



## **Filing Receipt**

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| <b>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</b> | §<br>§<br>§<br>§<br>§<br>§<br>§ | <b>PUBLIC UTILITY COMMISSION<br/><br/>OF TEXAS</b> |
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**TEXAS WATER UTILITIES, L.P.'S LIST OF ISSUES**

Texas Water Utilities, L.P. (TWU), on behalf of itself and Southern Horizons Development, Inc. (Southern Horizons), submits this proposed list of issues in accordance with the Order Requesting Lists of Issues filed in this proceeding on September 13, 2023, by the Commission Counsel for the Public Utility Commission of Texas (Commission).

**I. THRESHOLD BRIEFING ISSUES**

TWU proposes the following threshold issues for briefing:

Does the review of an initial rate requested under Texas Water Code (TWC) § 13.3011 constitute proper grounds for a hearing under TWC § 13.301(e)?

The only hearing request that was timely filed<sup>1</sup> in this proceeding was made “for the purpose of contesting the unjustly imposed new tariff rates.”<sup>2</sup> Therefore, this request falls outside the scope of TWC § 13.301(e), which prescribes the reasons the Commission may hold a hearing on an application for a sale, transfer, or merger (STM). Moreover, the Texas Legislature elected to create a new standalone section of the TWC addressing a request for initial rates, rather than adding these provisions to TWC § 13.301. This segregation 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. Finally, the plain language of TWC § 13.3011 sets forth the two criteria that must be satisfied to request an initial rate: (1) the initial rate is shown in a tariff filed with a regulatory authority; and (2) the initial rate is in effect on the date the STM application

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<sup>1</sup> A document is timely filed if it is filed on or before 3:00 pm the day the document is due. 16 Tex. Admin. Code § 22.71(h) (TAC).

<sup>2</sup> Anna Miller’s Request for a Hearing (Aug. 23, 2023). The hearing requests filed by Cecil Fairfax and Gerald and Constance Stover were filed after 3:00 pm on August 25, 2023. However, these requests were also made for the purpose of contesting the initial rates requested under TWC § 13.3011.

is filed. No additional criteria are warranted because the rates in a tariff filed with the Commission have been reviewed by the Commission and found just and reasonable.<sup>3</sup>

For these reasons, TWU respectfully requests the opportunity to brief this threshold legal issue before the Commission issues a preliminary order in this proceeding and refers this case to the State Office of Administrative Hearings for a hearing on the merits.

## II. ISSUES TO BE ADDRESSED

In the event the Commission determines that a hearing on the merits is appropriate, TWU proposes the following issues to be addressed in this proceeding:

### Application

1. Is the application sufficient?
2. Was public notice of the application proper? TWC § 13.301(a)(2); 16 Texas Administrative Code (TAC) §§ 24.235(b)(2) and 24.239(b), (e).
3. What is the effective date of the proposed transaction?
4. Was the application filed at least 120 days before the effective date of the proposed transaction? TWC § 13.301(a); 16 TAC § 24.239(b).

### Financial, Managerial, and Technical Capability

5. Has TWU demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to any areas currently certificated to TWU? TWC § 13.301(e)(2); 16 TAC § 24.239(h)(2).
6. Does TWU have a history of:
  - a. non-compliance with the requirements of the utility commission, the commission, or the Department of State Health Services; or
  - b. continuing mismanagement or misuse of revenues as a utility service provider. TWC § 13.301(e)(3); 16 TAC § 24.239(h)(3).

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<sup>3</sup> TWU has had two general rate cases approved by the Commission since authority over water and wastewater rates was transferred from the Texas Commission on Environmental Quality. *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022); *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 45570, Order (Aug. 21, 2017).

7. Has Southern Horizons or TWU failed to comply with any Commission or Texas Commission on Environmental Quality order? Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.239(h)(5)(I).
8. Has TWU demonstrated the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water systems to be acquired from Southern Horizons? TWC § 13.301(e)(4); 16 TAC § 24.239(h)(4).
9. Does the transaction serve the public interest after applying the considerations for determining whether to grant a certificate of convenience and necessity under TWC § 13.246(c)? TWC § 13.301(e)(5); 16 TAC § 24.239(h)(5).
  - a. What is the adequacy of the service currently provided to the requested area? TWC § 13.246(c)(1); 16 TAC § 24.239(h)(5)(A).
  - b. Is there a need for additional service in the requested area? TWC § 13.246(c)(2) and § 13.301(e)(5); 16 TAC § 24.239(h)(5)(B).
  - c. What is the effect of approving the transaction on Southern Horizons, TWU, landowners in the area, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area? TWC § 13.246(c)(3); 16 TAC § 24.239(h)(5)(C).
  - d. Taking into consideration the projected land use and density of the requested area, has TWU demonstrated the ability to provide adequate service, including meeting the standards of the Commission? TWC § 13.246(c)(4); 16 TAC § 24.239(h)(5)(D).
  - e. Is it feasible to obtain service from an adjacent retail public utility? TWC § 13.246(c)(5); 16 TAC § 24.239(h)(5)(E).
  - f. Has TWU demonstrated the financial ability and financial stability—including an adequate debt-to-equity ratio, if applicable—to pay for the facilities necessary to provide continuous and adequate service? TWC § 13.246(c)(6); 16 TAC § 24.239(h)(5)(F).
  - g. What is the effect of approving the transaction on the environmental integrity of the requested area? TWC § 13.246(c)(7); 16 TAC § 24.239(h)(5)(G).
  - h. Will the proposed transaction result in a probable improvement of service or lowering of cost to consumers? TWC § 13.246(c)(8); 16 TAC § 24.239(h)(5)(H).
  - i. What is the effect of approving the transaction on the land to be included in the requested area? TWC § 13.246(c)(9).

10. If TWU has not demonstrated adequate financial capability, should the Commission require TWU to provide financial assurance? If the answer is yes, what form and amount of financial assurance should the Commission require? TWC § 13.301(c); 16 TAC §§ 24.11, 24.239(f).

**Initial Rates**

11. What is the initial rate TWU is requesting to charge the customers to be acquired from Southern Horizons?
12. Was the initial rate requested by TWU shown in a TWU tariff filed with the Commission for another water system owned by TWU? TWC § 13.3011(a)(1).
13. Was the initial rate in force for the other water system on February 2, 2023, the date the application was filed in this proceeding? TWC § 13.3011(a)(2).
14. What pass-through rate in a TWU tariff filed with the Commission for another water system owned by TWU, if any, should be charged to the customers to be acquired from Southern Horizons?

**Voluntary Valuation of Acquired Utility**

15. Was TWU's notice of intent to use fair market value proper? TWC § 13.305(c)(1); 16 TAC § 24.238(d).
16. Did the Commission's Executive Director select three utility valuation experts to perform appraisals of Southern Horizons? TWC § 13.305(c)(2); 16 TAC § 24.238(e).
17. Did the application include copies of the three appraisal reports completed by the utility valuation experts selected by the Commission's Executive Director? TWC § 13.305(h)(1); 16 TAC § 24.238(f)(5).
18. Was the purchase price agreed to by Southern Horizons and TWU included in the application? TWC § 13.305(h)(2).
19. Was the fair market value for Southern Horizons properly calculated? TWC § 13.305(f); 16 TAC § 24.238(f)–(j).

20. Was the ratemaking rate base for Southern Horizons included in the application the lesser of the fair market value or the purchase price agreed to by Southern Horizons and TWU? TWC § 13.305(h)(3) and (g); 16 TAC § 24.238(b)(3)–(4).
21. Were 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 included in the application? TWC § 13.305(g); 16 TAC § 24.238(k).

### **III. ISSUES NOT TO BE ADDRESSED**

In the event the Commission determines that a hearing on the merits is appropriate, TWU does not propose any issues that should not be addressed in this proceeding.

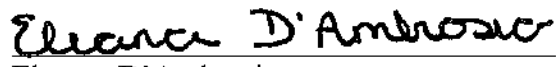
### **IV. CONCLUSION**

TWU respectfully requests that the Commission adopt a preliminary order in this proceeding consistent with the proposals presented above. TWU further requests that it be granted any other relief to which it may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS WATER  
UTILITIES, L.P.**

**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 October 3, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
Eleanor D' Ambrosio