



Control Number: 54617



Item Number: 151

OPEN MEETING COVER SHEET COMMISSIONER MEMORANDUM

MEETING DATE: January 16, 2025

DATE DELIVERED: January 15, 2025

AGENDA ITEM NO.: 8


CAPTION: Docket No. 54617; SOAH Docket No. 473-24-13127.WS – 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

DESCRIPTION: Chairman Thomas Gleeson Memorandum

Public Utility Commission of Texas

Memorandum

TO: Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

FROM: Chairman Thomas J. Gleeson 

DATE: January 15, 2025

RE: January 16, 2025 Open Meeting – Item No. 8
PUC Docket No. 54617; SOAH Docket No. 473-24-13127.WS – *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*

Before the Commission is a proposal for decision that would grant Texas Water Utilities, L.P.'s and Southern Horizons Development, Inc.'s application for approval of the sale, transfer, or merger (STM) of facilities and certificate rights but deny Texas Water's request to apply its existing rates to the acquired customers. I agree that the transaction should be approved, and the requested rates should be denied. However, I would make some changes to clarify why the requested rates should be denied.

The proposal for decision discusses the increase in cost and the lack of probable improvement of service in recommending denial of Texas Water's proposed initial rates. Consideration of the public-interest factors, such as probable improvement of service or lowering of cost to customers, is not simply a check-the-box exercise, but a nuanced public-interest determination that is fact specific. Here, there may arguably be long-term improvement in service. However, in light of the significant cost increases for the customers under the requested rates, approval of the requested rates does not appear to be justified. Texas Water failed to carry its burden of proof to show that its requested rates were in the public interest in light of the substantial, immediate rate shock. Therefore, I agree with the proposal for decision that Southern Horizons' existing rates should remain in effect as initial rates. Before its next base-rate case, Texas Water can seek recovery of costs through system improvement charges, pass-through true-ups, and other appropriate mechanisms. Thus, I would modify findings of fact 76, 78, and 79 and add findings of fact 77A and 79A, as follows.

76. The reliability and quality of water service for the systems are not expected to immediately or tangibly 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.

- 77A. As a large class A utility, Texas Water will have greater access to capital compared to Southern Horizons.
78. The STM transaction will ~~likely~~ result in a probable improvement of service over time.
79. The requested rates would represent a substantial, immediate rate increase from Southern Horizons' existing rates.
- 79A. On balance, in light of the long-term nature of any improvements of service compared to the immediate substantial rate increase if the requested rates were approved, Texas Water failed to carry its burden of proof to show that its requested rates were in the public interest.

Additionally, I would make the following changes to the proposal for decision.

Discussion and Reasoning

The ALJ states that a “relevant fact” in finding that the requested rates are not in the public interest is that “the [r]equested [r]ates are not tailored to the [s]ystems or based on the cost of service needed to service the [s]ystems’ customers”¹ I disagree. By design, initial rates under TWC § 13.3011(a) are never tailored to individual acquired systems and customers. Rather, they originate in prior rate proceedings and are based on systems and customers other than those being acquired.² Therefore, I would clarify that the Commission is not relying on this fact to find that the requested rates are not in the public interest.

Conclusions of Law

Conclusion of law 27 should be modified to clarify that the extension of the filed-rate doctrine under *Entex* is not applicable to this proceeding.³

27. The extension of the filed rate doctrine under *Entex*¹, as codified at Texas Water Code § 13.190, is not applicable to this proceeding.

¹ *Entex, a Div of Reliant Energy Resources Corp. v. Railroad Comm'n of Tex.*, 18 S.W.3d 858 (Tex. App.—Austin 2000).

¹ PFD at 52.

² Texas Reply Brief at 10.

³ PFD at 27.

In her December 6, 2024 letter, the State Office of Administrative Hearings administrative law judge modified conclusion of law 29 to remove the reference to 16 TAC § 24.240 because that rule was not in effect at the time Texas Water’s application was filed. Similarly, I would clarify that all other references to 16 TAC § 24.240 in the proposal for decision are being disregarded. The Commission makes its determination regarding initial rates in this proceeding based on its interpretation of the statutes TWC §§ 13.301 and 13.3011.

Finally, the Commission should delegate to the Office of Policy and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.