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

APPLICATION OF TEXAS WATER UTILITIES, LP AND SOUTHERN HORIZONS DEVELOPMENT, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN LIBERTY AND MONTGOMERY COUNTIES	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**OFFICE OF PUBLIC UTILITY COUNSEL’S
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this reply to exceptions to the proposal for decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) in this proceeding on October 22, 2024. OPUC replies to certain exceptions filed by Texas Water Utilities, L.P. (“TWU”) and respectfully shows the following:¹

I. OPUC’s response to TWU’s argument regarding the applicability of 16 Texas Administrative Code (“TAC”) § 24.240.

TWU argues, “[T]he PFD’s reliance on 16 [Texas Administrative Code (“TAC”)] § 24.240 constitutes a retroactive application of this rule and should be rejected.”² While the PFD finds the initial rates should remain as the acquired systems’ existing rates in accordance with 16 TAC § 24.240(c)(1),³ that accord is not derived from application of the new TAC rule, but instead application of the public interest factor test outlined in Texas Water Code (“TWC”) § 13.246(c) and 16 TAC § 24.239(g)-(h) combined with the Public Utility Commission of Texas’ (“Commission”) jurisdiction over rates found in TWC § 13.181 and 13.182.

¹ OPUC’s silence on any issue addressed in the parties’ exceptions should not be construed as an agreement with those provisions.

² Texas Water Utilities, L.P.’s Redacted Exceptions to the Proposal for Decision at 2 (Nov. 15, 2024). (“TWU’s Exceptions”).

³ Proposal for Decision at 16 (Oct. 22, 2024). (“PFD”).

Arguing that 16 TAC § 24.240 should not be mentioned in the PFD, TWU states, “Until the PFD, the only time 16 TAC § 24.240 was referenced was in OPUC’s statement of position and its proposed conclusions of law, neither of which were admitted into evidence.”⁴ TWU goes on to argue that its rights have been prejudiced in this proceeding by the PFD’s reference to 16 TAC § 24.240 because TWU was not given the opportunity to object to another party bringing it up in the proceeding.⁵ TWU’s arguments are meritless insofar as the PFD’s decision is not based on application of 16 TAC § 24.240, but rather the aforementioned public interest factor test.

II. The PFD correctly considered whether the requested rates are adequately tailored.

TWU argues that the PFD establishes a standard that requires the court to consider whether the requested rates are tailored to the acquired system or “based on the cost of service needed to serve the system’s customers.”⁶ This deliberately omits the portion of the PFD that specifies this is one of four facts considered by the ALJ in evaluating the lowering of costs to customers factor as part of the public interest determination. The entire sentence from the PFD states:

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 [Southern Horizons Development, Inc.’s (“SHDI”)] customers; (3) even if the Requested Rates are phased in over time, the Systems’ customers would experience an initial rate increase (between 20% and 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.⁷

The ALJ is simply listing the facts relied on in making the final determination, not establishing a new mandatory component in a request for initial rates. The PFD makes clear that the ALJ evaluated the public interest factors outlined in TWC § 13.246(c) and

⁴ TWU’s Exceptions at 4.

⁵ *Id.*

⁶ *Id.* at 6-7.

⁷ PFD at 52.

16 TAC § 24.239(h)(5).⁸ She then narrowed the contested factors to “whether the proposed STM [sale, transfer, or merger] transaction, including the requested rates, would result in a probable improvement of service or a lowering of cost to consumers.”⁹ The listed facts are simply those admitted into the record that she found relevant to the “lowering of cost to consumers factor” outlined in TWC § 13.246(c) and 16 TAC § 24.239(h)(5). Furthermore, the fact that the requested rates are not based on the acquired systems’ currently established cost of service is something TWC heavily relies on as support for its requested rates, arguing the acquired systems’ current rates do not meet its actual operating costs.¹⁰ Thus, TWU’s objection to its inclusion in the ALJ’s consideration of its requested rates is contradictory.

Additionally, TWU’s argument that this “standard” renders TWC § 13.3011 useless¹¹ is without merit. Again, the ALJ is not establishing a new requirement, but rather offering a fact considered in her analysis of one of the factors found in TWC § 13.246(c) and 16 TAC § 24.239(h)(5), factors that this Commission does not require be weighed equally. Therefore, by the very nature of cases having distinct facts, a different result is possible even if some facts remain the same.

III. The PFD considered more than the impact on customer bills.

TWU argues that the PFD is flawed because “two of the four facts cited in the PFD’s public interest analysis speak to the impact . . . on customer bills.”¹² This, again, omits the ALJ’s analysis that she considered the public interest factors outlined in TWC § 13.246(c) and 16 TAC § 24.239(h)(5) and narrowed the contested factors to “whether the proposed STM transaction, including the requested rates, would result in a probable improvement of service or a lowering of cost to consumers.”¹³ TWU’s argument implies that these are the only four facts the ALJ relied upon in her public interest analysis and that is patently incorrect. The ALJ lists four

⁸ PFD at 49.

⁹ PFD at 49.

¹⁰ Initial Brief of Texas Water Utilities, L.P. at 6 (Aug. 9, 2024).

¹¹ TWU’s Exceptions at 7.

¹² TWU’s Exceptions at 8.

¹³ PFD at 49.

facts she considered in determining whether there would be a probable improvement of service¹⁴ and then four different facts she considered in determining whether there would be a lower cost to consumers.¹⁵ The four facts cited in TWU's argument are the ones the PFD uses to address whether there would be a lower cost to consumers.¹⁶ Thus, it would follow that these facts would inform the lowering of cost to customers.

IV. The PFD is not required to consider consolidation.

TWU argues that the PFD should not have considered that “the requested initial rates would be a very small percentage of TWU's rate base.”¹⁷ Its reasoning to support this assertion is that “there is no legal requirement to consider this fact, and it is contrary to the goal of encouraging consolidation of small utilities with larger ones.”¹⁸ By that same logic, there is no legal requirement that the PFD needs to consider consolidation of smaller utilities with larger ones when determining initial rates. The PFD's assessment is well reasoned.

V. Conclusion

For the reasons stated herein and in its post-hearing briefing and statements of position, OPUC respectfully requests that the Commission adopt OPUC's recommendations of the issues presented in this case, including those addressed in this reply to exceptions, and incorporate them into the final order. OPUC further asks to be granted any other relief to which it may be entitled.

¹⁴ PFD at 49-50. “Regarding the probable improvement of service, the relevant facts are: (1) SHDI [the acquired utility] 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 facilitate the long-term health of the Systems, 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.”

¹⁵ PFD at 52. [These facts are quoted supra at page 2.]

¹⁶ TWU's Exceptions at 8.

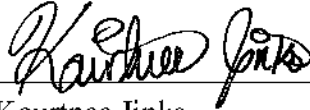
¹⁷ TWU's Exceptions at 9.

¹⁸ *Id.*

Date: November 22, 2024

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**ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 22nd day of November 2024 by facsimile, electronic mail, and/or first class, U.S. mail.



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