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**SOAH DOCKET NO. 473-24-13127.WS
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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	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S INITIAL BRIEF

Dated: August 9, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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I. INTRODUCTION AND SUMMARY

On February 2, 2023, Texas Water Utilities, LP (TWU) and Southern Horizons Development, Inc. (Southern Horizons) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Liberty and Montgomery Counties. On August 9, 2024, TWU and the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed Proposed Findings of Fact and Conclusions of Law addressing the uncontested issues in this proceeding. Therefore, in this brief Staff will solely address the remaining contested issues in this proceeding. Staff respectfully requests that the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issue a proposal for decision (PFD) finding that the transaction will serve the public interest and adopting the initial rates proposed by TWU. Alternatively, Staff recommends that the SOAH ALJ issue a PFD finding that the transaction will serve the public interest and adopting the Villas of Willowbrook phased rate schedule.

II. PROCEDURAL HISTORY

TWU filed the application in this proceeding on February 2, 2023. On August 23, 2023, intervenor Anna Miller timely requested a hearing to determine whether the sale, transfer, or merger transaction is in the public interest. On March 5, 2024, the Office of Policy and Docket Management filed an Order of Referral, referring this proceeding to SOAH. On July 23, 2024, the parties convened for the Hearing on the Merits. The parties agreed to file initial briefs by August 9, 2024 and reply briefs by August 23, 2024. Therefore, this brief is timely filed.

III. REMAINING PRELIMINARY ORDER ISSUES

A. Initial Rates [Preliminary Order Issue Nos. 7 and 21]

TWU's application in this proceeding requests authorized acquisition rates in accordance with Texas Water Code (TWC) § 13.3011. Specifically, TWU requests that the Commission authorize it to charge customers of the Southern Horizons public water systems rates included in TWU's water tariff that are higher than the current rates in Southern Horizons' tariff. As further detailed below, Staff recommends approval of the proposed transaction, including the charging of TWU's requested initial rates. Alternatively, Staff recommends the implementation of the phased-in rates in TWU's tariff for the Villas of Willowbrook, due to public interest concerns regarding

TWU's requested initial rates. Regardless of which rates are adopted, Staff recommends that the transaction will serve the public interest and should be allowed to proceed.

Section 13.3011 of the TWC allows a person who files an application with the Commission under TWC § 13.301(a) to request the Commission to authorize it to charge initial rates that are "(1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and (2) in force for the other water or sewer system on the date the application . . . is filed."¹ The initial rates TWU requests in its application are included in TWU's tariff and were in force on the date the application was filed. TWU provided the following comparison of the requested initial rates and current rates for Southern Horizons customers in its application:²

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 evidenced by the rate comparison chart, the requested initial rates are significantly higher than Southern Horizons' existing rates. As an alternative to TWU's requested initial rates, Staff recommends the potential implementation of the following phased rate schedule, which will moderate the effects of the rate increase for Southern Horizons customers:

¹ Texas Water Code (TWC) § 13.3011(a)(1)-(2).

² Texas Water Utilities, L.P. (TWU) Exhibit 2, Attachment BDB-2a at Attachment 1.

Texas Water Utilities (Villas of Willowbrook) - RATES effective 06-01-2024 (Phase 4 of 7)³

METER SIZE	MONTHLY BASE RATE (includes 0 gallons)	GALLONAGE TIER	CHARGE PER 1,000 GALLONS
5/8"	\$31.17	0 to 2,000	\$3.70
5/8"x3/4"	\$31.17		
3/4"	\$46.76	2,001 to 10,000	\$6.33
1"	\$77.93		
1½"	\$155.86	10,001 to 20,000	\$6.94
2"	\$249.37		
3"	\$467.57	over 20,000	\$7.27
4"	\$779.29		
6"	\$1,558.57		
8"	\$2,493.71		
10"	\$3,584.71		
12"	\$6,701.86		

Rates in the seven phased rate schedules for the Villas of Willowbrook increase annually on June 1, and culminate in TWU's requested initial rates on June 1, 2027.⁴ Staff recommends that the implementation of the Villas of Willowbrook phased rate schedule as an alternative to TWU's requested initial rates is in the public interest, based on the factors listed in TWC § 13.246(c) and 16 TAC § 24.239(h)(5).⁵

The Commission is not required to grant a utility's request under TWC § 13.3011(a), and instead may determine whether to grant a request under TWC § 13.3011 on a case-by-case basis.⁶ Under TWC § 13.301(e), the Commission may hold a hearing if there are concerns that the transaction may not serve the public interest, including after evaluating the considerations provided by Section 13.246(c).⁷ Section 13.246(c) provides factors the Commission must consider when determining whether to grant applications to obtain or amend certificates of public convenience and necessity, including "adequacy of service, need for additional service, effect on proximate

³ Staff Exhibit 2 at 13:1.

⁴ Texas Water Utilities, L.P. (TWU) Exhibit 1, Attachment BDB-2 at Attachment 4.

⁵ Tr. at 69:7-12.

⁶ Preliminary Order at 3 (Mar. 7, 2024).

⁷ TWC § 13.301(c)(5).

landowners and utilities, the applicant's ability to provide adequate service, the feasibility of obtaining service from an adjacent retail public utility, the applicant's financial ability, environmental integrity, probable improvement of service or lowering of cost, and effect on the land."⁸

Similarly, 16 TAC § 24.239(h) lists factors the Commission may consider when determining whether to require a public hearing to determine if a sale, transfer, or merger transaction will serve the public interest. Section 24.239(h)(5) provides that the Commission may require a public hearing if there are concerns that the transaction does not serve the public interest based on a consideration on several factors, including the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.⁹

There are no improvements, construction, or capital investment required to ensure continuous and adequate service to the requested area or to meet the minimum requirements of the TCEQ or Commission.¹⁰ Although TWU included an estimated capital improvement plan in its application,¹¹ TWU Director of Rates and Regulatory Affairs Brian D. Bahr stated that "neither of these projected improvements are needed or required in the near term to ensure that TWU can provide continuous and adequate service" and the initial estimates of capital improvements were instead intended to facilitate the long-term health of the system.¹² Mr. Bahr also noted that the preliminary estimates are subject to change after a more thorough evaluation of Southern Horizons' systems.¹³ Additionally, both of Southern Horizons' Texas Commission on Environmental Quality (TCEQ) approved public water systems – Southern Oaks Water System Phase 2 (Southern Oaks) and Southern Crossing Water System Phase 2 (Southern Crossing) – have adequate capacity to meet the current and projected demands in the requested areas.¹⁴ There is also no indication of any need for additional service in the requested areas.¹⁵ As of June 11, 2024,

⁸ Preliminary Order at 4; *see also* TWC § 13.246(c).

⁹ 16 TAC § 24.239(h)(5)(H).

¹⁰ TWU Exhibit 1, Attachment BDB-2 at 6; *see also* TWU Exhibit 8 at 3-4 and TWU Exhibit 1 at 20:1-7.

¹¹ TWU Exhibit 2, Attachment BDB-2a at bates 95.

¹² TWU Exhibit 1 at 20:8-16.

¹³ *Id.* at 20:13-16.

¹⁴ TWU Exhibit 1, Attachment BDB-2 at 10; *see also* TWU Exhibit 13.

¹⁵ *See* TWU Exhibit 1 at 17:20-23, 18:1-2.

neither Southern Crossing nor Southern Oaks have any treatment violations or central registry violations with the TCEQ.¹⁶

When evaluating any probable improvement of service to customers, Mr. Bahr cited TWU's status as the second largest investor-owned water and wastewater utility in Texas, and the resources that come with that status, as an improvement of service to customers in the requested areas.¹⁷

Considering the significant increase in Southern Horizons customers' rates if TWU's requested initial rates are approved, the lack of a need for any improvements, construction, or capital investment, and the public interest factors in TWC § 13.246(c) and 16 TAC § 24.239(h)(5), it is unclear if adoption of TWU's requested initial rates in this proceeding is in the public interest. Accordingly, Staff recommends that TWU's request for initial rates be granted, or alternatively, that the Villas of Willowbrook phased rate schedule be implemented. In addition to the foregoing, Staff reserves the right to address any arguments raised by the parties in Staff's reply brief.

IV. CONCLUSION

In sum, Staff recommends that the transaction will serve the public interest. Staff additionally recommends that TWU's request for initial rates be granted, or alternatively, that the Villas of Willowbrook phased rate schedule be implemented. For the foregoing reasons, Staff respectfully requests the issuance of a PFD consistent with Staff's recommendations.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be 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.

/s/ Kelsey Daugherty
Kelsey Daugherty

¹⁶ TWU Exhibit 7 at 3; *see also* Staff Exhibit 2 at 8:9-10.

¹⁷ TWU Exhibit 1 at 22:1-9.