



## **Filing Receipt**

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**Item Number - 45**

**DOCKET NO. 54617**

<b>APPLICATION OF TEXAS WATER UTILITIES, LP AND SOUTHERN HORIZONS DEVELOPMENT, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN LIBERTY AND MONTGOMERY COUNTIES</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**TEXAS WATER UTILITIES, L.P.'S RESPONSE TO REQUESTS FOR HEARING**

Texas Water Utilities, L.P. (TWU) timely files<sup>1</sup> this response to the requests for hearing filed by intervenor Anna Miller on August 23, 2023 and Cecil Fairfax on August 25, 2023.

**I. RESPONSE AND OBJECTION**

A hearing has been requested “for the purpose of contesting the unjustly imposed new tariff rates”<sup>2</sup> and to protest the proposed transaction due to the “price increase.”<sup>3</sup> TWU objects to these requests, which have been made for the impermissible purpose of reviewing the initial rates requested by TWU under Texas Water Code (TWC) § 13.3011.<sup>4</sup> A review of TWU’s rates is not a valid reason to require a hearing.

The purpose of TWC § 13.3011 is straightforward. It permits a utility that is acquiring another utility through a sale, transfer, or merger (STM) to request to charge a rate in the acquiring utility’s existing Commission-approved tariff to the customers acquired through the transaction. . . *without a rate case*. Requiring a hearing to review the initial rates TWU has requested in this case has the same practical effect as requiring TWU to file a rate case. Accordingly, the hearing request is invalid and should be denied.

In adopting TWC § 13.3011, the Texas Legislature recognized case law addressing a ratemaking principle referred to as the “filed rate doctrine.” The filed rate doctrine “prohibits regulated utilities from ‘charging rates for their services other than those properly filed with the

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<sup>1</sup> 16 Tex. Admin. Code § 22.78 (TAC).

<sup>2</sup> Anna Miller’s Request for a Hearing (Aug. 23, 2023).

<sup>3</sup> Cecil Fairfax’s Request for a Hearing (Aug. 25, 2023).

<sup>4</sup> TWU further objects to Mr. Fairfax’s request, which was filed after 3 p.m.

appropriate regulatory authority.”<sup>5</sup> In *Entex*, the Third Court of Appeals directly addressed a situation where customers were transferred as a result of an acquisition.<sup>6</sup> The Court held that the acquiring utility must charge rates according to the schedule of rates *approved and found reasonable for the acquiring utility* and not the rates of the utility that was serving the customers prior to the acquisition.<sup>7</sup> The Court reasoned that the acquiring utility was not increasing its rates—it was extending the rates it was authorized to charge to new customers.<sup>8</sup>

In light of the filed rate doctrine, the decision whether to approve the rates requested by TWU is limited to whether these rates satisfy the two criteria plainly enumerated in TWC § 13.3011: (1) the requested initial rate is shown in a tariff filed with a regulatory authority; and (2) the requested initial rate is in effect on the date the STM application is filed. No additional criteria are warranted because the requested initial rates have already been approved by a regulatory authority. As such, the expenses underlying the requested initial rates have been found reasonable and necessary, while the rates themselves have been found to be just and reasonable. To apply the standards used to evaluate a rate change proposed in a base rate case to a request under TWC § 13.3011 would contravene the purpose of subsection (b), which prohibits the Public Utility Commission of Texas (Commission) from requiring an acquiring utility to file a full rate case to establish the initial rates for any customers acquired.

Further, the standards enumerated in TWC § 13.301(b) and (e) are inapplicable to a request for initial rates. The Legislature elected to create a new, standalone section authorizing an acquiring utility to make such a request. This separation indicates that the rate issue is discrete and is not part of the public interest considerations attendant to the amendment of a certificate of convenience and necessity effected via an STM.

The initial rates requested by TWU were approved by the Commission roughly 18 months ago.<sup>9</sup> Consistent with the filed rate doctrine and TWC § 13.3011, TWU has requested to charge those rates to the customers that will be transferred as part of the transaction proposed in this

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<sup>5</sup> *Entex v. R.R. Comm’n of Tex.*, 18 S.W.3d 858, 862–63 (Tex. App.—Austin 2000, pet. denied) (citing *Koegh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163, 67 L. Ed. 183, 43 S. Ct. 47 (1922) and *Southwestern Bell Tel. Co. v. Metro-Link Telecom, Inc.*, 919 S.W.2d 687, 692 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

<sup>6</sup> *Entex*, 18 S.W.3d at 861.

<sup>7</sup> *Id.* at 862–66 (emphasis added).

<sup>8</sup> *Id.* at 866.

<sup>9</sup> *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2023).

proceeding.<sup>10</sup> The hearing request that has been filed clearly states that the request is made to contest these initial rates. Therefore, the request is outside the scope of this proceeding.

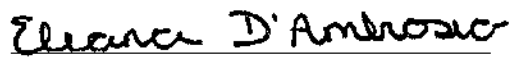
## II. CONCLUSION

TWU respectfully requests the entry of an Order sustaining its objection and denying the requests for a hearing filed on August 23, 2023 and August 25, 2023. Additionally, TWU requests any further relief to which it has shown itself entitled.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS WATER  
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<sup>10</sup> *See also*, TWC § 13.190(a) (“A water and sewer utility may . . . charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter. . .”).

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 24, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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Eleanor D'Ambrosio