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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attention
Interim Chair Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

RE: *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, Docket No. 54617*

Dear Interim Chair Jackson and Commissioners,

The Texas Association of Water Companies, Inc. (TAWC) is a Texas non-profit corporation established by Texas investor-owned water and sewer utilities to be the Texas chapter of the National Association of Water Companies. TAWC currently has 13 members who operate water and sewer utilities throughout Texas. Texas Water Utilities, L.P. (TWU) is one of our members, and our organization has been monitoring the above-referenced sale, transfer, or merger (STM) proceeding for TWU's approval to acquire water facilities and certificate of convenience and necessity (CCN) rights of Southern Horizons Development, Inc. (Southern Horizons).

In this proceeding, the Commission ordered briefing on several threshold issues related to implementation of Texas Water Code (TWC) § 13.3011, which was intended to allow water and sewer utilities to extend their approved tariffs and rates to newly acquired system customers as part of the Commission's STM process. TAWC strongly supports the positions stated in the initial brief TWU filed in this docket.¹

TAWC and its members supported TWC § 13.3011 two legislative sessions ago in part because TAWC wanted to see the codification of existing case law and the creation of a relatively simple STM process whereby there would no longer be a question of whether an acquiring utility could extend its approved tariff and rates to acquired customers. The unwillingness of the Commission, and the Texas Commission on Environmental Quality (TCEQ) before it, to follow

¹ *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*, PUC Docket No. 54617, Texas Water Utilities, L.P.'s Initial Brief on Threshold Issues (Oct. 27, 2023).

established case law by permitting utilities to extend approved tariffs and rates without a comprehensive rate case is why this was a needed change.² That policy has significantly impeded water and sewer utility regionalization and consolidation efforts. Since 2014, when the Commission assumed jurisdiction over water and sewer utilities, TAWC's understanding is that the Commission has come to recognize why those efforts are important.

If the Commission layers the TWC § 13.3011 STM process with conditions and additional criteria beyond whether the tariffs and rates requested for use are previously approved, the intent of TWC § 13.3011 will go unfulfilled. If the Commission opens every STM application where TWC § 13.3011 is used up to a contested case hearing simply because the rates will be higher, the intent of TWC § 13.3011 will go unfulfilled. Respectfully, TAWC requests the process be kept simple.

TAWC submits that its members should be able to have their previously approved tariffs and rates extended to acquired customers under TWC § 13.3011 without question. Notably, there is a pending rulemaking process where the Commission has an opportunity to consider input from all stakeholders, and TAWC hereby incorporates its initial comments filed in that matter by reference here.³ The Commission should simply permit utilities using TWC § 13.3011 in a STM application proceeding to apply their approved tariffs and rates.

In summary, TAWC submits that the Commission's TWC § 13.3011 STM process should be one that is streamlined and where authorization to use previously approved tariffs and rates is relatively automatic. Otherwise, the legislative intent underlying TWC § 13.3011 will not be achieved.

Respectfully submitted,



Geoffrey P. Kirshbaum

TERRILL & WALDROP

General Counsel

Texas Association of Water Companies, Inc.

² See *Entex v. Railroad Comm'n of Texas*, 18 S.W.3d 858, 862-66 (Tex. App.—Austin 2000, pet. denied) (interpreting the “filed rate doctrine” to require acquiring utilities to extend their tariffs and rates to new customers).

³ *Water and Sewer Utility Rates After Acquisition*, Project No. 53924, Texas Association of Water Companies, Inc.'s Initial Comments and Request for Public Hearing on Proposed Rule (Oct. 13, 2023).