



Filing Receipt

Filing Date - 2024-12-06 11:21:45 AM

Control Number - 54617

Item Number - 147

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 6, 2024

Shelah Cisneros, Commission Counsel

VIA EFILE TEXAS

**RE: SOAH Docket Number 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 Rights in Liberty and Montgomery Counties***

Dear Ms. Cisneros:

The undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter on October 22, 2024. The PFD recommended approval of Texas Water Utilities, L.P.'s (TWU) and Southern Horizons Development, Inc.'s (SHDI) (collectively, Applicants) application for a sale, transfer, or merger (STM) of certain facilities, but denial of TWU's request for initial rates under Texas Water Code (TWC) § 13.3011. TWU filed exceptions to the PFD on November 15, 2024; and the Office of Public Utility Counsel (OPUC), Cecil Fairfax, Constance Stover, and Ann Miller each replied to TWU's exceptions on November 22, 2024.

The majority of TWU's exceptions raise issues that were fully considered and addressed in the PFD. However, the ALJ does address TWU's contention that the PFD's reliance on 16 Texas Administrative Code § (Rule) 24.240 constitutes a retroactive application of that rule and should be rejected.¹ TWU correctly notes that Rule 24.240 became effective on April 10, 2024, after the application was filed and deemed administratively complete. Thus, TWU excepted to the PFD's Conclusion of Law (CoL) No. 29 (and generally to other determinations in the PFD that support

¹ Texas Water Utilities, L.P.'s Exceptions to the Proposal for Decision at 1, 2-4, 9 (Nov. 15, 2024).

the same determination) and the PFD's just and reasonable analysis applying Rule 24.240(f).² In particular, CoL No. 29 provides:

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).³

In its reply to TWU's exceptions, OPUC asserts TWU's "arguments are meritless insofar as the PFD's decision is not based on [the] application of [Rule] 24.240, but rather on the . . . public interest factor test," as set forth in TWC § 13.246(c) and Rule 24.239(g)-(h) combined with the Commission's jurisdiction over rates found in TWC §§ 13.181 and .182 (which includes the requirement for just and reasonable rates).⁴

The Commission considered various threshold legal and policy issues in this proceeding and held in part:

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) and Rule 24.239(h)].⁵ Under TWC § 13.301(e), 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) . . ." Under TWC § 13.246(c), the Commission is required to consider the following factors: adequacy of service, need for additional service, effect on proximate landowners and utilities, the applicant's ability to provide adequate service, the feasibility of obtaining service from an adjacent

² See PFD at 52-54 (Oct. 22, 2024).

³ Rule 24.240(c)(1) provides "A transferee must use existing rates as initial rates unless the commission authorizes, under this section or other applicable law, the use of different initial rates."

⁴ Office of Public Utility Counsel's Reply to Exceptions to the Proposal for Decision at 1-2 (Nov. 22, 2024).

⁵ See Threshold Issue No. 4 that asks: Does a request for a hearing to contest approval of rates under TWC § 13.30311(a) [sic] constitute proper grounds for a hearing under 13.301(e) and 16 Texas Administrative Code (TAC) § 24.239(h)? Preliminary Order at 4 (Mar. 7, 2024).

retail public utility, the applicant's financial ability, environmental integrity, probable improvement of service or lowering of cost, and effect on the land.⁶

In accordance with that ruling, the PFD addressed TWU's request for initial rates under TWC § 13.3011 using the public interest factors set forth in TWC § 13.246(c) and Rule 24.239(h)(5). After consideration of those factors, the ALJ concluded TWU did not demonstrate that approval of its requested initial rates would serve the public interest.⁷

Rule 24.240 was adopted in response to the enactment of TWC § 13.3011 to provide additional guidance concerning requests for initial rates after an acquisition of a water or sewer system. In determining whether to approve such an acquisition, Rule 24.240(c)(5) requires the Commission to "consider whether approving the transferee's request to charge authorized acquisition rates under this section [i.e., initial rates under TWC § 13.3011] would change whether the proposed transaction would serve the public interest under § 24.239(h)(5)." Rule 24.240 does not require the consideration of any additional public interest factors than those required under TWC § 13.246(c) and Rule 24.239(h)(5) and did not impact the ALJ's findings regarding whether Applicants' requested initial rates would serve the public interest. However, because Rule 24.240 was not in effect at the time Applicants filed the application, the ALJ recommends deleting that reference from CoL No. 29 as follows:

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(e)(1).~~

In addition, although the PFD refers to Rule 24.240(f) in discussing whether TWU's requested rates are just and reasonable, the Commission also has an obligation under TWC § 13.182 to ensure that rates meet that standard. Accordingly,

⁶ Preliminary Order at 4 (internal citation to 16 TAC § 24.239(h)(5) omitted).

⁷ See PFD at 48-52, Finding of Fact Nos. 41-79, 97-100, and CoL Nos. 9, 28. The PFD states "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)." PFD at 52.

Exceptions Letter

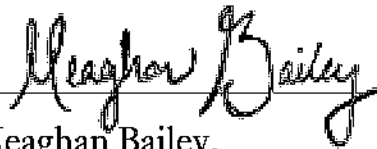
December 6, 2024

Page 4 of 4

the ALJ defers to the Commission on the extent to which that analysis should be considered in determining whether to approve the Applicants' requested initial rates under TWC § 13.3011.

With the change described in this letter, the PFD is ready for the Commissioners' consideration.

ALJ Signature(s):



Meaghan Bailey,

Presiding Administrative Law Judge

CC: Service List