas, and is generally bounded on the north by County Road 377; on the east 0.1 miles from County Road 3737; on the south by County Road 373; and on the west by US Highway 59.

12. In Order No. 4 filed on April 5, 2023, the Commission administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

13. On April 26, 2023, TWU filed the affidavit of Brian Bahr, the Director of Rates and Regulatory Affairs for TWU, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on April 20, 2023.
14. On April 27, 2023, TWU filed a confidential list of the customers to whom notice was provided.
15. On May 9, 2023, TWU filed a publisher's affidavit attesting to the publication of notice in the *Houston Business Journal*, a newspaper of general circulation in Liberty and Montgomery counties, on April 21 and 28, 2023.
16. On June 7, 2023, TWU filed the affidavit of Mr. Bahr attesting that there are no tracts of land greater than 25 acres located wholly or partially within the requested area.
17. The mailed and published notices included language that "[t]he proposed transaction may change the current customers' rates and services to the current approved rates and services of Texas Water Utilities, LP, which are higher than the current rate for a 5/8" meter for Southern Horizons Development, Inc. . . ."
18. In Order No. 9 filed on June 22, 2023, the Commission ALJ found the notice sufficient.

Effective Date of Proposed Transaction

19. The application was filed on February 2, 2023, and notice was completed on April 28, 2023.
20. TWU and Southern Horizons agreed to an effective date for the proposed transaction that was no earlier than the 121st day after notice was completed.
21. The 120th day after April 28, 2023, is August 28, 2023; therefore, the application was filed at least 120 days before the effective date for the proposed transaction.

Interventions

22. In Order No. 3 filed on March 27, 2023, the Commission ALJ granted the intervention of the Office of Public Utility Counsel (OPUC).

23. In Order No. 6 filed on May 16, 2023, the Commission ALJ granted the interventions of Colin Jones, Cecil Fairfax, Jeffrey Berry, and Anna Miller.
24. In Order No. 8 filed on May 30, 2023, the Commission ALJ granted the intervention of Gerald Stover.
25. At the hearing on the merits on July 23, 2024, the SOAH ALJ denied the intervention of Adriana Carillo Pillow and struck Colin Jones and Jeffrey Berry as parties.

Referral to the State Office of Administrative Hearings (SOAH)

26. On March 5, 2024, the Commission referred this proceeding to SOAH.
27. On March 7, 2024, the Commission filed a preliminary order in this proceeding.
28. On July 23, 2024, the SOAH ALJ convened a hearing on the merits.

Testimony and Statements of Position

29. On April 18, 2024, TWU filed the redacted direct testimony of Brian D. Bahr, including attachments, and the confidential direct testimony of Brian D. Bahr, including attachments.
30. On April 18, 2024, Southern Horizons filed the direct testimony and attachments of Steve Sullivan.
31. On May 5, 2024, Cecil Fairfax filed direct testimony.
32. On May 8, 2024, Constance Stover filed direct testimony.
33. On May 9, 2024, Anna Miller filed direct testimony.
34. On May 9, 2024, OPUC filed a statement of position.
35. On May 30, 2024, Commission Staff filed the direct testimony and attachments of Fred Bednarski III, including confidential attachment FB-3, and the direct testimony and attachments of James Harville.
36. On June 20, 2024, TWU filed the redacted rebuttal testimony of Brian D. Bahr, including attachments and the confidential rebuttal testimony of Brian D. Bahr, including attachments.
37. On July 18, 2024, OPUC filed a supplemental statement of position.

Purchaser's Compliance History

38. TWU has been subject to enforcement actions by the TCEQ in the past five years for non-compliance with rules, orders, or state statutes. TWU has resolved, or is in the process of resolving, the compliance issues related to the open TCEQ enforcement actions listed in the application.
39. TWU has either resolved or is in the process of resolving the outstanding violations related to the TCEQ enforcement actions.
40. TWU does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
41. TWU has demonstrated a compliance history that is adequate for approval of the proposed transaction.

Adequacy of Existing Service

42. There are 461 current customers in the requested area that are being served by Southern Horizons through public water system numbers 1460158 and 1460150.
43. Southern Horizons' public water systems at issue in this proceeding are currently providing continuous and adequate service to the requested area.
44. The last TCEQ compliance investigation of Southern Horizons' Southern Oaks Water System Phase 2 was on May 27, 2022. Southern Horizons does not have any unresolved violations listed in the TCEQ database.
45. The last TCEQ compliance investigation of Southern Horizons' Southern Crossing Water System Phase 2 was on March 6, 2023. Southern Horizons does not have any unresolved violations listed in the TCEQ database.
46. The Commission's complaint records, which date back five years, show four complaints against Southern Horizons, all of which have been closed.
47. There is no evidence in the record that Southern Horizons has failed to comply with any Commission or TCEQ order.

Need for Additional Service

48. There are approximately 461 existing water customers in the requested area that are currently receiving service from Southern Horizons and have an ongoing need for service.
49. This is an application to transfer only existing facilities and customers.
50. Southern Horizons has not provided service in the 98.7 acres currently held under water CCN number 12863 because this area does not align with the property boundaries of the area served by its public water systems.
51. There is no evidence in the record indicating a need for additional service.
52. The combined effect of the decertification of the 98.7 acres held under CCN number 12863 and the addition of the 102.5 acres of uncertificated area to water CCN number 12983 will be to align the boundaries of TWU's service area post-transaction with the property boundaries of the area currently served by Southern Horizons such that all customers transferred from Southern Horizons will be located within water CCN number 12983.

Effect of Approving the Transaction and Granting the Amendment

53. TWU will be the sole certificated water utility for the requested area.
54. TWU be required to provide continuous and adequate water service to current and future customers in the requested area.
55. Landowners in the requested area will be able to obtain water service from TWU.
56. Southern Horizons and TWU are the only utilities affected by this sale and transfer.
57. All retail public utilities in the proximate area were provided notice of the application and no protests or adverse comments were filed by any adjacent retail public utility.
58. There will be no adverse effect on any landowners in the requested area because Southern Horizons is not providing service in the 98.7 acres to be decertified and the 102.5 acres of uncertificated area align with the property boundaries of the area where Southern Horizons is currently providing service.

Ability to Serve: Managerial and Technical

59. TWU owns and operates numerous TCEQ-registered public water systems.
60. TWU employs or contracts with TCEQ-licensed operators who will be responsible for the operation if the public water systems being transferred.
61. TWU has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.
62. TWU has the technical and managerial capability to provide continuous and adequate service to the requested area.

Ability to Serve: Financial Ability and Stability

63. TWU's affiliate, SouthWest Water Company, is capable, available, and willing to cover any temporary cash shortages and has a debt-service coverage ratio that is greater than 1.25. Therefore, TWU satisfies the leverage test.
64. TWU projects no operating and maintenance shortages in the first five years after completion of the transaction. Therefore, TWU satisfies the operations test.
65. TWU submitted documentation indicating it possesses the funds necessary for the purchase of Southern Horizons' public water systems and for the construction of TWU's planned capital improvements.
66. TWU demonstrated the financial capability and stability to provide continuous and adequate water service.

Financial Assurance

67. There is no need to require TWU to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

68. Southern Horizons is currently serving customers throughout all but the 98.7-acre portion of the requested area for which decertification has been requested and such service has been continuous and adequate.

69. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.
70. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity

71. The proposed transaction will not adversely affect the environmental integrity of the land.
72. The effect on the land should be minimal as the requested area will continue to be served with existing facilities with new facilities anticipated shortly after closing.

Regionalization or Consolidation

73. The construction of a physically separate water system is not necessary for TWU to serve the requested area.
74. Because the requested CCN amendment will not require the construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

Voluntary Valuation of Acquired Utility

75. On September 16, 2022, prior to filing the application at issue in this docket, TWU and Southern Horizons filed a notice in Project No. 49859 of their intent to use the Commission's fair-market-value process to determine the ratemaking rate base of the water systems to be acquired by TWU.
76. TWU included in the application copies of the three appraisal reports required by the fair-market-value process and evidence of the purchase price agreed upon between TWU and Southern Horizons.
77. The appraisal reports submitted with the application were filed under confidential seal.
78. The average of the three appraisals yields the fair market value for Southern Horizons and is listed in the direct testimony of Fred Bednarksi, III at confidential Attachment FB-3.
79. The purchase price for Southern Horizons was filed under confidential seal.

80. The ratemaking rate base for Southern Horizons is the purchase price and is listed in the direct testimony of Fred Bednarski, III at confidential Attachment FB-3.
81. The application included the amount of fees paid to the three utility valuation experts and known transaction and closing costs that will be reviewed for inclusion in TWU's rate base in a future TWU rate case.
82. No additional conditions for the acquisition based on the fair-market-value process are needed.
83. Because the applicants used the fair-market-value process, it is not necessary to address whether Southern Horizons' public water systems were partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the Commission.

Customer Deposits

84. Southern Horizons currently holds deposits for 398 customer accounts.
85. The amount of each deposit held is \$50, consistent with the tariff for water CCN number 12863.
86. Southern Horizons has the funds necessary to refund all 398 deposits with interest.
87. Southern Horizons will issue final bills after the closing of the proposed transaction; if the final bill is paid in full by the due date, Southern Horizons will refund the deposit with interest, and if the final bill is not paid in full by the due date, Southern Horizons will apply the deposit to the final bill and refund any remaining portion with interest.

CCN Amendments

88. The evidence in the record supports the decertification of the 98.7 acres of Southern Horizons' CCN that will not be transferred to TWU.
89. The evidence in the record supports the cancellation of Southern Horizons' water CCN number 12863.
90. The evidence in the record supports the amendment of TWU's water CCN number 12983 to include the area transferred from water CCN number 12863 and the 102.5 acres of currently uncertificated area requested in the application.

II. Conclusions of Law

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.214, 13.244, 13.246, 13.301, 13.3011, and 13.305.
2. TWU and Southern Horizons are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. The application was filed and notice was provided at least 120 days before the effective date of the proposed transaction, as required by TWC § 13.301(a) and 16 TAC § 24.239(b)
4. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) §§ 24.235 and 24.239(e).
5. The application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
6. The Commission processed this application as required by the TWC, Administrative Procedure Act,¹ and Commission rules.
7. After consideration of the factors in TWC § 13.246(c), TWU demonstrated that it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.
8. TWU demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
9. It is not necessary for TWU to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
11. TWU and Southern Horizons filed their notice of intent to use the Commission's fair-market-valuation process in compliance with TWC § 13.305(c)(1) and 16 TAC § 24.238(d).

¹ Tex. Gov't Code §§ 2001.001–.903.

12. The Commission's executive director selected three utility valuation experts to perform appraisals of Southern Horizons in compliance with TWC § 13.305(c)(2) and 16 TAC § 24.238(e).
13. The application included copies of the three appraisal reports completed by the utility valuation experts as required by TWC § 13.305(h)(1) and 16 TAC § 24.239(d)(1)(A).
14. The application included the purchase price agreed to by TWU and Southern Horizons as required by TWC § 13.305(h)(2) and 16 TAC § 24.239(d)(1)(B).
15. The application included the ratemaking rate base determined under TWC § 13.305(g) and 16 TAC § 24.238 as required by TWC § 13.305(h)(3).
16. The application included the known transaction and closing costs incurred by TWU to be requested for review and recovery in TWU's rate base in a future rate case as permitted by TWC § 13.305(e) and 16 TAC §§ 24.238(k), 24.239(d)(1)(C), and 24.239(d)(2).
17. The calculation of the fair market valuation for Southern Horizons complies with TWC § 13.305(f) and 16 TAC § 24.238(f)-(j).
18. The calculation of the ratemaking rate base for Southern Horizons complies with TWC § 13.305(g) and 16 TAC § 24.238(b)(3)-(4).
19. The disclosure requirement in TWC § 13.301(j) and 16 TAC § 24.239(q) do not apply because the original sources of funding for any part of Southern Horizons' public water systems is not relevant to determine the value of those systems under TWC § 13.305(k).
20. The applicants demonstrated that the sale of Southern Horizons' facilities and the transfer of a portion of the service area held under water CCN number 12863 to TWU will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).
21. The applicants demonstrated that the decertification of 98.7 acres currently held by Southern Horizons under CCN number 12863 and the amendment of TWU CCN number 12983 to include 102.5 acres of currently uncertificated area will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).

22. The applicants demonstrated that the cancellation of water CCN number 12863 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).
23. Southern Horizons has the funds necessary to address customer deposits as required by 16 TAC § 24.239(k) and (l).