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

<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>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION      OF TEXAS</b>
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**COMMISSION STAFF’S REPLY BRIEF**

Dated: August 23, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

Phillip Lehmann  
Managing Attorney

/s/ Kelsey Daugherty  
Kelsey Daugherty  
State Bar No. 24125054  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7255  
(512) 936-7268 (fax)  
Kelsey.Daugherty@puc.texas.gov

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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]

#### a. **TWU's estimated bill calculation does not prove that the requested initial rates are reasonable and in the public interest.**

TWU Director of Rates and Regulatory Affairs Brian Bahr's rebuttal testimony includes ratemaking calculations that TWU believes demonstrate why TWU's requested initial rates are in the public interest.<sup>1</sup> TWU's initial brief suggests that those calculations, alongside the fact that no one contested TWU's request to use the fair market valuation process or the information in TWU's 2022 Annual Report, further show why TWU's requested initial rates are in the public interest.

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<sup>1</sup> TWU Exhibit 6 at 4:17-21, 5:1-5, Attachment BDB-R-2.

However, the veracity of this contention is difficult to verify, as Mr. Bahr's calculations are not based on the Commission's rate-setting methodology for investor-owned water and sewer utilities, as reflected in the Commission's Class A investor-owned water and sewer utilities rate filing package.<sup>2</sup> Without using the Commission's rate-setting methodology to calculate an estimated monthly bill, Staff is unable to determine if Mr. Bahr's calculations show that TWU's requested initial rates are reasonable and in the public interest. Further, as this proceeding is not a comprehensive rate case, and the Commission is prohibited from initiating a rate proceeding to establish the initial rates for service,<sup>3</sup> Staff cannot require TWU to complete the Commission's Class A investor-owned water and sewer utilities rate filing package to determine if TWU's requested initial rates are just and reasonable. Instead, Staff may consider the factors in Texas Water Code (TWC) § 13.246(c) and 16 Texas Administrative Code § 24.239(h)(5)(H) when evaluating if a proposed transaction, including a request for initial rates under TWC § 13.3011, is in the public interest.

**b. Approving either TWU's requested initial rates or the Villas of Willowbrook phased rate schedule is consistent with TWC § 13.190 and the Third Court of Appeals' interpretation of a similar provision of the Gas Utility Regulatory Act (GURA).**

TWU's initial brief states that "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*."<sup>4</sup> However, this is not true. While approval of TWU's requested initial rates would be consistent with TWC § 13.190 and the *Entex* decision, approval of the Villas of Willowbrook phased rate schedule would be too.

TWC § 13.190 prohibits utilities from charging rates other than those included in a rate schedule. Similarly, in *Entex*, the Third Court of Appeals held that the filed rate doctrine prohibited Entex from charging rates established for another utility.<sup>5</sup> As the Villas of Willowbrook phased rates are authorized rates included in TWU's Commission-approved tariff, adoption of the Villas

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<sup>2</sup> See Class A Rate Filing Package Instructions.

<sup>3</sup> Texas Water Code (TWC) § 13.3011(b).

<sup>4</sup> Texas Water Utilities, L.P.'s (TWU) Initial Brief at 12 (Aug. 9, 2024) (TWU's Initial Brief).

<sup>5</sup> *Entex, a Div. of Reliant Energy Res. Corp. v. R.R. Comm'n of Texas*, 18 S.W.3d 858, 865 (Tex. App.—Austin 2000, pet. denied).

of Willowbrook phased rates is also consistent with TWC § 13.190, the filed rate doctrine, and the *Entex* decision.

As provided in TWC § 13.3011 and as stated in the Preliminary Order<sup>6</sup> in this proceeding, the Commission is not required to grant a utility's request to charge its existing rates in a newly acquired utility's service area. Instead, the Commission may decide whether or not to grant such a request on a case-by-case basis.<sup>7</sup>

**c. The Villas of Willowbrook phased rate schedule is an available tool to moderate the effects of the rate increase for Southern Horizons customers.**

Staff maintains that the Villas of Willowbrook phased rate schedule is a viable option that, if implemented, will moderate the effects of the rate increase for Southern Horizons customers. TWU's initial brief states that 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."<sup>8</sup> While it is true that the Villas of Willowbrook phased rate schedule is not the only solution available for Southern Horizons customers, it is the only option available for *all* Southern Horizons customers. Mr. Bahr's rebuttal testimony includes customer assistance programs like the Low-Income Household Water Assistance Program (LIHWAP), and TWU's Elderly Assist Rates and Water Assist programs,<sup>9</sup> which are useful tools for assisting some of TWU's customers, but not available to all customers. Intervenor Anna Miller expressed concerns about Southern Horizons customers' ineligibility to qualify for LIHWAP or TWU's Water Assist program due to their household income being just above the qualifying thresholds, yet the increased rates still being a hardship for Southern Horizons ratepayers.<sup>10</sup>

The record evidence does not establish any of these programs as the *best* solution available to mitigate the impact of the rate increase to customer bills. Instead, both the programs detailed by Mr. Bahr and the potential implementation of the Villas of Willowbrook phased rate schedule

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<sup>6</sup> Preliminary Order at 3 (Mar. 7, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> TWU's Initial Brief at 13.

<sup>9</sup> TWU Exhibit 5 at 8:6-22, 9:1-10.

<sup>10</sup> Intervenor Initial Brief at 1-2 (Aug. 16, 2024) (Anna Miller's Initial Brief).

recommended by Staff Infrastructure Analyst James Harville are options available for moderating the effects of the rate increase for Southern Horizons customers.

**d. Staff's testimony adequately analyzes the public interest factors in 16 TAC § 24.239 and sufficiently supports Staff's recommendation supporting TWU's request for initial rates or alternatively, adoption of the Villas of Willowbrook phased rate schedule.**

TWU's initial brief questions the validity of Mr. Harville's testimony in this proceeding because he is not "a water ratemaking expert".<sup>11</sup> However, this proceeding is not a water rate case. Mr. Harville's review of TWU's application considered the statutes and rules applicable to sale, transfer, or merger proceedings.<sup>12</sup> Specifically, TWC 13.246(c) and 16 TAC § 24.239(h)(5) list public interest factors the Commission shall consider when evaluating whether this proceeding serves the public interest. Amongst other factors, Mr. Harville evaluated the probable improvement or lowering of cost to customers, and determined that given the then-active Texas Commission on Environmental Quality (TCEQ) capacity violations, the rate change was potentially necessary.<sup>13</sup> However, after determining that all TCEQ capacity violations had been resolved by Southern Horizons, Mr. Harville found that no capital improvements were required to address the now closed TCEQ capacity violations.<sup>14</sup> The record evidence shows that Mr. Harville addressed each public interest factor to be considered, and developed his recommendation to approve TWU's request for initial rates or alternatively implement the Villas of Willowbrook phased rate schedule after thoughtful review and analysis.

**e. The Commission addresses whether or not to grant an acquiring utility's request to charge its existing rates on a case-by-case basis.**

The Commission may determine to grant a request for initial rates under TWC § 13.3011 on a case-by-case basis.<sup>15</sup> TWU's initial brief argues that its requested initial rates should be adopted due to the Commission's decision in CSWR-Texas Utility Operating Company's (CSWR-

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<sup>11</sup> TWU's Initial Brief at 19.

<sup>12</sup> Staff Exhibit 2 at 4:12-13, 5:1-2.

<sup>13</sup> *Id.* at 12:7-8.

<sup>14</sup> TWU Exhibits 7 and 8.

<sup>15</sup> Preliminary Order at 3.

Texas) comprehensive base rate case.<sup>16</sup> This assertion overlooks the fact that this proceeding involves a sale, transfer, or merger application between two retail public utilities and not a comprehensive base rate case consolidating 62 water and 12 sewer systems. Any precedential value that CSWR-Texas's recent comprehensive base rate case has for this sale, transfer, or merger proceeding is minimal at best, due to the differences in fact and applicable law between the two proceedings. The Commission's decision that phased-in rates were not necessary in CSWR-Texas's comprehensive base rate case does not necessarily support a finding that phased-in rates are not in the public interest in this or other proceedings.

#### 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 23, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kelsey Daugherty  
Kelsey Daugherty

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<sup>16</sup> Application of CSWR-Texas Utility Operating Company, LLC for Authority to Change Rates, Docket No. 54565, Order (Jun. 13, 2024).