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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 22, 2024

Shelah Cisneros
Commission Counsel
Public Utility Commission of Texas

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-24-13127.WS; 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 of Rights in Liberty and Montgomery Counties***

Dear Parties:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

The Commission will place this case on an open meeting agenda for the Commissioners' consideration. The Commission will also notify the Administrative Law Judge and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**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**

TABLE OF CONTENTS

I. Procedural History.....5
II. Applicable Law and Threshold Issue Rulings7
 A. Applicable Law7
 B. Threshold Issues..... 11
III. Uncontested Matters 12
 A. Preliminary Order Issues 12
 B. Public Interest Factors 13
 C. Approval of the STM Transaction Will Serve the Public Interest 15
IV. Will Approval of the Requested Rates Serve the Public Interest? 17

A.	Background on the Requested Rates and Staff’s Alternative Phased-In Approach	17
B.	TWU’s Position	20
1.	Support for Requested Rates	20
a)	Compliance with TWC § 13.3011(a).....	20
	(i) Just and Reasonable Rates	21
	(ii) Opportunity to Earn a Reasonable Return	24
b)	Probable Improvement in Service	25
c)	Equitable to TWU and the Systems’ Customers.....	27
d)	Consistent with Statutory Interpretation and Precedent	28
2.	Objections to Phased-in Rates	31
a)	Staff’s Primary Support of TWU’s Requested Rates.....	31
b)	Precedent Does Not Support Phased-In Rates	33
c)	Direct-to-Customer Assistance is More Effective	35
d)	Weight Given to the Public Interest Factors	36
C.	Staff’s Position	36
1.	Staff’s Recommendations	37
2.	Support for Phased-In Rates.....	38
D.	OPUC’s Position	40
1.	Support for Phased-In Rates.....	41
2.	Responses to Staff and TWU	43
E.	Intervening SHDI Customers’ Arguments.....	45
V.	ALJ’s Analysis and Recommendations.....	48
VI.	Findings of Fact	54
VII.	Conclusions of Law.....	65
VIII.	Proposed Ordering Paragraphs.....	68

TABLE OF ACRONYMS

TERM	DEFINITION
ALJs	Administrative Law Judges
Applicants	TWU and SHDI
Application	Applicants' application for a sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Liberty and Montgomery counties, Texas
CCN	Certificate of Convenience and Necessity
CoL	Conclusion of Law
Commission	Public Utility Commission of Texas
Conf.	Confidential
CSWR-Texas	CSWR-Texas Utility Operating Company
FMV	Fair Market Valuation
FoF	Finding of Fact
IOU	Investor-Owned Utility
Intervening SHDI Customers	Cecile Fairfax, Anna Miller, and Gerald & Constance Stover
OP	Ordering Paragraph
OPUC	Office of Public Utility Counsel
PFD	Proposal for Decision
Rule	Texas Administrative Code Section
SHDI	Southern Horizons Development, Inc.
Staff	Staff of the Public Utility Commission of Texas
STM	Sale, Transfer, or Merger
SOAH	State Office of Administrative Hearings

Systems	SHDI's Southern Crossing Water System Phase 2 and the Southern Oaks Water System Phase 2
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
Tr.	Hearing Transcript
TWC	Texas Water Code
TWU	Texas Water Utilities, L.P.

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PROPOSAL FOR DECISION

Texas Water Utilities, L.P. (TWU) and Southern Horizons Development, Inc. (SHDI) (collectively, Applicants) filed an application (Application) with the Public Utility Commission of Texas (Commission) for the sale, transfer, or merger (STM) of facilities and certificate of convenience and necessity (CCN) rights in Liberty and Montgomery counties, Texas.¹

Specifically, the Applicants request approval for the:

¹ TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application).

1. sale and transfer to TWU of SHDI's two public water systems (the Southern Crossing Water System Phase 2 and the Southern Oaks Water System Phase 2 (collectively, the Systems))² and 527 acres of service area held under SHDI's CCN No. 12863;
2. decertification of the remaining 98.7 acres held under SHDI's CCN;
3. cancelation of SHDI's CCN; and
4. amendment of TWU's CCN No. 12983 to include SHDI's 527-acre service area and an additional 102.5 acres of currently uncertificated area.³

If approved, 629.5 acres (the requested area) will be added to TWU's CCN, and TWU will acquire the Systems, which have 461 existing water connections.⁴

Further, Applicants request that the Commission establish the ratemaking rate base for the to-be-transferred Systems, and TWU requests approval to charge the Systems' customers initial rates equal to TWU's existing Commission-approved rates in effect for most of its water service customers (Requested Rates).⁵ TWU's request represents a novel mechanism under Texas Water Code (TWC) § 13.3011(a) whereby an acquiring utility may charge a tariffed rate for its own systems to customers of a newly acquired system. The Texas Third Court of Appeals decided a similar issue concerning what initial rates should be charged for an acquired natural

² The Systems are identified as public water system Nos. 1460158 and 1460150, respectively.

³ TWU Ex. 1 (Bahr Dir.) at 5. TWU asserts its request to decertify 98.7 acres from SHDI's CCN and include 102.5 uncertificated acres to TWU's CCN is necessary to align the CCN boundaries with the property boundaries of the area served by SHDI. The 98.7 acres proposed for decertification does not include any current customers. TWU Ex. 1A (Bahr Dir. Errata) at 6, 21; TWU Ex. 3A (Sullivan Dir. Errata) at 9. For TWU's errata exhibits (Exs. 1A and 3A), the ALJ references the page numbers located in the upper right hand of each page. For all other party exhibits, the ALJ references the Bates-stamped page number located on the lower right hand of each page.

⁴ TWU Ex. 1 (Bahr Dir.) at 6-7, Att. BDB-2 (Application) at 41, 43; TWU Ex. 3 (Sullivan Dir.) at 6.

⁵ TWU Ex. 1 (Bahr Dir.) at 8, Att. BDB-2 (Application) at 19-20. *See* Tex. Water Code § 13.3011.

gas distribution facility, but that decision relied on the statutory framework of the Gas Utility Regulatory Act (GURA),⁶ not the TWC. Accordingly, the question of the appropriate initial rate TWU should charge the Systems is an issue of first impression.

In addition to the Applicants, the following parties participated in this proceeding: Commission staff (Staff); the Office of Public Utility Counsel (OPUC); and the following current SHDI customers served via the Systems: Cecil Fairfax, Anna Miller, and Gerald and Constance Stover⁷ (collectively, Intervening SHDI Customers).

The sole contested issue in this proceeding is whether the Applicants' proposed STM, including TWU's Requested Rates, is in the public interest and should be approved. Accordingly, the Proposal for Decision (PFD) addresses the following questions:⁸

- Whether the STM transaction, including the Requested Rates, will serve the public interest?⁹

⁶ Tex. Util. Code §§ 101.001-105.051. See *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). *Entex* is discussed in Section IV.B.1.d. of the PFD.

⁷ Gerald Stover filed a request to intervene and was granted intervention by Commission Order No. 8 (May 30, 2023). That order did not identify Constance Stover as a party. Ms. Stover did not file a separate request to intervene, but Mr. Stover listed her email address in his intervention request and the document attached to his request stated, "We request to intervene...." Accordingly, Ms. Stover is granted party status now.

⁸ See Preliminary Order at Issue Nos. 7, 9, and 18-21 (Mar. 7, 2024). The remaining uncontested issues in the Preliminary Order are briefly identified below and addressed in the Findings of Fact (FoFs) and Conclusions of Law (CoLs).

⁹ See Tex. Water Code §§ 13.246(c), .301(d), (e)(5), (g), .3011; 16 Tex. Admin. Code §§ 24.239(g), (h)(5), .240(c)(5), (f).

- If not, what rates should the Commission authorize for TWU to charge as initial rates to the Systems' customers?¹⁰

TWU asserts the proposed STM transaction as set forth in the Application, including the Requested Rates, is in the public interest and should be approved. The other parties' positions are summarized as follows:

- **Staff** supports approval of the Application as is, including the Requested Rates. Alternatively, to mitigate the rate increase caused by the Requested Rates, Staff proposes that TWU phase-in the Requested Rates over a multi-year schedule.
- **OPUC** supports approval of the proposed STM transaction but requests the Commission maintain SHDI's existing rates that the Systems' customers are currently paying until TWU applies for and receives Commission approval for a new base rate. Alternatively, if TWU is allowed to charge the Systems' customers an initial rate other than SHDI's existing rates, OPUC supports Staff's alternative phased-in rate schedule.
- **The Intervening SHDI Customers** do not challenge the proposed STM transaction itself but strongly oppose the Requested Rates and request that SHDI's existing rates remain in place.

For the reasons discussed below, the Administrative Law Judge (ALJ) finds the proposed STM transaction serves the public interest and should be approved, the Requested Rates should be denied, and SHDI's existing rates should remain in effect as initial rates until TWU requests and receives Commission approval for a rate change for the Systems. Accordingly, the ALJ recommends the Commission

¹⁰ See Tex. Water Code § 13.3011; 16 Tex. Admin. Code § 24.240.

approve the Application as modified so that TWU charges SHDI's existing rates as initial rates for the Systems.¹¹

I. PROCEDURAL HISTORY

Applicants filed the Application on February 2, 2023, and the Commission ALJ found the Application administratively complete on April 5, 2023.¹² On June 22, 2023, the Commission ALJ found notice sufficient.¹³

Ms. Miller timely requested a hearing “for the purpose of contesting the unjustly imposed new tariff rates [the Requested Rates].”¹⁴ TWU and Staff objected to Ms. Miller’s hearing request, arguing it was impermissible under TWC § 13.3011 and should be denied.¹⁵ The Commission requested briefing on four threshold issues, including whether Ms. Miller’s hearing request was proper.¹⁶ Ultimately, “so as to do substantial justice” under 16 Texas Administrative Code § (Rule) 22.75(a), the Commission construed Ms. Miller’s hearing request “as a request for a hearing to determine whether the [STM] transaction, including [TWU’s] request for initial

¹¹ See 16 Tex. Admin. Code § 24.240(c)(1).

¹² Commission Order No. 4 (Apr. 5, 2023).

¹³ Commission Order No. 9 (June 22, 2023).

¹⁴ Commission Order No. 10 (Aug. 18, 2023); Ms. Miller’s Request for Hearing (Aug. 23, 2023). Ms. Fairfax and Ms. Stover also requested a hearing; however, timeliness concerns were raised regarding those requests. The Commission did not address those timeliness concerns “because only one request for a hearing is needed, and it [is] not disputed that Anna Miller’s request for a hearing was timely.” Preliminary Order at 2.

¹⁵ Texas Water Utilities, L.P.’s Response to Requests for Hearing (Aug. 25, 2023); Commission Staff’s Reply to Texas Water Utilities’ Response to Requests for Hearing (Sept. 11, 2023).

¹⁶ Order Requesting Briefing on Threshold Issues (Oct. 13, 2023). Notably, the Commission asked: Does a request for a hearing to contest approval of rates under TWC § 13.3011(a) constitute proper grounds for a hearing under § 13.301(e) and 16 Texas Administrative Code (TAC) § 24.239(h)?

rates under TWC § 13.3011 [Requested Rates], is in the public interest.”¹⁷ The Commission’s decision is further addressed below regarding the applicable threshold legal and policy rulings.

On March 5, 2024, the Commission referred the proceeding to the State Office of Administrative Hearings (SOAH).¹⁸ The Commission issued its Preliminary Order that set forth the issues to be addressed.¹⁹ All parties filed testimony except OPUC, which filed a position statement.

ALJ Meaghan Bailey convened the hearing on the merits via Zoom videoconference on July 23, 2024. All parties submitted post-hearing briefing, and the record closed upon receipt of the reply briefs on August 23, 2024. The record was reopened on September 25, 2024, for the limited purpose of admitting Applicants’ unopposed errata to the direct testimonies of its witnesses Brian D. Bahr and Steve Sullivan.²⁰

¹⁷ Preliminary Order at 2, 4 (Commission’s Threshold Legal and Policy Determinations)(Mar. 7, 2024).

¹⁸ Order of Referral (Mar. 5, 2024).

¹⁹ Preliminary Order at 4-10.

²⁰ SOAH Order No. 8 (Sept. 25, 2024). The errata to the direct testimonies of Messrs. Bahr and Sullivan were marked as TWU Ex. 1A and TWU Ex. 3A, respectively.

II. APPLICABLE LAW AND THRESHOLD ISSUE RULINGS

A. APPLICABLE LAW

The Applicants propose the STM transaction pursuant to TWC § 13.301, which authorizes the sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a CCN. TWC § 13.301(e) allows the Commission to hold a hearing to determine if the transaction will serve the public interest if “there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by [TWC §] 13.246(c) for determining whether to grant a [CCN].”²¹ Pursuant to Section 13.246(c), the Commission must consider the following factors, as applicable here:

- (1) adequacy of service currently provided by SHDI;
- (2) need for additional service in the requested area;
- (3) the effect of granting the CCN amendment on TWU and any proximate landowners and retail public utilities providing the same service;
- (4) TWU’s ability to provide adequate service, including meeting the standards of the Commission for the current and projected density and land use of the requested area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) TWU’s financial ability to pay for the facilities necessary to provide continuous and adequate service and its financial stability;
- (7) environmental integrity;

²¹ Tex. Water Code § 13.301(e)(5).

- (8) the probable improvement of service or lowering of cost to consumers in the requested area resulting from the granting of the CCN amendment, and
- (9) the effect on the land to be included in the certificated area.

Rule 24.239(h) tracks this language except for the final factor. Instead of the potential effect on the land, Rule 24.239(h)(5)(I) requires consideration of whether SHDI or TWU has failed to comply with any Commission or Texas Commission on Environmental Quality (TCEQ) order.

A key consideration in this case is TWC § 13.3011, a recently enacted law that concerns the initial rates that may be charged to an acquired system in an STM proceeding. Under Section 13.3011(a), TWU, as the acquiring utility, “may request” authorization to charge initial rates to the Systems’ customers for water service that are: (1) shown in a tariff filed with a regulatory authority by TWU for another water system; and (2) in force for that other water system on the date the Application was filed.²² However, subsection (b) prohibits the Commission from requiring TWU “to initiate a new rate proceeding to establish” its requested initial rates (here, the Requested Rates).²³

The Commission implemented this statute in Rule 24.240, which provides additional guidance. Under this rule, TWU must use SHDI’s existing rates as initial

²² As discussed later, it is uncontested that the Requested Rates comply with the conditions set forth in TWC § 13.3011(a)(1)-(2).

²³ TWC § 13.3011(b).

rates unless the Commission authorizes the use of different initial rates.²⁴ Rule 24.240(b)(1) requires that the Requested Rates meet the same conditions set forth in TWC § 13.3011(a).

Further, under Rule 24.240(c)(5), in determining whether to approve the proposed STM transaction, the Commission will consider whether approval of the Requested Rates “would change whether the proposed [STM] transaction would serve the public interest under [Rule] 24.239(h)(5).” In reviewing the Requested Rates, the Commission will investigate whether they are just and reasonable for the Systems’ customers and TWU.²⁵ Notably, a previous determination that the Requested Rates are just and reasonable for TWU’s water systems to which those rates already apply is not, in itself, sufficient to conclude that the Requested Rates are just and reasonable for the to-be-acquired Systems.²⁶

Additionally, because the Commission granted Ms. Miller’s hearing request to determine whether the Requested Rates will serve the public interest per TWC §13.301 and Rule 24.239(h), the Requested Rates “will not be approved unless the [C]ommission determines that the requested rates are just and reasonable.”²⁷ The scope of a just-and-reasonable review in this circumstance is to be based on the relevant facts of the case, subject to the following limitations:

²⁴ 16 Tex. Admin. Code § 24.240(c)(1). Rule 24.240(b)(3) provides that “[a]n initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.”

²⁵ 16 Tex. Admin. Code § 24.240(f).

²⁶ 16 Tex. Admin. Code § 24.240(f).

²⁷ 16 Tex. Admin. Code § 24.240(f)(1)(A).

The transferee [here, TWU] is not required to support its request for authorized acquisition rates [i.e., initial rates] by initiating a rate proceeding, establishing the cost of service for the acquired water or sewer system, or establishing substantial similarity between the acquired water or sewer system and the water or sewer system to which the requested rates already apply. The transferee is also not required to defend the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.²⁸

However, the Commission may consider, among other things, whether (1) any changes or significant components of the Requested Rates (e.g., local or system-specific charges, pass throughs, etc.) would be unjust or unreasonable if applied to the Systems; (2) the Systems' customers are currently receiving continuous and adequate service from SHDI; and (3) the Requested Rates are generally consistent with the rates charged to similar water systems.²⁹

Applicants bear the burden to prove the Application will serve the public interest and that the Requested Rates are just and reasonable.³⁰

²⁸ 16 Tex. Admin. Code § 24.240(f)(2)(A).

²⁹ 16 Tex. Admin. Code § 24.240(f)(2)(B).

³⁰ Tex. Water Code §§ 13.184(c), .301(d); 16 Tex. Admin. Code §§ 24.12, .239(g).

B. THRESHOLD ISSUES

As previously noted, the Commission ordered briefing on four threshold issues, to which TWU, Staff, OPUC, and Ms. Miller timely responded. The Commission's rulings on each threshold issue are summarized below:³¹

1. The language used in TWC § 13.3011 is discretionary, and therefore, the Commission is not required to grant the Requested Rates.
2. TWC § 13.3011 does not specify the criteria, if any, the Commission should use to determine whether to grant the Requested Rates. The Commission will address the criteria on a case-by-case basis.
3. If an acquiring utility's initial rate request under TWC § 13.3011(a) is denied, the Commission will, on a case-by-case basis, address what rates it may authorize the acquiring utility to charge the customers of the acquired system in light of the prohibition precluding the Commission from requiring the acquiring utility to initiate a new rate proceeding to establish the initial rates for the acquired system.
4. A request for a hearing to determine whether an STM transaction, including a request for initial rates under TWC § 13.3011, is in the public interest constitutes proper grounds for a hearing. Under TWC § 13.301(e)(5), the Commission may hold a hearing in an STM proceeding if "there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by [TWC §] 13.246(c) for determining whether to grant a [CCN]."

An acquiring utility's [TWU's] request to charge its initial rates under TWC § 13.3011 is part of an overall STM transaction. Moreover, the probable improvement of service or lowering of cost to consumers is a public-interest consideration under TWC § 13.246(c) and [Rule] 24.239(h)(5)(H) for STM transactions. Therefore, a hearing under TWC § 13.301(e) and [Rule] 24.239(h) regarding whether an STM

³¹ Preliminary Order at 3-4 (Commission's Threshold Legal and Policy Determinations).

transaction serves the public interest may include a request to charge initial rates.³²

These determinations are considered dispositive of those matters.³³

III. UNCONTESTED MATTERS

A. PRELIMINARY ORDER ISSUES

The following issues listed in the Commission's Preliminary Order, are unchallenged and therefore uncontested: Issue Nos. 1-2 (re: notice); Issue Nos. 3-4 (re: effective date of transaction); Issue No. 5 (re: SHDI's notice requirements); Issue No. 6 (re: questions about the use of contributions in aid of construction); Issue No. 8 (re: Systems' compliance with regulations); Issue No. 10 (re: cancelation of SHDI's CCN); Issue Nos. 11-16 (re: amendment of TWU's CCN); Issue No. 17 (re: post-transaction requirements); and Issue Nos. 22-28 (re: fair market valuation).

TWU and Staff submitted joint proposed findings of fact (FoFs) and conclusions of law (CoLs) on the uncontested issues identified; no party objected.³⁴

³² Thus, the effect of the Requested Rates on the Systems' customers (i.e., the fact that it will increase rather than lower their cost for water service) is a factor that the Commission must consider in its overall determination of whether the proposed STM transaction will serve the public interest and should be approved. This is consistent with the Commission's public interest determination set forth in Rule 24.240(c)(5), as discussed below.

³³ Preliminary Order at 10.

³⁴ Texas Water Utilities, L.P.'s and Commission Staff's Joint Proposed Findings of Facts and Conclusions of Law (Aug. 9, 2024) (Joint Proposed FoFs and CoLs).

Due to their uncontested status, the proposed findings and legal conclusions regarding the issues identified above are adopted and incorporated into the FoFs and CoLs below, with minor modifications, and not further discussed.

B. PUBLIC INTEREST FACTORS

Additionally, no party challenged or presented arguments regarding the public interest factors set forth in TWC § 13.246(c)(1)-(7), (9) and Rule 24.239(h)(5)(A)-(G), (I). As such, the ALJ finds those factors to be uncontested. TWU and Staff also proposed FoFs and CoLs concerning those uncontested factors; no party objected.³⁵ The ALJ summarizes the uncontested public interest factors below:

1. SHDI's Systems are currently providing continuous and adequate service to the requested area, and the Systems do not have any unresolved violations listed in the TCEQ database.³⁶
2. There is no evidence that SHDI has failed to comply with any Commission or TCEQ order; TWU has been subject to TCEQ enforcement actions in the past five years and has resolved, or is in the process of resolving, those compliance issues; and TWU has demonstrated a compliance history that is adequate for approval of the proposed STM transaction.³⁷
3. There is no need for additional service in the requested area.³⁸
4. TWU will be the sole certificated water utility for the requested area; the Applicants are the only utilities affected by the proposed STM; no

³⁵ Joint Proposed FoFs and CoLs at FoF Nos. 42-72. TWU and Staff did not propose FoF concerning a probable improvement of service or lowering of cost to consumers resulting from approval of the Application.

³⁶ Joint Proposed FoFs and CoLs at FoF Nos. 42-47; *see* Tex. Water Code § 13.246(c)(1); 16 Tex. Admin. Code § 24.239(h)(5)(A).

³⁷ Joint Proposed FoFs and CoLs at FoF Nos. 38-41; *see* 16 Tex. Admin. Code § 24.239(h)(5)(I).

³⁸ Joint Proposed FoFs and CoLs at FoF No. 51; *see* Tex. Water Code § 13.246(c)(2); 16 Tex. Admin. Code § 24.239(h)(5)(B).

retail public utilities providing water service in the proximate area protested or filed adverse comments against the Application; and there will be no adverse effect on any landowners in the requested area.³⁹

5. TWU has access to an adequate supply of water and can provide water that meets the requirements of chapter 342 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules; and TWU has the technical and managerial capability to provide continuous and adequate service to the requested area.⁴⁰
6. It is not feasible to obtain service from an adjacent retail public utility.⁴¹
7. TWU has the financial capability and stability to provide continuous and adequate water service and there is no need to require TWU to provide a bond or other financial assurance to ensure continuous and adequate service.⁴²
8. The proposed STM transaction will not adversely affect the environmental integrity of the land.⁴³

The only public interest factor disputed in this proceeding concerns whether the proposed STM transaction will result in a probable improvement of service or lowering of cost to consumers.⁴⁴ That factor is discussed later.

³⁹ Joint Proposed FoFs and CoLs at FoF Nos. 53-58; *see* Tex. Water Code § 13.246(c)(3); 16 Tex. Admin. Code § 24.239(h)(5)(C). The issue of any potential adverse impact on the Systems' customers regarding the Requested Rates is a contested issue and is addressed below.

⁴⁰ Joint Proposed FoFs and CoLs at FoF Nos. 61-62; *see* Tex. Water Code § 13.246(c)(4); 16 Tex. Admin. Code § 24.239(h)(5)(D).

⁴¹ Joint Proposed FoFs and CoLs at FoF Nos. 69-70; *see* Tex. Water Code § 13.246(c)(5); 16 Tex. Admin. Code § 24.239(h)(5)(E).

⁴² Joint Proposed FoFs and CoLs at FoF Nos. 66-67; *see* Tex. Water Code § 13.246(c)(6); 16 Tex. Admin. Code § 24.239(h)(5)(F).

⁴³ Joint Proposed FoFs and CoLs at FoF Nos. 66-67; *see* Tex. Water Code § 13.246(c)(7), (9); Tex. Admin. Code § 24.239(h)(5)(G).

⁴⁴ Tex. Water Code § 13.246(c)(8); 16 Tex. Admin. Code § 24.239(h)(5)(H).

C. APPROVAL OF THE STM TRANSACTION WILL SERVE THE PUBLIC INTEREST

In determining whether approval of the Application will serve the public interest, the ALJ first considers the proposed STM transaction independently from the Requested Rates. Accordingly, in this section, the ALJ considers whether the transaction itself, excluding the Requested Rates, will serve the public interest.

For purposes of this section, “STM transaction” refers only to the proposed: (1) transfer of SHDI’s Systems and 527 acres of service area from SHDI to TWU; (2) decertification of the remaining 98.7 acres of SHDI’s service area; (3) cancelation of SHDI’s CCN No. 12863; and (4) amendment of TWU’s CCN No. 12983 to include SHDI’s Systems and service area along with an additional 102.5 acres of currently uncertificated area.

Based on the uncontested public interest factors above, TWU and Staff assert in their joint proposed CoLs that the STM transaction will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required by TWC §§ 13.246(g)-(h) and 13.301(d), (e) and (g).⁴⁵ No party raised or challenged this issue or objected to the joint CoLs presented on this issue.

⁴⁵ Proposed Joint FoFs and CoLs at CoL Nos. 20-22; Staff Ex. 2 (Harville Dir.) at 5-15 (Based on his review of the Application and available evidence, Staff witness James Harville recommended “that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction.”); Staff Initial Brief at 1.

In fact, consistent with the Applicants and Staff, OPUC supports the proposed STM transaction.⁴⁶ Further, while the Intervening SHDI Customers made general statements and arguments that the Application is not in the public interest, those assertions were specific to their concerns about the Requested Rates, not the STM transaction itself.⁴⁷ Accordingly, the ALJ concludes it is uncontested that the proposed STM transaction, excluding the issue of the Requested Rates, will serve the public interest under TWC § 13.301(d), (e), and (g) and Rule 24.239(g)-(h).

When excluding the Requested Rates from consideration, the ALJ finds that, unless the Commission authorizes a different initial rate, TWU would use SHDI's existing rates as the initial rates to be charged to the Systems' customers, in accordance with Rule 24.240(c)(1). In that situation, the SDHI customers' rates would remain unchanged, and the ALJ finds that the uncontested public interest factors addressed above weigh in favor of approving the STM transaction, even without considering whether the transaction would result in a probable improvement of service.⁴⁸ Thus, that portion of the public interest factor set forth in TWC § 13.246(c)(8) and Rule 24.239(h)(r)(H) is not addressed in this section.

⁴⁶ OPUC Initial Brief at 10-11. OPUC only contests TWU's Requested Rates.

⁴⁷ Fairfax Initial Brief ("Is this merger/sale in the public interest? No it is for profits only."); Stover Initial Brief at 2 ("This STM is not in the public interest and should not go forward unless our current SHDI existing rates stay."); Miller Initial Brief at 2 ("Having the 2nd largest Water and Sewer Utility (TWU) (Investor Owned Utility) take us over is not in the Public Interest . . . [TWU's] justifications and view of entitlement reflects that this is only for revenue.").

⁴⁸ See Tex. Water Code § 13.246(c)(8); 16 Tex. Admin. Code § 24.239(h)(5)(H).

IV. WILL APPROVAL OF THE REQUESTED RATES SERVE THE PUBLIC INTEREST?

The ALJ now considers whether the proposed STM transaction will continue to serve the public interest if the Requested Rates are approved. For a better understanding of the parties' arguments, the ALJ provides an overview of what comprises the Requested Rates and Staff's alternative phased-in rate schedule below.

A. BACKGROUND ON THE REQUESTED RATES AND STAFF'S ALTERNATIVE PHASED-IN APPROACH

The Requested Rates reflect TWU's existing rates approved via settlement agreement in Docket No. 50944 in 2022.⁴⁹ TWU states that those rates were designed using a revenue requirement based on a test year ending December 31, 2019, developed after a comprehensive review of that revenue requirement, including its reasonable and necessary expenses and capital investment, and that the rates are applicable to TWU's single comprehensive customer class.⁵⁰ In that docket, all but 16 of TWU's water systems were consolidated and placed under the approved rates that TWU now seeks to charge the Systems' customers (i.e., the Requested Rates).⁵¹ TWU agreed to place the

⁴⁹ *Application of Monarch Utilities I L.P. for Authority to Change Rate*, Docket No. 50944, Order (Feb. 23, 2022). Staff and OPUC were parties to that case. Docket No. 50944, Order at FoF Nos. 25, 27, 39. The Commission approved Monarch Utilities I L.P.'s name change to Texas Water Utilities, L.P. approximately nine months after Docket No. 50944 was completed. *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).

⁵⁰ TWU Ex. 1 (Bahr Dir.) at 15-16; Docket No. 50944, Order at FoF Nos. 59, 64, 80-81, 85, 90, 96 and CoL Nos. 13-17; TWU Initial Brief at 7.

⁵¹ Only four of the original 16 public water systems are currently under a phased-in rate schedule as approved in Docket No. 50944. TWU Initial Brief at 6; TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 122-24, 133-41.

remaining 16 systems on varying phased-in rate schedules that, once complete, will reflect TWU's full approved rate. Some of those phased-in rate schedules will not be complete until 2027.⁵²

To mitigate the impact of the rate increase that would result from the Requested Rates, Staff witness James Harville proposed an alternative wherein TWU would phase in the Requested Rates using the rate schedule for one of the 16 systems discussed above.⁵³ Specifically, he identified the phased-in rate schedule for the Villas of Willowbrook system. The Villas of Willowbrook's rate schedule has seven annual phases, and the schedule will be completed on June 1, 2027.⁵⁴ That system is currently in Phase 4 of its rate schedule. Pursuant to Mr. Harville's alternative, the Systems' customers would be charged the annual rate increases set forth in Phases 5, 6, and 7.⁵⁵ Under this approach, the Systems' customers would eventually pay TWU's full Requested Rates on June 1, 2027.

The following table illustrates the difference in SHDI's existing rates for the Systems compared to the Requested Rates:⁵⁶

⁵² TWU Ex. 1 (Bahr Dir.) at 15-16, Att. BDB-7 (Docket No. 50944 Water Tariff) at 262-375.

⁵³ Staff Ex. 2 (Harville Dir.) at 12-14, Att. JH-2 (Rate Comparison); Hearing Transcript (Tr.) at 66, 69 (Harville Cross).

⁵⁴ TWU Ex. 1 (Bahr Dir.), Att. BDB-7 (Docket No. 50944 Water Tariff) at 301-04.

⁵⁵ Tr. at 74-75 (Harville Cross).

⁵⁶ Staff Ex. 2 (Harville Dir.) at 11-12.

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

Villas of Willowbrook’s current Phase 4 rates are provided below:⁵⁷

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		
1 1/2"	\$155.86	10,001 to 20,000	\$6.94
2"	\$249.37		
3"	\$467.57		
4"	\$779.29	over 20,000	\$7.27
6"	\$1,558.57		
8"	\$2,493.71		
10"	\$3,584.71		
12"	\$6,701.86		

Mr. Harville noted that the Requested Rates “are significantly higher” than SHDI’s existing rates. According to his analysis, when comparing the rates for water usage of 2,000, 5,000, and 10,000 gallons, the Requested Rates represent a

⁵⁷ Staff Ex. 2 (Harville Dir.) at 13.

respective 90.47%, 104.29%, and 117.16% increase from SHDI's existing rates. Under his alternative phased-in approach, the Systems' customers would see a series of annual increases over the next three years with a much lower initial rate increase of 19.78%, 37.90%, and 54.77% for those same usage amounts, respectively.⁵⁸

B. TWU'S POSITION

TWU contends its Requested Rates are in the public interest and should be approved in lieu of maintaining SHDI's existing rates, as proposed by OPUC and the Intervening SHDI Customers. TWU also presents various challenges to Staff's alternative phased-in approach.

1. Support for Requested Rates

a) Compliance with TWC § 13.3011(a)

No party disputes that the Requested Rates comply with the conditions set forth in TWC § 13.3011(a). They were previously approved by the Commission in Docket No. 50944; were incorporated and shown in the tariff for TWU's CCN No. 12983, as approved in Docket No. 52201;⁵⁹ and were in effect for a majority of TWU's water systems at the time the Application was filed.⁶⁰

⁵⁸ Staff Ex. 2 (Harville Dir.), Att. JH-2.

⁵⁹ *Application of Utilities Investment Company, Inc. and UIC 13 LLC and Monarch Utilities I L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris, Liberty, and Chambers Counties*, Docket No. 52201, Amended Notice of Approval (Aug. 26, 2022).

⁶⁰ See Tex Water Code § 13.3011(a)(1)-(2).

By virtue of that compliance, TWU argues the Requested Rates are in the public interest because they also satisfy the ratemaking standards found in TWC §§ 13.182(a)-(b) and .183(a). Particularly, TWU asserts that the Commission already determined in Docket No. 50944 that the Requested Rates are (1) just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; and are sufficient, equitable, and consistent in application to each class of customers; and (2) permit TWU a reasonable opportunity to earn a reasonable return on its used and useful invested capital and preserve its financial integrity.⁶¹ Moreover, TWU argues that interpreting the Section 13.3011(a) conditions as subsuming the criteria in Sections 13.182 and 13.183 is consistent with the Section 13.3011(b) prohibition on requiring a new rate proceeding because doing so obviates the need for a review as intensive as a comprehensive rate case.⁶²

In addition, TWU offers the following arguments that the Requested Rates are just and reasonable and would continue to allow TWU to earn a reasonable return.

(i) Just and Reasonable Rates

Unlike the Requested Rates, which are based on a relatively recent review of TWU's revenue requirement, TWU asserts SHDI's existing rates may not generate enough revenue to cover the Systems' cost of service.⁶³ Particularly, TWU stresses that SHDI's cost of service has not been comprehensively reviewed since 2009 when

⁶¹ Docket No. 50944, Order at FoF No. 84, CoL No. 13; TWU Initial Brief at 2-3, 5-6, 8-10; *see also* Tex. Water Code §§ 13.182(a)-(b), .183(a).

⁶² TWU Initial Brief at 10.

⁶³ TWU Initial Brief at 6.

SHDI filed its last rate case with TCEQ.⁶⁴ Rather, SHDI's existing rates, approved in 2020, are the result of an automatic 5% increase through a Class D utility rate adjustment.⁶⁵

SHDI's current manager, Mr. Sullivan, confirmed that the costs of operating the Systems have increased since 2010 and that the existing rates have not always generated enough revenue to cover capital expenditures in years where substantial repairs or improvements to facilities were made.⁶⁶ Mr. Sullivan opined that SHDI has been able to get by because it does not have any employees, it relies on contract labor, and neither he nor his business partner are compensated for their work managing SHDI.⁶⁷

TWU argues that continuing to charge SHDI's existing rates is not in the public interest because those rates 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 comparable to TWU's.⁶⁸ TWU acknowledges that, because the Systems' have not undergone a rate increase for several years, the

⁶⁴ TWU Ex. 3 (Sullivan Dir.) at 8, Att. SCS-1 (TCEQ Order in TCEQ Docket No. 36526-R approving SHDI's rates to be effective for July 2010 bills).

⁶⁵ *Application of Southern Horizons Development, Inc. for a Class D Rate Adjustment*, Docket No. 51017, Notice of Approval (Aug. 24, 2020); TWU Ex. 3 (Sullivan Dir.) at 7-8.

⁶⁶ TWU Ex. 3 (Sullivan Dir.) at 8.

⁶⁷ TWU Ex. 3 (Sullivan Dir.) at 8.

⁶⁸ TWU Initial Brief at 8.

increase proposed by the Requested Rates may seem large. However, TWU asserts the size of a rate increase is not determinative of the rate being just and reasonable.⁶⁹

Furthermore, TWU contends that using the ratemaking rate base for SHDI that it requests in this case and the operating expenses per customer as calculated in its 2022 Annual Report would result in an estimated bill that is higher than the Requested Rates. TWU summarized Mr. Bahr's analysis supporting this contention as follows:

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. He then used the requested ratemaking rate base for [SHDI], including the amount requested for the fees paid to the utility valuation experts, the current customer count of 461, and TWU's pre-tax weighted average cost of capital to calculate a monthly capital cost of service per customer. 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 [SHDI] customer would pay at TWU's [Requested Rates].⁷⁰

TWU's request in this proceeding to use the fair market valuation (FMV) process⁷¹ to determine SHDI's ratemaking rate base and its 2022 Annual Report were

⁶⁹ TWU Reply Brief at 10.

⁷⁰ TWU Initial Brief at 10 (internal citations omitted). Certain data used by Mr. Bahr in his analysis above was designated confidential and is therefore not included in the PFD. That data can be located in the following confidential exhibits: TWU Ex. 2 (Bahr Dir. Confidential (Conf.)) (including Att. BDB-2a); TWU Ex. 6 at 4-5 (Bahr Reb. Conf.) (including Att. BDB-R-2).

⁷¹ Tex. Water Code § 13.305; Tex. Admin. Code § 24.238.

uncontested. Based on Mr. Bahr's analysis and the uncontested matters identified above, TWU contends the Requested Rates are just and reasonable.

(ii) Opportunity to Earn a Reasonable Return

TWU maintains that approval of the Requested Rates will not result in it earning a greater return than authorized in Docket No. 50944. As noted previously, some of the rates approved in that docket included phased-in rate schedules. As such, TWU notes it is unable to charge the rates designed to collect the full, approved Docket No. 50944 revenue requirement until 2027, when all phased-in rate schedules are completed.⁷² Additionally, according to TWU's 2022 Annual Report, TWU earned less than its approved 7.73% rate of return. Based on that report, Mr. Bahr opined that TWU would still not earn more than its authorized return, even if every Systems customer used 5,000 gallons per month and TWU realized the entire \$471,716.64 net annual revenue for that usage.⁷³

In short, TWU argues that by approving the Requested Rates, the Commission can establish initial rates that have already been deemed just and reasonable, while also ensuring TWU will continue to be provided an opportunity to earn a reasonable return.⁷⁴

⁷² TWU Ex. 1 (Bahr Dir.) at 15-16.

⁷³ TWU Ex. 1 (Bahr Dir.) at 15-16; TWU Ex. 2 (Bahr Dir. Conf.) at 14; TWU Initial Brief at 11.

⁷⁴ TWU Initial Brief at 10.

b) Probable Improvement in Service

TWU maintains that the Systems' customers will benefit from a probable improvement of service due to joining TWU's network and emphasizes Staff witness Harville's agreement that "[r]eliability and quality of water service is expected to improve under [TWU's] management."⁷⁵

TWU highlights its long-standing operation as the second largest investor-owned water/wastewater utility in Texas and its focus on safety, environmental stewardship, customer care, employee engagement, integrity, and community partnership.⁷⁶ TWU notes that it has received two formal complaints in the last three years—one of which was withdrawn—and the majority of the 165 informal complaints it received in 2023 were related to summer or winter outages, 93% of which were resolved in TWU's favor.⁷⁷ TWU employs water/wastewater operators licensed by TCEQ and routinely performs internal reviews of its systems to identify, prioritize, and resolve deficiencies, if any.⁷⁸ TWU witness Bahr stressed TWU's access to substantial resources that benefit customers including a dedicated customer call center, access to capital through capital markets, an engineering team, and the ability to draw on affiliate resources during times of natural disasters.⁷⁹ No party contested these assertions.

⁷⁵ TWU Ex. 5 (Bahr Reb.), Att. BDB-R-1 at 20; TWU Ex. 1 (Bahr Dir.) at 16-17, 23; TWU Reply Brief at 1.

⁷⁶ TWU Ex. 1 (Bahr Dir.) at 15-18, 23-24.

⁷⁷ TWU Ex. 1 (Bahr Dir.) at 16-17.

⁷⁸ TWU Ex. 1 (Bahr Dir.) at 16-17.

⁷⁹ TWU Ex. 1 (Bahr Dir.) at 16-17.

TWU admits that while the Application included a proposed capital improvements plan, none of those “projected improvements are needed or required in the near term to ensure that TWU can provide continuous and adequate service to the CCN area it will acquire from [SHDI].”⁸⁰ Rather, the proposed projects were identified during TWU’s initial due diligence for the proposed STM transaction based on preliminary cost and timing estimates and are subject to change once TWU closes the transaction and can perform a more thorough evaluation of the Systems.⁸¹

It should be noted that Staff witness Harville agreed that the STM transaction would result in a probable improvement of service, as quoted above, after only reviewing the Application and believing that the projects identified in the capital improvements plan were immediately needed to meet minimum regulatory standards. However, Mr. Harville later confirmed his primary recommendation that the STM transaction, including the Requested Rates, be approved remained unchanged even after reviewing Mr. Bahr’s testimony and learning there was no immediate need for such improvements.⁸²

TWU argues that Staff nevertheless attempts to shy away from Mr. Harville’s recommendation in its initial brief. According to TWU, Staff presents a new

⁸⁰ TWU Ex. 1 (Bahr Dir.) at 21.

⁸¹ TWU Ex. 2 (Bahr Dir. Conf.), Att. BDB-2a at 94-95; TWU Ex. 1 (Bahr Dir.) at 21.

⁸² Tr. at 84 (Harville Dir.); TWU Ex. 5 (Bahr Reb.), Att. BDB-R-1 (Harville Memorandum) at 20. While his ultimate recommendation that the Application be approved remains unchanged, it appears from his hearing testimony that Mr. Harville may not still agree that the STM transaction would result in a probable improvement of service. Tr. at 90-92 (Harville Cross?).

argument that the lack of an immediate need for improvements casts doubt on whether the Requested Rates are in the public interest.⁸³ TWU opines that Staff holds an erroneously narrow view that if there is no immediate need for improvements or capital investment to comply with regulatory standards, then there are no projects that will result in a probable improvement to service.⁸⁴ According to TWU, such a position ignores the distinction between such necessary improvements and the “initial estimates of capital improvements [TWU] intends to make post-acquisition as part of a prudent capital plan to facilitate the long-term health of the [Systems].”⁸⁵

c) Equitable to TWU and the Systems’ Customers

TWU maintains that the Requested Rates will result in an equitable rate structure for both TWU and the Systems’ customers. If the Requested Rates are approved, TWU asserts the Systems’ customers will receive the same level of water service as all its other customers in exchange for paying the Commission-approved rates currently paid by many of TWU’s existing customers. As discussed earlier, TWU asserts the Requested Rates are based on its actual cost of providing water service to existing customers and is necessary for TWU to recover that cost.⁸⁶

⁸³ Staff Initial Brief at 7; TWU Reply Brief at 5.

⁸⁴ See Staff Initial Brief at 6-7.

⁸⁵ TWU Ex. 1 (Bahr Dir.) at 21.

⁸⁶ TWU Ex. 1 (Bahr Dir.) at 14-16; TWU Initial Brief at 6, 11-12.

Further, Mr. Bahr opined that being part of a larger customer base will mitigate the impact on the Systems' customers from large, single capital expenditures.⁸⁷ According to TWU, the Requested Rates are more equitable than SHDI's existing rates, which have not always generated revenue sufficient to cover the entire cost of needed capital improvements to the Systems.⁸⁸ Under SHDI's existing rates, TWU contends that it and its other customers will be forced to subsidize the Systems' customers for any such large capital expenditures.⁸⁹

d) Consistent with Statutory Interpretation and Precedent

TWU insists that approval of initial rates that differ from its Requested Rates would contravene the filed rate doctrine, as codified in TWC § 13.190,⁹⁰ and the holding in *Entex*, where the Third Court of Appeals held that the filed-rate doctrine “prohibits regulated utilities from ‘charging rates for their services other than those properly filed with the appropriate regulatory authority.’”⁹¹ As explained below, *Entex* interpreted GURA, wherein the filed-rate doctrine is codified in GURA § 104.005(a).⁹²

⁸⁷ TWU Ex. 1 (Bahr Dir.) at 23; TWU Reply Brief at 3.

⁸⁸ TWU Ex. 3 (Sullivan Dir.) at 8.

⁸⁹ TWU Reply Brief at 3.

⁹⁰ Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.

⁹¹ *Entex*, 18 S.W.3d at 862-63 (“The doctrine operates ‘across the spectrum of regulated utilities’ and applies ‘where state law creates a state agency and a statutory scheme pursuant to which the state agency determines reasonable rates.’”).

⁹² *Entex*, 18 S.W.3d at 862.

Although *Entex* involves a different statutory framework, TWU compares it to the current proceeding because both cases concern what rates an acquiring utility should charge the customers of a recently acquired facility/system. In the referenced case, Entex acquired a facility from another utility, ETIG, and proceeded to charge the former ETIG customers the rates authorized for Entex by the Railroad (RR) Commission in Docket No. 8187. As here, Entex’s rates were considerably higher than ETIG’s rates. The RR Commission concluded Entex was overcharging the former ETIG customers and ordered Entex to charge those customers ETIG’s authorized rates instead. Entex appealed, and the Third Court of Appeals reversed the RR Commission’s decision, holding in part:

- “We agree with Entex that it did not increase *its* rates, but instead extended to new customers the rates it was authorized to charge.”⁹³
- “Entex is prohibited by [GURA §] 104.005(a) from charging its customers any rates other than those authorized by the [RR] Commission in Docket No. 8187.”⁹⁴
- “ETIG’s former customers are entitled to the rights shared with Entex’s other customers, that is, the right to be charged the just and reasonable rates established in Docket No. 8187.”⁹⁵
- “We hold the filed rate doctrine requires Entex to charge only its authorized rates established in Docket No. 8187 and prohibits it from charging any other rates. The [RR] Commission’s order requiring Entex to charge rates established for another utility in Docket No. 4001 [ETIG’s rates] is erroneous as a matter of law. Unless this

⁹³ *Entex*, 18 S.W.3d at 866.

⁹⁴ *Entex*, 18 S.W.3d at 866.

⁹⁵ *Entex*, 18 S.W.3d at 866.

order can be sustained on other grounds, we are required to reverse it.”⁹⁶

TWU contends that GURA § 104.005 is similar to TWC § 13.190, as both statutes codified the common law filed-rate doctrine and 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 as shown in the utility’s approved tariff.⁹⁷ TWU further contends that both chapter 13 of the TWC and GURA similarly strive to assure rates, operations, and services that are just and reasonable to the consumer and to the utilities.⁹⁸

When TWC § 13.3011 was enacted in 2021, the filed-rate doctrine had been codified in TWC § 13.190 for approximately 36 years and the Third Court of Appeals had long recognized the common law doctrine.⁹⁹ Thus, per statutory construction rules, TWU argues that the Legislature enacted Section 13.3011 to shore up Section 13.190 and require the Commission to apply the filed-rate doctrine in STM proceedings.¹⁰⁰

⁹⁶ *Entex*, 18 S.W.3d at 865.

⁹⁷ TWU Initial Brief at 12-13; *compare* TWC § 13.190(a) *with* GURA § 104.005(a)-(b).

⁹⁸ *Compare* GURA § 101.002(a) *with* TWC § 13.001(c).

⁹⁹ *See generally Entex*, 18 S.W.3d 858.

¹⁰⁰ TWU Initial Brief at 12-13.; *see Susan Letner (Beaber) Phillips v. Daniel Edward Beaber*, 995 S.W.2d 655, 658 (Tex. 1999) (“We also bear in mind the circumstances under which the statute was enacted, and the consequences of any particular construction Further, we presume that the Legislature acted with knowledge of the common law and court decisions.”).

Given the factual similarities between the two cases and the TWC and GURA statutes, TWU asserts it is reasonable to apply *Entex* to STM transactions by water utilities and that doing so supports approval of the Requested Rates.¹⁰¹

2. Objections to Phased-in Rates

a) Staff's Primary Support of TWU's Requested Rates

TWU argues Staff's alternative phased-in approach should be denied because it does not change Staff's primary recommendation that the proposed STM transaction is in the public interest and should be approved, including the Requested Rates.¹⁰² Further, TWU questions Mr. Harville's water ratemaking experience and argues that his alternative recommendation should be afforded no weight.¹⁰³

As noted earlier, after reviewing TWU witness Bahr's direct testimony, Mr. Harville learned that the capital improvements plan proposed in the Application did not reflect immediately needed improvements but rather projected improvements that are subject to change. Additionally, after filing his own testimony, Mr. Harville learned that the Systems' pending TCEQ violations included in the Application had been resolved.¹⁰⁴ Based on these changed circumstances, Mr. Harville presented his alternative phased-in rate approach.¹⁰⁵ Nevertheless, even

¹⁰¹ TWU Initial Brief at 13.

¹⁰² See Staff Initial Brief at 7; Staff Reply Brief at 7.

¹⁰³ TWU Initial Brief at 15-16, 18-19.

¹⁰⁴ Tr. at 66, 70-71, 90-91 (Harville Cross).

¹⁰⁵ Tr. at 66 (Harville Cross).

after presenting his alternative, Mr. Harville confirmed his primary recommendation remains that the STM transaction will serve the public interest and it, including the Requested Rates, should be approved.¹⁰⁶ Further, in its post-hearing briefing, Staff continues to support approval of the Application, including the Requested Rates, as its primary recommendation.¹⁰⁷

TWU argues Mr. Harville lacks the necessary experience to pose such an alternative phased-in approach based on his admissions that ratemaking is not a primary function of his role at the Commission, none of his assigned 75 cases at the time of the hearing were water rate cases, he has not previously testified as to rate increases and their effect on customers, and he was unaware of recent Commission decisions involving phased-in rates for water service, including the Commission's rejection of phased-in rates in the recent Docket No. 54565, discussed below.¹⁰⁸

TWU emphasizes that Mr. Harville provided almost no analysis regarding how the Requested Rates being higher than SHDI's existing rates weighs against the probable improvement in service that he stated was likely to occur. TWU also asserts Mr. Harville did not mention the other phased-in rate schedules included in TWU's existing tariff or provide any analysis as to why or how he selected the Villas of

¹⁰⁶ Tr. at 101-02 (Harville Cross); TWU Ex. 5 (Bahr Reb.), Att. BDB-R-1 (Harville Memorandum) at 20.

¹⁰⁷ Staff Initial Brief at 7; Staff Reply Brief at 1.

¹⁰⁸ Tr. at 60-62, 65-67 (Harville Cross). Mr. Harville's "current role at the Commission includes analyzing and reviewing fuel factor applications, energy efficiency cost recovery applications, service area exception and boundary change applications, and each category of water and sewer CCN and STM applications or petitions." Staff Ex. 2 (Harville Dir.) at 3.

Willowbrook’s schedule as opposed to one of the others.¹⁰⁹ For these reasons, TWU argues Mr. Harville’s suggestion that his alternative phased-in rate schedule would alleviate rate shock is little more than a bare assertion and fails to demonstrate that phasing in the Requested Rates is necessary for the approval of those rates to be in the public interest.¹¹⁰

b) Precedent Does Not Support Phased-In Rates

TWU cites the Commission’s decision in Docket No. 54565 as support for why its Requested Rates should be approved instead of a phased-in rate approach.¹¹¹ In that docket, CSWR-Texas Utility Operating Company (CSWR-Texas) requested, in part, to increase its rates and consolidate the tariffs of 62 water systems. CSWR-Texas requested a rate increase in which its “water service customers would experience changes in their monthly bills ranging from an 11% decrease to a 717% increase at the 5,000-gallon monthly usage level.”¹¹² OPUC’s witness in that case testified that “a rate increase of 10% or more causes rate shock for customers” and that “many customers on the acquired systems [in Docket No. 54565] would experience acute rate shock.”¹¹³ Therefore, OPUC proposed two potential multi-year

¹⁰⁹ Staff Ex. 2 (Harville Dir.) at 12-14, Att. JH-2.

¹¹⁰ TWU Initial Brief at 14-15, 18-19; *see* Staff Ex. 2 (Harville Dir.) at 12.

¹¹¹ *See Application of CSWR-Texas Utility Operating Company, LLC for Authority to Change Rates*, Docket No. 54565, Order (June 13, 2024).

¹¹² Docket No. 54565, PFD at 95-96 (Nov. 28, 2023).

¹¹³ Docket No. 54565, PFD at 95 (internal citations omitted).

phased-in rate schedules to mitigate the rate shock resulting from CSWR-Texas's request.¹¹⁴

The ALJs in that case rejected OPUC's phased-in proposals, finding insufficient evidence that a phased-in approach was necessary and that it would delay CSWR-Texas's recovery of millions that it had already expended on capital investments to rehabilitate the acquired systems.¹¹⁵ The Commission affirmed the ALJs' recommendation, holding that even though "Commission rules provide for phased-in rates as a reasonable alternative ratemaking methodology," "[FoF No.] 103 provides a sufficient basis for why phased-in rates are not necessary in this proceeding."¹¹⁶ Specifically, that FoF provides, "Consolidation of the systems identified in the application sufficiently mitigated rate shock while ensuring customers are paying their actual cost of service."¹¹⁷

In TWU's view, the decision in Docket No. 54565 demonstrates that the consolidation of systems sufficiently mitigates rate shock and that phased-in rates are unnecessary even when facing rate increases up to 717%. As such, TWU asserts that Docket No. 54565 justifies a finding that the Requested Rates are in the public interest and should be approved over any phased-in approach.¹¹⁸

¹¹⁴ Docket No. 54565, PFD at 95-97.

¹¹⁵ Docket No. 54565, PFD at 99-100.

¹¹⁶ Docket No. 54565, Order at 7.

¹¹⁷ Docket No. 54565, Order at FoF 103.

¹¹⁸ TWU Initial Brief at 17-18.

c) Direct-to-Customer Assistance is More Effective

According to TWU, the evidence does not demonstrate that approval of a phased-in rate schedule for the Systems is the best or only solution available to mitigate the impact that would result from approval of the Requested Rates. Rather, TWU contends that its direct-to-customer assistance programs, described below, will provide a more effective tool for mitigating such impacts.

TWU argues that phasing in rates artificially depresses rates for a broad group of customers, which can result in assistance for customers who do not need it and/or who may use large amounts of water, resulting in inappropriate subsidization. Conversely, TWU argues that its direct-to-customer programs provide payment assistance to those who need it most and avoid implementing rates below the level needed for TWU to recover its approved cost of service. In doing so, TWU asserts such programs better balance both the needs of the utility and the customers it serves.¹¹⁹

TWU offers the Low-Income Household Water Assistance Program, which it asserts is particularly effective as it is administered by the Texas Department of Housing and Community Affairs and relies on local agencies and city and county governments to award funds.¹²⁰ TWU also offers the Elderly Assist Rates and Water Assist programs that provide qualifying customers with a monthly \$20 discount on

¹¹⁹ TWU Ex. 5 (Bahr Reb.) at 6, 8-9.

¹²⁰ TWU Ex. 5 (Bahr Reb.) at 8-9.

both water and wastewater bills. Furthermore, TWU makes alternate payment arrangements available for customers requiring temporary assistance.¹²¹

d) Weight Given to the Public Interest Factors

Finally, TWU argues that Staff's phased-in alternative relies only upon whether the proposed STM transaction will result in the probable improvement of service or lowering of cost to consumers,¹²² and erroneously neglects all other uncontested applicable public interest factors under TWC § 13.246(c) and Rule 24.239(h)(5).¹²³ Ultimately, TWU asserts the uncontested public interest factors support a finding that the Application, including the Requested Rates, is in the public interest and that a single factor alone is not enough to overcome all the others.¹²⁴

C. STAFF'S POSITION

As noted above, Staff recommends that the proposed STM transaction will serve the public interest and should be approved and that the Requested Rates should

¹²¹ TWU Ex. 5 (Bahr Reb.) at 8-9.

¹²² See Tex. Water Code § 13.146(c)(8); 16 Tex. Admin. Code § 24.239(h)(5)(H).

¹²³ Neither TWC chapter 13 nor the Commission's rules indicate that any one of those factors should hold more weight than any other. TWU Reply Brief at 6.

¹²⁴ TWU Reply Brief at 6; see Staff Initial Brief at 6-7; OPUC Initial Brief at 4.

be granted.¹²⁵ Alternatively, due to the impact of the Requested Rates on the Systems' customers, Staff recommends that the phased-in rates in TWU's existing rate schedule for the Villas of Willowbrook be implemented.¹²⁶

The ALJ first addresses Staff's reasoning for its primary and alternative recommendations, followed by Staff's responses to TWU's objections to phased-in rates.

1. Staff's Recommendations

In response to TWU's challenge of Mr. Harville's experience in water ratemaking, Staff stresses that this proceeding is not a water rate case and Mr. Harville appropriately considered the applicable law and considerations for an STM proceeding.¹²⁷ Staff explains that:

Mr. Harville evaluated the probable improvement or lowering of cost to customers, and determined that given the then-active [TCEQ] capacity violations, the rate change [the Requested Rates] was potentially necessary. However, after determining that all TCEQ capacity violations had been resolved by [SHDI], Mr. Harville found that no capital improvements were required to address the now closed TCEQ capacity violations. The record evidence shows that Mr. Harville

¹²⁵ Staff Initial Brief at 4, 7. Staff raised an argument for the first time in its reply brief regarding its inability to determine if the ratemaking calculations provided in Mr. Bahr's rebuttal testimony, TWU's uncontested use of the FMV process, and information in TWU's 2022 Annual Report demonstrate that the Requested Rates "are reasonable and in the public interest." Staff Reply Brief at 3-4. This argument is based on information that was previously uncontested and known to Staff prior to TWU's initial brief and therefore should have been included in Staff's initial brief. By initially presenting this argument in its reply brief, Staff failed to provide the parties with an opportunity to review and respond. Tex. Gov't Code § 2001.051(2). Accordingly, the ALJ did not consider Staff's argument on this issue.

¹²⁶ Staff Initial Brief at 4, 7; Staff Reply Brief at 7.

¹²⁷ Staff Reply Brief at 6; Staff Ex. 2 (Harville Dir.) at 4-5.

addressed each public interest factor to be considered, and developed his recommendation to approve TWU's request for [the Requested Rates] or alternatively implement the Villas of Willowbrook phased rate schedule after thoughtful review and analysis.¹²⁸

Ultimately, based on Mr. Harville's considerations and testimony, Staff opines:

Considering the significant increase in [SHDI's] 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.¹²⁹

2. Support for Phased-In Rates

Staff contests TWU's assertion that denial of the Requested Rates would contravene TWC § 13.190 and the holding in *Entex*. While Staff admits that approval of the Requested Rates would be consistent with that statute and decision, it asserts that approval of its alternative phased-in approach would also be consistent. The Villas of Willowbrook phased-in rates are authorized rates included in TWU's Commission-approved tariff and were in effect at the time the Application was filed. Thus, Staff asserts its alternative recommendation is proper and can be approved as

¹²⁸ Staff Reply Brief at 6 (internal citations omitted).

¹²⁹ Staff Initial Brief at 7 (emphasis added).

it complies with the requirements set forth in TWC § 13.3011(a)(1)-(2), TWC § 13.190 (i.e., the filed-rate doctrine), and the decision in *Entex*.¹³⁰

Staff emphasizes that the Commission is not required to grant the Requested Rates and may decide whether to grant or deny them on a case-by-case basis.¹³¹ Regarding the Commission's decision in Docket No. 54565, Staff asserts that TWU overlooks the fact that this proceeding is a proposed STM between two retail public utilities and not a comprehensive base-rate case consolidating 62 water systems and 12 sewer systems. Thus, Staff argues Docket No. 54565 is distinguishable from the current proceeding and any precedential influence it may have on this case is minimal at best due to the differing facts and law. In contrast to TWU, Staff contends that the Commission's decision that phased-in rates were unnecessary in Docket No. 54565 does not necessarily support a finding that phased-in rates are not in the public interest in the current proceeding.¹³²

Finally, Staff argues that TWU's direct-to-customer assistance programs are not the best solution available to mitigate the impact of the rate increase to the Systems' customers. Staff agrees that such programs are useful for assisting some of TWU's customers, but not all TWU customers, as some may not meet the programs' eligibility criteria. Thus, Staff argues that while its alternative phased-in

¹³⁰ Staff Reply Brief at 4-5; *see Entex*, 18 S.W.3d at 865.

¹³¹ Staff Reply Brief at 4-5.

¹³² Staff Reply Brief at 6-7.

approach is not the only solution available to mitigate rate impacts for the Systems' customers, it is the only option available for *all* the Systems' customers.¹³³

D. OPUC'S POSITION

OPUC's sole focus is mitigating the impacts of what it asserts would be the unavoidable rate shock experienced by the Systems' customers if the Requested Rates are approved. It is that potential rate shock, OPUC contends, that makes the proposed STM transaction not in the public interest.¹³⁴ For that reason, OPUC proposes the Commission maintain SHDI's existing rates for the Systems until TWU applies for and receives Commission approval for a new base rate.¹³⁵

Alternatively, if the Commission allows TWU to charge initial rates other than SHDI's existing rates, OPUC supports Staff's alternative to implement the Villas of Willowbrook's rate schedule.¹³⁶ While OPUC proposes that the Phase 4 rate be held permanent until the Commission approves a new base rate for TWU, it also supports Mr. Harville's recommendation to implement all phases of the Villas of Willowbrook's rate schedule.¹³⁷

¹³³ Staff Reply Brief at 5-6.

¹³⁴ OPUC Initial Brief at 3.

¹³⁵ OPUC Initial Brief at 7-8.

¹³⁶ Staff Ex. 2 (Harville Dir.) at 12-14; Tr. at 66 (Harville Cross). OPUC also suggests the phased-in rate schedule for TWU's Dal-High Water Systems would also be reasonable and in the public interest if implemented as the initial rates for the Systems. No evidence was presented regarding that schedule; accordingly, it was not considered.

¹³⁷ OPUC Initial Brief at 10; Tr. at 74 (Harville Cross).

The ALJ first addresses OPUC's reasoning for its proposal followed by its response to arguments presented by Staff and TWU.

1. Support for Phased-In Rates

OPUC asserts there is strong support for a public interest determination resulting in a denial of TWU's Requested Rates based on the testimonies provided by the Intervening SHDI Customers. Based on that testimony, as discussed in greater detail below, OPUC contends that the quintessential rate-paying public has spoken on this matter and that it is imperative that the Commission listen to their pleas and deny the Requested Rates.¹³⁸

Additionally, OPUC agrees with Mr. Harville's analysis of the Requested Rates when considered in conjunction with the fact that the Systems do not need any immediate improvements to comply with TCEQ or Commission standards. Notably, OPUC cites to Mr. Harville's testimony explaining his analysis on this issue:

If the immediate improvements that were provided in the initial application are no longer necessary, and each system is receiving adequate service, that is what sparks the question to me, under public interest, are the rates as listed beneficial to the customers?

...

If capital improvements aren't being required, either by immediate improvements based on the initial application, . . . if there are no violations or treatment issues that need to be resolved, that is part of my

¹³⁸ OPUC Initial Brief at 6-10.

question as to as [sic] the customers of this system, what is the immediate reason for the increase in cost aside from the initial rates?¹³⁹

Approval of the Requested Rates, as OPUC notes, would result in a greater than 50% increase in the Systems' existing base rates (an increase of \$16.17/month), with any consumer using 4,000 gallons or more in any given month paying at least double their current water bill.¹⁴⁰ OPUC maintains that the rate increase that will be experienced by the Systems' customers if the Requested Rates are approved will be astronomical as demonstrated in Staff witness Harville's testimony.¹⁴¹ Further, OPUC stresses that the Requested Rates were not developed or tailored to the Systems or the Systems' customers, which will invariably add to the potential rate shock.¹⁴² For these reasons, OPUC argues the Requested Rates cannot be found to be just and reasonable under TWC § 13.182(a) and must therefore be rejected.¹⁴³

OPUC also questions why TWU agreed to place 16 systems on phased-in rate schedules in Docket No. 50944 to mitigate rate impacts to those customers but refuses to do so here despite the Systems' small sizes and the fact they have undergone only two rate adjustments in the past 14 years.¹⁴⁴ OPUC argues that the additional revenue generated from the Systems at the Requested Rates would make

¹³⁹ Tr. at 91-92 (Harville Cross).

¹⁴⁰ See Staff Ex. 2 (Harville Dir.), Att. JH-2.

¹⁴¹ See Staff Ex. 2 (Harville Dir.), Att. JH-2.

¹⁴² OPUC Initial Brief at 3, 6.

¹⁴³ OPUC Initial Brief at 5.

¹⁴⁴ OPUC Initial Brief at 5-6; see TWU Ex. 1 (Bahr Dir.) at 15-16; TWU Ex. 3 (Sullivan Dir.) at 7-8.

up less than 1% of TWU's current rate base.¹⁴⁵ Thus, while such a rate increase would pose a financial burden on the Systems' customers, it represents just a drop in the bucket to TWU.¹⁴⁶

Finally, OPUC notes that, independently of this proceeding, TWU anticipates seeking additional rate increases for the Systems within the next year but does not intend to go through a formal comprehensive base-rate case.¹⁴⁷ Specifically, TWU noted in the Application that it anticipates filing requests for a System Improvement Charge and true-ups for purchased water pass-throughs. If that occurs as anticipated, the Systems' customers may experience additional rate increases and the Commission will not have an opportunity to thoroughly review the cost of service for the Systems and potentially approve an updated rate for some time.¹⁴⁸

For these reasons, OPUC contends the Requested Rates are not just and reasonable nor in the public interest and should be denied.

2. Responses to Staff and TWU

OPUC raises a concern with Staff's recommendation that the Requested Rates be found in the public interest and approved. In presenting its

¹⁴⁵ TWU Ex. 1 (Bahr Dir.) at 15, Att. BDB-2 (Application) at 39.

¹⁴⁶ OPUC Initial Brief at 6.

¹⁴⁷ TWU anticipates filing a System Improvement Charge and true-ups for purchased water pass-throughs within the next 12 months but notes that those "anticipated filings are not the result of the [STM] transaction proposed in this" proceeding. TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 39.

¹⁴⁸ OPUC Initial Brief at 6; *see* TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 39.

recommendation, Staff admits it is unclear if adoption of those rates is in the public interest when considering the significant and instantaneous rate increase the Systems' customers will experience and the lack of any necessary immediate improvements, construction, or capital investments that may merit such a rate increase.¹⁴⁹ Thus, OPUC poses the question: How can Staff recommend approval of the Requested Rates if it is unable to determine if approval of those rates would result in the proposed STM transaction no longer serving the public interest?

OPUC also challenges TWU's reliance on Docket No. 54565 for support that the Requested Rates are in the public interest and that any resulting rate shock is absorbable per Commission precedent. OPUC emphasizes that, in Docket No. 54565, the Commission explicitly found that phased-in rates are a reasonable alternative ratemaking methodology and that the decision to not approve a phased-in approach was based on the specific facts of that case.¹⁵⁰ The current proceeding is distinguishable, OPUC argues, because the rates in Docket No. 54565 were not imposed rates; they were rates reviewed, tailored, and approved for the systems and customers that CSWR-Texas was consolidating. Like Staff, OPUC argues the applicability of phased-in rates is not precluded simply because consolidation occurs. Rather, OPUC asserts that phased-in rates were designed for the current situation where the Systems' customers require time to adjust to the increased Requested

¹⁴⁹ See Staff Initial Brief at 7; Staff Reply Brief at 6-7.

¹⁵⁰ Docket No. 54565, Order at 7, FoF No. 103.

Rates that are based on a different geographic or demographic water system and do not consider the Systems' size, condition, gallonage, service, etc.¹⁵¹

E. INTERVENING SHDI CUSTOMERS' ARGUMENTS

The Intervening SHDI Customers are all retirees and currently receive water service from the Systems. They are united in their position that the Requested Rates are not in the public interest because the rates would result in an unjust and unreasonable rate increase that would unjustly burden the Systems' customers. Therefore, the Intervening SHDI Customers request that the Commission maintain SHDI's existing rates.¹⁵² By maintaining the existing rates, they argue the Commission can alleviate further strain and burden on the Systems' customers and ensure they are paying a rate that is just and reasonable and in the public interest.¹⁵³ Further, Ms. Miller objects to Staff's alternative phased-in approach, arguing it would have the same result as TWU's request and "only delay the unjust and unreasonable price increase."¹⁵⁴

Ms. Stover participated in this proceeding to provide a voice for herself and the other customers that she asserts are "already struggling to pay their bills."¹⁵⁵ When discussing the Systems' customers, she explained that they are "mostly

¹⁵¹ OPUC Reply Brief at 3-4.

¹⁵² *See generally* Ms. Fairfax's, Ms. Miller's, and Ms. Stover's post-hearing briefing.

¹⁵³ Stover Initial Brief at 2.

¹⁵⁴ Miller Initial Brief at 3

¹⁵⁵ Stover Ex. 1 (Stover Dir.) at 2.

retired, low income, veterans, and working-class people” that need just and reasonable rates.¹⁵⁶ Similarly, Ms. Miller noted:

[T]he customers in our subdivisions are not very affluent and are struggling to make ends meet. We live in Liberty County and not in Montgomery County (only 16 lots) for a reason which is affordability. Our subdivisions primarily consist of mobile homes and not big [e]state mansions with in ground pools and landscape irrigations. We should not be forced [into] a tariff rate that does not reflect our living capability.¹⁵⁷

Ms. Stover asserts the Requested Rates will place a “big burden” on the Systems’ customers since most of the customers “are just above all of the low-income assistance programs,” and therefore may not be eligible to benefit from the assistance programs offered by TWU.¹⁵⁸ Similarly, Ms. Fairfax opines that the most important issue in this proceeding is the welfare of the public, not lining the pockets of TWU and others who will not be affected by the requested rate increase.¹⁵⁹ For example, Ms. Miller contends that with active conservation practices her monthly usage is approximately 2,000 gallons a month for which she pays approximately \$32.20 (without taxes). She stresses that if the Requested Rates are approved, she will be forced to pay \$61.33 a month for water without any change in her water service or quality.¹⁶⁰

¹⁵⁶ Stover Ex. 1 (Stover Dir.) at 2.

¹⁵⁷ Miller Ex. 1 (Miller Dir.) at 3.

¹⁵⁸ Stover Ex. 1 (Stover Dir.) at 2.

¹⁵⁹ Fairfax Reply Brief at 2.

¹⁶⁰ Miller Initial Brief at 2.

She further questions “the perceived automatic entitlement view” held by TWU “to impose such [a] tariff plus the high gain of revenue”¹⁶¹ when considering the Systems are not currently substandard or in need of improvements and that TWU is a much larger Class A investor-owned utility (IOU) compared to SHDI’s Class D status. For these reasons, in addition to the rate shock she asserts will occur, she contends the Requested Rates are not just and reasonable.¹⁶² Like OPUC, she also questions why TWU objects to the use of a phased-in approach for its Requested Rates to mitigate rate shock when it agreed to do so previously in Docket No. 50944.¹⁶³

Finally, both Ms. Stover and Ms. Miller were frustrated with what they considered the confusing and arduous process intervenors had to go through to participate in this STM proceeding. They speculate that such frustration may have prevented other customers from participating to contest the Requested Rates.¹⁶⁴

¹⁶¹ Miller Ex. 1 (Miller Dir.) at 2.

¹⁶² Miller Ex. 1 (Miller Dir.) at 6-7.

¹⁶³ Miller Ex. 1 (Miller Dir.) at 5. Ms. Miller questions how the Requested Rates could be appropriate considering the instruction in the Commission’s STM application that states: “If the acquiring entity is an IOU [investor-owned utility], the IOU may not change the rates charged to the customers through this STM application. Rates can only be changed through the approval of a rate change application.” TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 39 (Instruction 15.A.). The version of the Commission’s STM Application TWU used is from September 2019 and TWC § 13.3011 was enacted in 2021. It appears the STM application language has not been updated to reflect the enactment of Section 13.3011; however, that does not impact the validity of the statute. Accordingly, Ms. Miller’s concerns on this issue are not further discussed.

¹⁶⁴ Miller Ex. 1 (Miller Dir.) at 3; Stover Initial Brief at 2.

V. ALJ'S ANALYSIS AND RECOMMENDATIONS

For the reasons set forth below, the ALJ recommends that the proposed STM transaction be approved, the Requested Rates be denied, and SHDI's existing rates remain in effect until TWU requests and receives Commission approval for a rate change for the Systems, either through its anticipated System Improvement Charge and purchased water pass-through true ups¹⁶⁵ or a comprehensive base-rate case that includes the Systems.¹⁶⁶

As previously noted, the proposed STM transaction, excluding the issue of the Requested Rates, is uncontested and will serve the public interest.¹⁶⁷ Accordingly, the ALJ recommends the Commission approve the Applicants' requests as set forth in the Application to: (1) transfer the Systems and 527 acres of service area from SHDI's CCN No. 12863 to TWU; (2) decertify the remaining 98.7 acres of SHDI's service area under SHDI's CCN; (3) cancel SHDI's CCN; and (4) amend TWU's CCN No. 12983 to include the Systems, SHDI's service area, and an additional 102.5 acres of currently uncertificated area.

The ALJ now addresses whether the Requested Rates would result in the proposed STM transaction still serving the public interest. As an initial matter, the

¹⁶⁵ TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 39.

¹⁶⁶ TWU has a pending application to change its rates filed on June 24, 2024; however, the Systems' customers are not included in that application because it is unknown when TWU will receive approval for this proposed STM transaction. Thus, the rates approved by the Commission in that case will not apply to the Systems' customers. *See Application of Texas Water Utilities, L.P. for Authority to Change Rates*, Docket No. 56665, Application (June 24, 2024) (pending); TWU Ex. 5 (Bahr Reb.) at 10-11.

¹⁶⁷ Tex. Water Code § 13.301(d)-(e), (g); 16 Tex. Admin. Code § 24.239(g)-(h).

ALJ rejects TWU's argument that *Entex* should influence the current proceeding. The approval of the Requested Rates is not guaranteed. Unlike the GURA statutes under review in *Entex*, TWC § 13.3011(a) gives the Commission discretion on whether to approve TWU's request. In making that decision, the Commission must consider the specific facts of this case and whether approval of the Requested Rates would serve the public interest.¹⁶⁸ Thus, *Entex* is not analogous to the current proceeding and should not impact the Commission's decision. Furthermore, because TWC § 13.3011 was enacted years after the filed-rate doctrine was codified in TWC § 13.190, the ALJ finds it reasonable to assume the Texas Legislature did not intend for the filed-rate doctrine to apply in STM transactions pursuant to TWC § 13.301. To assume otherwise would negate the discretion the Legislature gave the Commission to deny TWU's request to charge its current Commission-approved and filed-rates (i.e., the Requested Rates) to the Systems' customers.

Next, the ALJ considers the public interest factors set forth in TWC § 13.246(c) and Rule 24.239(h)(5). While most of the factors are uncontested, the issue of whether the proposed STM transaction, including the Requested Rates, would result in a probable improvement of service or a lowering of cost to consumers still needs to be addressed. Regarding the probable improvement of service, the relevant facts are: (1) SHDI is currently providing continuous and adequate service to the Systems' customers; (2) no immediate capital improvements, construction, or projects are needed to ensure the Systems comply with minimum regulatory standards; (3) while TWU presented a proposed capital improvements plan to

¹⁶⁸ Tex. Water Code §§ 13.246(c), .301(d)-(e), (g); see Preliminary Order at 2-4 (Commission's Legal and Policy Issues).

facilitate the long-term health of the Systems,¹⁶⁹ that plan is subject to change post-acquisition and, therefore, it is unknown what specific projects will actually be initiated (if any) and when that would occur; and (4) TWU represents a larger, more established Class A IOU with many customer-assistance programs and presumably additional access to capital through capital markets when compared to SHDI.

The ALJ commends TWU's operation as evidenced by the low number of formal complaints and the percentage of informal complaints resolved in its favor in the last three years and finds that TWU is well situated to provide sufficient customer and operational service for the Systems. However, the ALJ is unpersuaded that the STM transaction, with or without the Requested Rates, would result in a probable improvement of service. The ALJ agrees with TWU that it is not necessary for the Systems to require *immediate* improvements for the proposed acquisition to result in a probable improvement of service. Improvements like those proposed by TWU in the Application could meet that threshold if there was some certainty as to what exact projects were to be initiated and if they would occur shortly after the acquisition is complete. Here, however, there is no such certainty and TWU admits the projects it identified and the timing of their implementation are subject to change once it can more thoroughly review the Systems. Although TWU and Staff proposed a joint FoF that indicated "new facilities [are] anticipated shortly after closing,"¹⁷⁰ the ALJ found no evidence to support that assertion.

¹⁶⁹ TWU Ex. 1 (Bahr Dir.) at 21.

¹⁷⁰ Proposed Joint FoFs and CoLs at FoF No. 72.

Furthermore, Staff witness Harville testified: “Considering [SHDI’s] active TCEQ capacity violations, the rate change is potentially necessary for the reliability and quality of water service to be improved upon under [TWU’s] management.”¹⁷¹ Thus, Mr. Harville’s recommendation that the transaction would result in a probable improvement of service was conditioned upon his belief that the Systems had ongoing capacity violations that needed to be resolved. Although Mr. Harville later confirmed that his recommendation remained the same even after learning those capacity violations were resolved, no justification was provided to explain or justify his recommendation considering the changed circumstances. Accordingly, for the foregoing reasons, the ALJ finds that the proposed STM application will not result in a probable improvement of service.

The ALJ also finds TWU’s comparison of the current case to Docket No. 54565 unpersuasive. Unlike CSWR-Texas, TWU has not invested in capital improvements or projects to rehabilitate the Systems prior to requesting the rate increase in this proceeding. Additionally, Docket No. 54565 involved a comprehensive rate case in which numerous small water and wastewater systems were being consolidated to equalize rates across systems. Thus, the ALJ concludes Docket No. 54565 is not authority for the current proceeding and should not impact the Commission’s decision in this case.

As to cost, it is uncontested that the Requested Rates would increase, not lower, the cost to the Systems’ customers. This is only one half of the factor set forth

¹⁷¹ Staff Ex. 2 (Harville Dir.) at 12.

in TWC § 13.246(c)(8) and Rule 24.239(h)(R)(H), thus it must be considered in conjunction with the lack of a probable improvement of service. Accordingly, the question arises: With no immediate need for improvements and if the customers will not experience a change in water quality or service, does it serve the public interest to approve the Requested Rates as part of this transaction in lieu of maintaining SHDI's existing rates? The ALJ finds the answer is "no." Specifically, the relevant facts are: (1) the Requested Rates are not tailored to the Systems or based on the cost of service needed to serve the Systems' customers; (2) the Requested Rates represent a significant rate increase to SHDI's customers; (3) even if the Requested Rates are phased in over time, the Systems' customers would experience an initial rate increase (between 20% to 55% depending on water usage) followed by annual increases until 2027; and (4) the impact of the Requested Rates on TWU would be small as the resulting additional revenue generated from the Systems would make up less than 1% of TWU's current rate base. The ALJ therefore concludes that approving the Requested Rates, either at once or phased-in, would result in the STM transaction no longer serving the public interest under TWC § 13.301(e) and Rule 24.239(h).¹⁷²

Finally, the ALJ considers whether the Requested Rates are just and reasonable for both TWU and the Systems' customers under Rule 24.240(f). Contrary to TWU's assertions, the Requested Rates are not deemed just and reasonable for the Systems simply because they were found so in Docket No. 50944

¹⁷² 16 Tex. Admin. Code § 24.240(c)(5).

for TWU's existing water systems.¹⁷³ While the scope of what may be considered in determining whether the Requested Rates are just and reasonable is extremely limited in this proceeding compared to a comprehensive rate case, some case-specific evidence must be provided to prove up TWU's request.¹⁷⁴

Here, the evidence shows that: (1) although its tariff includes a pass-through rate applicable to a majority of its customers, TWU is not requesting to charge any pass-through rates to the Systems' customers in this proceeding;¹⁷⁵ (2) the Systems' customers are currently receiving continuous and adequate service from SHDI; and (3) due to a lack of evidence on the matter, it is unclear whether the Requested Rates are generally consistent with the rates charged to similar water systems.¹⁷⁶

For the foregoing reasons, the ALJ finds that the Requested Rates are not just and reasonable for the Systems and should not be approved. This determination is not intended to preclude TWU from seeking rate increases for the Systems through any legal means available.¹⁷⁷ Additionally, when the Systems' rates and cost of service are comprehensively reviewed by the Commission, a rate increase may be just and reasonable due to various factors, including rising operation costs, the length of time since the Systems' last rate increase, and potential capital improvements.

¹⁷³ 16 Tex. Admin. Code § 24.240(f).

¹⁷⁴ 16 Tex. Admin. Code § 24.240(f)(2)(A).

¹⁷⁵ TWU Ex. 1 (Bahr Dir.) at 14.

¹⁷⁶ See 16 Tex. Admin. Code § 24.240(f)(2)(B).

¹⁷⁷ See TWU Ex. 1 (Bahr Dir.), Att. BDB-2 (Application) at 39 (TWU's anticipated requests for a System Improvement Charge and true-ups for purchased water pass-throughs).

Ultimately, in this case, the ALJ recommends the Requested Rates be denied because they are not just and reasonable to the Systems and implementation of those rates, either as proposed by TWU or alternatively by Staff, would result in the proposed STM transaction no longer serving the public interest. If the Commission adopts the ALJ's recommendation and does not authorize the use of different initial rates, then TWU is required to use SHDI's existing rates as initial rates per Rule 24.240(c)(1).

In support of the determinations and recommendations addressed above, the ALJ proposes the following FoFs, CoLs, and proposed ordering paragraphs.

VI. FINDINGS OF FACT

Applicant

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 Development, Inc. (SHDI) is a Texas corporation registered with the Texas secretary of state under filing number 144217300.
4. SHDI holds CCN number 12863, which obligates it to provide retail water service in its certificated service areas in Montgomery and Liberty counties.
5. SHDI 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) (collectively, the Systems).

Application

6. On February 2, 2023, TWU and SHDI (collectively, the Applicants) filed an application (Application) with the Public Utility Commission of Texas (Commission) for approval of the sale, transfer, or merger (STM) of facilities and CCN rights in Liberty and Montgomery counties.
7. The Applicants supplemented the Application on February 16, March 15, and June 23, 2023.
8. The Application, as supplemented, seeks approval of the following STM transaction:
 - a. sale and transfer of SHDI's Systems and 527 acres of the service area held by SHDI under CCN No. 12863 to TWU;
 - b. decertification of the remaining 98.7 acres held under SHDI's CCN No. 12863;
 - c. cancelation of SHDI's CCN No. 12863; and
 - d. amendment of TWU's CCN No. 12983 to include:
 - i. the Systems and 527 acres of service area previously held by SHDI under its CCN; and
 - ii. an additional 102.5 acres of currently uncertificated area.
9. The requested area to be included in TWU's CCN No. 12983 includes approximately 728.2 acres and 461 current customers, which is comprised of the 527 acres to be transferred from SHDI's CCN No. 12863 and the 102.5 acres of currently uncertificated area.
10. 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 3737; and on the west by U.S. Highway 59.

11. Additionally, the Application, as supplemented, seeks:
 - a. an order confirming the ratemaking rate base for the Systems; and
 - b. authorization for TWU to charge initial rates to the Systems' customers equal to TWU's most-recently approved water rates, as established in Docket No. 50944 (the Requested Rates).
12. In Commission 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, Director of Rates and Regulatory Affairs, 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 Commission Order No. 9, filed on June 22, 2023, the Commission ALJ found the notice sufficient.

Effective Date of Proposed STM Transaction

19. The Application was filed on February 2, 2023, and notice was completed on April 28, 2023.
20. Applicants 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, was August 28, 2023; therefore, the Application was filed at least 120 days before the effective date for the proposed transaction.

Interventions

22. In Commission Order No. 3, filed on March 27, 2023, the Commission ALJ granted the intervention of the Office of Public Utility Counsel (OPUC).
23. In Commission Order No. 6, filed on May 16, 2023, the Commission ALJ granted the interventions of Colin Jones, Cecil Fairfax, Jeffrey Beny, and Anna Miller.
24. In Commission 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 State Office of Administrative Hearings (SOAH) ALJ denied the intervention of Adriana Carillo Pillow and struck Colin Jones and Jeffrey Beny as parties.
26. Constance Stover was admitted as a party in the Proposal for Decision, filed on October 22, 2024.

Referral to SOAH

27. On March 5, 2024, the Commission referred this proceeding to SOAH.
28. On March 7, 2024, the Commission filed a preliminary order ruling on four threshold legal issues and setting forth the issues to be addressed in this proceeding.
29. On July 23, 2024, ALJ Meaghan Bailey convened the hearing on the merits.

30. Applicants, OPUC, staff for the Commission (Staff), Ms. Fairfax, Ms. Miller, and Ms. Stover appeared at the hearing either personally or through legal counsel.
31. All parties submitted post-hearing briefing, and the record closed upon receipt of the reply briefs on August 23, 2024. The record was reopened on September 25, 2024, for the limited purpose of admitting Applicants' unopposed errata to the direct testimonies of its witnesses Mr. Bahr and Steve Sullivan.

Testimony and Position Statements

32. On April 18, 2024, TWU filed the redacted direct testimony of Mr. Bahr, including attachments, and his confidential direct testimony, including attachments.
33. On April 18, 2024, SHDI filed the direct testimony and attachments of Mr. Sullivan.
34. On May 5, 8, and 9, 2024, Ms. Fairfax, Ms. Stover, and Ms. Miller filed their direct testimonies, respectively.
35. On May 9, 2024, OPUC filed a statement of position.
36. On May 30, 2024, 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.
37. On June 20, 2024, TWU filed the redacted rebuttal testimony of Mr. Bahr, including attachments, and his confidential rebuttal testimony, including attachments.
38. The testimonies referenced above were admitted at the hearing.
39. On July 18, 2024, OPUC filed a supplemental statement of position.
40. On August 9, 2024, TWU filed errata to the direct testimonies of Messrs. Bahr and Sullivan. The errata were admitted in SOAH Order No. 8, filed on September 25, 2024.

TWU Compliance History

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

Adequacy of Existing Service

45. There are 461 customers in the requested area that are currently being served by SHDI through the Systems.
46. SHDI's Systems are currently providing continuous and adequate service to the requested area.
47. The last TCEQ compliance investigation of SHDI's Southern Oaks Water System Phase 2 was on May 27, 2022. That system does not have any unresolved violations listed in the TCEQ database.
48. The last TCEQ compliance investigation of SHDI's Southern Crossing Water System Phase 2 was on March 6, 2023. That system does not have any unresolved violations listed in the TCEQ database.
49. The Commission's complaint records, which date back five years, show four complaints against SHDI, all of which have been closed.
50. There is no evidence that SHDI has failed to comply with any Commission or TCEQ order.

Need for Additional Service

51. The 461 existing water customers in the requested area have an ongoing need for service.

52. The Applicants seek to transfer only existing facilities and customers.
53. SHDI has not provided service in the 98.7 acres currently held under its CCN No. 12863 and which the Applicants seek to decertify because that area does not align with the property boundaries of the area served by SHDI's Systems.
54. There is no evidence of a need for additional service in the requested area.
55. The decertification of the 98.7 acres held under SHDI's CCN No. 12863 and the addition of the 102.5 acres of uncertificated area to TWU's CCN No. 12983 will result in the alignment of the boundaries of TWU's service area post-transaction with the property boundaries of the area currently served by SHDI such that all customers transferred from SHDI will be located within TWU's CCN No. 12983.

Effect of Approving the STM Transaction and Granting the CCN Amendment

56. TWU will be the sole certificated water utility for the requested area.
57. TWU will be required to provide continuous and adequate water service to current and future customers in the requested area.
58. Landowners in the requested area will be able to obtain water service from TWU.
59. The Applicants are the only utilities affected by the proposed STM transaction.
60. 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.
61. There will be no adverse effect on any landowners in the requested area because SHDI is not providing service in the to-be-decertified 98.7 acres, and the identified uncertified 102.5 acres align with the property boundaries of the area where SHDI is currently providing service.

Ability to Serve: Managerial and Technical Capability

62. TWU owns and operates numerous TCEQ-registered public water systems.

63. TWU employs or contracts with TCEQ-licensed operators who will be responsible for the operation of the Systems being transferred from SHDI.
64. 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.
65. TWU has the technical and managerial capability to provide continuous and adequate service to the requested area.

Ability to Serve: Financial Ability and Stability

66. 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.
67. TWU projects no operating and maintenance shortages in the first five years after completion of the proposed STM transaction. Therefore, TWU satisfies the operations test.
68. TWU submitted documentation indicating it possesses the funds necessary for the purchase of SHDI's Systems and for the construction of its proposed capital improvements.
69. TWU demonstrated the financial capability and stability to provide continuous and adequate water service to the Systems.

Financial Assurance

70. 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

71. SHDI is currently serving customers throughout the requested area, except for the to-be-decertified 98.7-acre portion, and such service has been continuous and adequate.

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

Environmental Integrity

74. The proposed transaction will not adversely affect the environmental integrity of the land.
75. The effect on the land should be minimal as the requested area will continue to be served with existing facilities.

Probable Improvement of Service or Lowering of Cost to Consumers

76. The reliability and quality of water service for the Systems are not expected to improve once the Systems are transferred to TWU as no capital improvements or construction are needed for the Systems to meet minimum regulatory standards or to continue providing continuous and adequate service.
77. TWU intends to make capital improvements in the future for the long-term health of the Systems once the transfer has been completed and it can do a more in-depth investigation of the Systems. The specific improvements are subject to change, and the timeframe for initiating any improvements is unknown.
78. The STM transaction will not result in a probable improvement of service.
79. The Requested Rates would represent a rate increase from SHDI's existing rates.

Regionalization or Consolidation

80. The construction of a physically separate water system is not necessary for TWU to serve the requested area.

81. 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

82. On September 16, 2022, prior to filing the Application, Applicants filed in Project No. 49859 a notice of intent to use the Commission's fair-market-value (FMV) process to determine the ratemaking rate base of the Systems to be acquired by TWU.
83. The Application included copies of the three appraisal reports required by the FMV process and evidence of the purchase price agreed upon by the Applicants.
84. The appraisal reports submitted with the Application were filed under confidential seal.
85. The average of the three appraisals yields the FMV for SHDI and is listed in the direct testimony of Staff's witness Mr. Bednarski at confidential Attachment FB-3.
86. The purchase price for SHDI was filed under confidential seal.
87. No party contested Applicants' use of the FMV process to determine the ratemaking rate base of the Systems or Applicants' resulting proposed rate base.
88. The ratemaking rate base for SHDI is the purchase price and is listed in the direct testimony of Mr. Bednarski at confidential Attachment FB-3.
89. The Application included the amount of fees paid to the three utility valuation experts and the known transaction and closing costs that will be reviewed for inclusion in TWU's rate base in a future base-rate case.
90. No additional conditions for the acquisition based on the FMV process are needed.
91. Because the Applicants used the FMV process, it is not necessary to address whether the Systems were partially or wholly constructed with customer

contributions in aid of construction derived from specific surcharges approved by the Commission.

Customer Deposits

92. SHDI currently holds deposits for 398 customer accounts.
93. The amount of each deposit is \$50, consistent with the tariff for SHDI's CCN No. 12863.
94. SHDI has the funds necessary to refund all 398 deposits with interest.
95. SHDI will issue final bills after the closing of the proposed STM transaction; if a customer's final bill is paid in full by the due date, SHDI will refund the deposit with interest, and if the final bill is not paid in full by the due date, SHDI will apply the deposit to the final bill and refund any remaining portion with interest.

STM Transaction: Public Interest

96. The Applicants' proposed STM transaction, including any necessary CCN amendments, as described in FoF No. 8 will serve the public interest.

Initial Rates: Public Interest

97. At the time the Application was filed the Requested Rates were approved by the Commission in Docket No. 50944 and were being implemented for a majority of TWU's water systems.
98. As part of the settlement agreement in Docket No. 50944, TWU agreed to implement phased-in rates for 16 of its water systems. Upon reaching the final phase, those systems will be charged TWU's full approved rate.
99. Approving the Requested Rates to be charged by TWU as initial rates for the Systems' customers would not serve the public interest.
100. It would serve the public interest to maintain SHDI's existing rates for the Systems until TWU requests and receives Commission approval for a rate change for the Systems.

VII. CONCLUSIONS OF LAW

1. The Commission has authority over this proceeding under TWC §§ 13.041, .241, .244, .246, .301, .3011, and .305.
2. Applicants 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. As part of the Application, TWU requested approval to charge its Requested Rates as initial rates pursuant to TWC § 13.3011. The Requested Rates complied with the conditions in TWC § 13.3011(a)(1)-(2).
5. Notice of the Application was provided in compliance with TWC §§ 13.246 and .301(a)(2), and 16 TAC §§ 24.235 and .239(e).
6. The Application meets the content requirements of TWC § 13.244 and 16 TAC § 24.233.
7. The Commission processed the Application as required by the TWC, Administrative Procedure Act, and Commission rules.
8. Under TWC § 13.301(e)(5) and 16 TAC § 24.239(h)(5), the Commission may hold a hearing to determine whether a proposed STM transaction will serve the public interest if there are concerns the transaction may not serve the public interest.
9. If the Commission holds a public interest hearing under TWC § 13.301(e)(5) and 16 TAC § 24.239(h)(5), the Commission must consider the factors set forth in TWC § 13.246(c)(1)-(9) and 16 TAC § 24.239(h)(5)(A)-(I).
10. After consideration of the factors in TWC § 13.246(c)(1)-(9) and 16 TAC § 24.239(h)(5)(A)-(I), TWU demonstrated it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.

11. After consideration of the factors in TWC § 13.246(c)(1)-(9) and 16 TAC § 24.239(h)(5)(A)-(I), 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 .301(b).
12. It is not necessary for TWU to provide a bond or other financial assurance under TWC §§ 13.246(d) and .301(c).
13. 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.
14. Applicants filed their notice of intent to use the Commission's FMV process in compliance with TWC § 13.305(c)(1) and 16 TAC § 24.238(d).
15. The Commission's Executive Director selected three utility valuation experts to perform appraisals of SHDI in compliance with TWC § 13.305(c)(2) and 16 TAC § 24.238(e).
16. The Application included copies of the three appraisal reports completed by the Commission's utility valuation experts as required by TWC § 13.305(h)(1).
17. The Application included the purchase price agreed to by the Applicants as required by TWC § 13.305(h)(2).
18. The Application included the ratemaking rate base determined under TWC § 13.305(g) and 16 TAC § 24.238(f)(6), as required by TWC § 13.305(h)(3).
19. 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).
20. The calculation of the FMV for SHDI complies with TWC § 13.305(f) and 16 TAC § 24.238(b)(3).
21. The calculation of the ratemaking rate base for SHDI complies with TWC § 13.305(g) and 16 TAC § 24.238(b)(4).

22. The disclosure requirement in TWC § 13.301(j) and 16 TAC § 24.239(q) does not apply because the original sources of funding for the Systems is not relevant to determine the value of the Systems' assets under TWC § 13.305(k).
23. The Applicants demonstrated that the sale of SHDI's Systems and the transfer of a portion of the service area held under SHDI's CCN No. 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)-(e) and (g).
24. The Applicants demonstrated that the decertification of 98.7 acres currently held by SHDI under CCN No. 12863 and the amendment of TWU's CCN No. 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)-(e) and (g).
25. The Applicants demonstrated that the cancelation of SHDI's CCN No. 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)-(e) and (g).
26. SHDI has the funds necessary to address customer deposits as required by 16 TAC § 24.239(k) and (l).
27. The field rate doctrine, as codified at Texas Water Code § 13.190, is not applicable to this proceeding.
28. TWU did not demonstrate that approval of its Requested Rates as initial rates under TWC § 13.3011(a) would serve the public interest, as required by TWC § 13.301(d)-(e) and (g).
29. Maintaining SHDI's existing rates as the initial rates to be charged by TWU to the Systems' customers will serve the public interest, as required by TWC § 13.301(d)-(e) and (g). 16 TAC § 24.240(c)(1).

VIII. PROPOSED ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision, including findings of facts and conclusions of law, to the extent provided in this Order.
2. The Commission approves the:
 - a. sale and transfer of SHDI's public water systems, the Southern Crossing Water System Phase 2 and the Southern Oaks Water System Phase 2 (Systems), and 527 acres of service area held under SHDI's CCN No. 12863 to TWU;
 - b. decertification of the remaining 98.7 acres held under SHDI's CCN No. 12863;
 - c. cancelation of SHDI's CCN No. 12863; and
 - d. amendment of TWU's CCN No. 12983 to include:
 - i. the Systems and 527 acres of service area previously held by SHDI's CCN; and
 - ii. an additional 102.5 acres of currently uncertificated area.
3. The transaction between the Applicants in this proceeding is approved and may be completed.
4. SHDI's existing rates will remain in effect to be charged by TWU as initial rates for the Systems' customers.
5. After the closing of the transaction, SHDI will issue final bills to the Systems' customers. If a customer's final bill is paid in full by the due date, SHDI will refund the customer's deposit with interest, and if the final bill is not paid in full by the due date, SHDI will apply the deposit to the final bill and refund any remaining portion with interest.


6. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the Applicants must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
7. The Applicants have 180 days from the date of this Order to complete the transaction.
8. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants must reapply for approval.
9. Upon completion of the transaction, TWU must provide service to every customer or qualified applicant for service within the approved area under CCN number 12983 that requests water service and meets the terms of TWU's water service policies, and such service must be continuous and adequate.
10. TWU must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Montgomery and Liberty counties affected by the Application and must submit to the Commission evidence of the recording no later than 45 days after completion of the transaction.
11. The Commission determines the ratemaking rate base for SHDI to be the fair market value stated in confidential Commission Staff Exhibit 1B.
12. TWU must file a tariff consistent with this Order within 30 days after the effective date of the transaction in *Compliance Tariff for Final Order in Docket No. 54617 (Application of Texas Water Utilities, L.P. and Southern Horizons Development, Inc. for Sale, Transfer, or Merger of Facilities and Certificate of Rights in Liberty and Montgomery Counties)*, Control No. ____.
13. Copies of all tariff-related filings must be served on all parties of record.
14. No later than 10 days after the date the tariff is filed, Staff must file its comments recommending approval, modification, or rejection of the individual sheets of the tariff proposal, unless the presiding officer in Control No. ____ files an order stating otherwise. Responses to Staff's recommendation must be filed no later than 15 days after the filing of the tariff,

unless the the presiding officer in Control No. ____ files an order stating otherwise. The presiding officer in Control No. ____ must approve, modify, or reject each proposed tariff sheet. If any proposed tariff sheets are modified or rejected, TWU must file proposed revisions to those tariff sheets in accordance with any applicable order by the presiding officer.

15. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed October 22, 2024.

ALJ Signature:


Meaghan Bailey

Presiding Administrative Law Judge