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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 REPLY BRIEF**

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August 23, 2023

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RATE SHOCK	2
III.	CONCLUSION	5

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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 reply brief.¹ 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 reply briefs is August 23, 2024. Therefore, this reply brief is timely filed.

I. INTRODUCTION

The Staff of the Public utility Commission of Texas (“Staff”) filed its Initial Brief arguing that the ALJ issue a proposal for decision (“PFD”) “finding that the transaction will serve the public interest and adopting the initial rates proposed by TWU,” but also alternatively recommended that the ALJ “issue a PFD finding that the transaction will serve the public interest and adopting the Villas of Willowbrook phased rate schedule.”² On the other hand, Texas Water

¹ 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.

² Commission Staff’s Initial Brief at 3 (Aug. 9, 2024).

Utilities, L.P. (“TWU”) argues, with regard to the alternative solution proposed by Staff that Staff’s expert, “Mr. Harville was clear during the hearing that this phasing in of the initial rates was not a recommendation made by Commission Staff,”³ and that TWU’s proposed initial rates met the public interest requirements of 16 TAC § 24.239.

II. RATE SHOCK

OPUC 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, as discussed previously and in depth in OPUC’s Post-Hearing Initial Brief.⁴ TWU’s pre-existing tariff was never tailored to the Southern Horizons’ systems or Southern Horizons’ customers and imposition of TWU’s rates would inevitably cause significant rate shock to ratepayers of Southern Horizon.

Staff, in its Post-Hearing Initial Brief, readily acknowledges an alternative solution to address the rate shock that will undoubtedly occur—recognizing the significant increase in customers’ rates if TWU’s application is approved as filed juxtaposed with a lack of any necessary improvements, construction, or capital investment to merit such a significant and instantaneous increase in rates, stating:

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.⁵

³ Initial Brief of Texas Water Utilities, L.P. at 15 (Aug. 9, 2024).

⁴ Office of Public Utility Counsel’s Post-Hearing Initial Brief at 3 (Aug. 9, 2024).

⁵ Commission Staff’s Initial Brief at 7 (Aug. 9, 2024).

It cannot be said that TWU's requested rates are squarely in the public interest if it is unclear to Staff that adoption of TWU's requested initial rates is in the public interest..

In contrast, TWU, which is not tasked or obligated to assess if requested rates serve the public interest, argues that its proposed rates very much serve the public interest, with rate shock being absolvable per Commission precedent. TWU states:

[T]he 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.⁶

What is not quoted by TWU from that final order in Docket No. 54565 tells a different story of the Commission's interpretation of phased-in rates. Elsewhere, the Commission states:

Commission rules *provide for phased-in rates as a reasonable alternative ratemaking methodology*. Further, finding of fact 103 provides a sufficient basis for why phased-in rates are not necessary *in this proceeding*.⁷ [Emphasis added.]

Additionally, the rates at issue in the CSWR proceedings were not imposed rates; they were rates reviewed, tailored and approved for the customers of CSWR. The Commission never intended to do away with the benefits of phased-in rates, as the fact of the matter persists that rate shock still occurs when a water or sewer system is pressed into a utility's existing tariff that was developed from a different geographic or demographic water or sewer system—not taking into consideration the purchased plant size, plant condition, gallonage service, etc. Contrary to TWU's argument, just because consolidation may occur, does not eviscerate applicability of phased-in rates. Here, there

⁶ Initial Brief of Texas Water Utilities, L.P. at 18(Aug. 9, 2024).

⁷ Application of CSWR-Texas Utility Operating Company, LLC for Authority to Change Rates, Docket No. 54565, Order at 7 (Jun. 13, 2024).

are numerous rate protestors who would be adversely affected by TWU's substantial rate increase. Phased-in rates were quintessentially designed for such circumstances where consumers would require time to adjust to a utility's increase in rates.

The rate-paying public have spoken in this matter, and it is imperative that the ALJ and the Commission listen to their plea. Rate protestors have taken the great effort to participate in this proceeding, for good reasons. Mrs. Constance Stover states that “[a] large population of our subdivisions are low income, retired, veterans, and or of Hispanic descent and have little or no idea what this STM is all about (hence the low intervenor participation),”⁸ and that “[i]mposing TWU initial rates will unjustly burden all of us customers with an outrageously high tariff.”⁹ Ms. Anna Miller explains that she conserves water and that “[w]ithout taxes I pay approx. \$32.20 and will be forced to pay \$61.33 without any change in service, water quality etc.” She puts it succinctly, “[p]ublic Interest is in question with this STM and all of this should be taken into consideration.”¹⁰ 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 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.

Again, as stated in OPUC's initial post-hearing brief, in the event the ALJ believes allowing TWU to charge initial rates other than those currently in effect, to mitigate the

⁸ Intervenor Initial Brief at 3 (Aug. 16, 2024).

⁹ Intervenor Initial Brief at 2 (Aug. 16, 2024).

¹⁰ Intervenor Initial Brief at 2 (Aug. 16, 2024).

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.¹¹ Thus, OPUC supports Staff’s “alternative solution” as to the initial rates proposed in this application.¹² 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.¹³

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.¹⁴ 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.¹⁵

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

¹¹ Direct Testimony of James Harville, Staff Ex. 2 at 12:5 – 14:2 (May 30, 2024). (Harville Direct).

¹² Tr. at 66:12-66:14 (Harville Cross) (July 23, 2024).

¹³ TWU Exhibit 1, Attachment BDB-2 at 6; *See also* TWU Exhibit 8 at 3-4 and TWU Exhibit 1 at 20:1-7.

¹⁴ Application at 91 and 108 (Water Tarriff Pages 11 [Villas] and 28 [Dal-High]).

¹⁵ *See* Tr. at 74:13-74:20 (Harville Cross) (July 23, 2024).

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 (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 23, 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 23rd day of August 2024, by facsimile, electronic mail, and/or first class, U.S. mail.



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