



## **Filing Receipt**

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**SOAH DOCKET NO. 473-24-13127.WS  
PUC DOCKET NO. 54617**

<b>APPLICATION OF TEXAS WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITIES, LP AND SOUTHERN</b>	<b>§</b>	
<b>HORIZONS DEVELOPMENT, INC. FOR</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SALE, TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN LIBERTY AND</b>	<b>§</b>	
<b>MONTGOMERY COUNTIES</b>	<b>§</b>	

**COMMISSION STAFF’S RESPONSE TO  
TEXAS WATER UTILITIES, LP’S  
FIRST REQUEST FOR INFORMATION  
TO COMMISSION STAFF  
QUESTION NOS. TWU 1-1 THROUGH 1-17 AND  
RESPONSE TO TEXAS WATER UTILITIES, LP’S  
MOTION TO COMPEL**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) responds to Texas Water Utilities, LP’s (TWU) First Request for Information (RFI) to Staff and further stipulates that the following responses may be treated by all parties as if the answers were filed under oath. Negotiations related to Staff’s objections were conducted diligently and in good faith.

TWU’s First RFI to Staff was served on June 5, 2024, and specified a response deadline of June 17, 2024. Staff timely filed objections to TWU’s RFI Nos. TWU 1-5 – TWU 1-7, TWU 1-9 – TWU 1-12, and TWU 1-14 – TWU 1-17. TWU responded to Staff’s objections to its First RFI on June 10, 2024. Pursuant to 16 Texas Administrative Code (TAC) § 22.144(d)(4), responses to RFIs to which objection is made shall be postponed until the objections are ruled upon and for such additional time thereafter as the presiding officer may direct. Further, under 16 TAC § 22.144(f), responses to motions to compel shall be filed within five working days after receipt of the motion. Therefore, these responses to TWU’s First RFI to Staff and responses to TWU’s motion to compel are timely filed.

Dated: June 17, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on June 17, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kelsey Daugherty  
Kelsey Daugherty

**SOAH DOCKET NO. 473-24-13127.WS  
PUC 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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**TWU 1-1**                      Reference the direct testimony of James Harville at 11:1-7. Please describe the immediate capital improvements that may be warranted to address the unresolved TCEQ violations for the Southern Crossing Water System Phase 2 public water system.

**RESPONSE:**                The immediate capital improvements that may have been warranted are reflected in the direct testimony of James Harville at 7:5-19 and 8:1-13. Staff notes that as of June 11, 2024, all four violations have been adequately resolved in the TCEQ's central registry database for the Southern Crossing Water System Phase 2, public water system identification number 1460158.

Prepared by:                Counsel  
Sponsor:                     James Harville

**TWU 1-2**                      Reference the direct testimony of James Harville at 11:1-7. Is it Mr. Harville's assertion that the immediate capital improvements that may be warranted to address the unresolved TCEQ violations for the Southern Crossing Water System Phase 2 public water system will cost \$100,000 or more? If yes, please explain.

**RESPONSE:**                See Staff's response to RFI No. TWU 1-1. During Staff's initial review of the application, Staff interpreted the capital improvement plan provided in the application as improvements necessary to address the previously outstanding TCEQ violations for the Southern Crossing Water System Phase 2. It is now clear to Staff that these listed improvements were

projected capital improvements and were not specifically provided for the now closed TCEQ violations applicable to this system.

Prepared by: Counsel  
Sponsor: James Harville

**TWU 1-3** Reference the table in the direct testimony of James Harville at the bottom of page 11 and top of page 12. Please admit or deny that Southern Horizons' flat gallonage rate does not encourage water conservation. If the response is anything other than an unqualified admit, please explain.

**RESPONSE:** Admit.

Prepared by: Counsel  
Sponsor: James Harville

**TWU 1-4** Reference the table in the direct testimony of James Harville at the bottom of page 11 and top of page 12. Please admit or deny that the inclusion of 2,000 gallons of usage in the fixed monthly charge of \$32.20 does not encourage water conservation. If the response is anything other than an unqualified admit, please explain.

**RESPONSE:** Without taking any other factors into consideration, Staff is unable to definitively determine if the inclusion of 2,000 gallons of usage in a fixed monthly charge of \$32.20 encourages water conservation or not.

Prepared by: Counsel  
Sponsor: James Harville

**TWU 1-5** Reference the table in the direct testimony of James Harville at the bottom of page 11 and top of page 12 and the following billing comparison for a customer using 5,000 gallons per month.

Southern Horizons Current Rates	TWU's Requested Initial Rates
$32.20 + (3 * 3.18) = 41.74$	$48.37 + (2 * 6.48) + (3 * 7.98) = 85.27$

Please admit or deny that 63% of the \$45.53 difference in customer bills is attributable to the difference in gallonage rates as follows:

$$85.27 - 41.74 = 43.53$$

$$3 * 3.18 = 9.54$$

$$(2 * 6.48) + (3 * 7.98) = 36.90$$

$$36.90 - 9.54 = 27.36$$

$$27.36 / 43.53 = 0.63$$

**RESPONSE:**

Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024. Additionally, in TWU's motion to compel TWU itself acknowledges that, "[m]oreover, TWU was not required to propound RFI Nos. TWU 1-5 and 1-6 and instead could have reserved these questions for cross examination during the hearing on the merits."<sup>1</sup> Staff agrees.

**TWU 1-6**

Reference the table in the direct testimony of James Harville at the bottom of page 11 and top of page 12 and the following billing comparison for a customer using 5,000 gallons per month.

Southern Horizons Current Rates	TWU's Villas of Willowbrook Phase 4 Rates
$32.20 + (3 * 3.18) = 41.74$	$31.17 + (2 * 3.70) + (3 * 6.33) = 57.56$

Please admit or deny that 106.5% of the \$16.85 difference in customer bills is attributable to the difference in gallonage rates as follows:

$$57.56 - 41.74 = 15.82$$

$$3 * 3.18 = 9.54$$

$$(2 * 3.70) + (3 * 6.33) = 26.39$$

$$26.39 - 9.54 = 16.85$$

$$16.85 / 15.82 = 1.065$$

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<sup>1</sup> Texas Water Utilities, L.P.'s Motion to Compel Discovery Responses from Commission Staff at 3 (June 13, 2024) (TWU's Motion to Compel).

**RESPONSE:** Staff reasserts its objection to this question stated in Staff’s filing on June 10, 2024 and as stated above in response to RFI No. TWU 1-5.

**TWU 1-7** Please admit or deny that TWU’s application has not been amended or supplemented—i.e., has not changed—since Commission Staff filed its Recommendation on Approval of the Transaction on July 17, 2023. If the response is anything other than an unqualified admit, please explain.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff’s filing on June 10, 2024. Staff also directs TWU to 16 TAC § 22.144(c)(2)(D), which states, “[w]here the response to a request for information may be derived or ascertained from local public records, the responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information.” Staff continues to direct TWU to the public records in the Commission’s interchange in this proceeding, available at <https://interchange.puc.texas.gov>. Additionally, TWU’s motion to compel argues that RFI Nos. TWU 1-7 and 1-10 constitute proper requests for admission.<sup>2</sup> However, Commission rules provide that “[r]equests for admission of facts shall be made in accordance with the Texas Rules of Civil Procedure.”<sup>3</sup> The section of the Texas Rules of Civil Procedure cited to by TWU in its motion to compel includes not only admission of facts, but also “statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying.”<sup>4</sup> By requesting Staff to provide “statements of opinion or fact . . . (1) to determine whether Commission Staff’s view of facts related to filings made in this proceeding is the same or different from TWU’s . . . and (2) in the event Commission Staff’s view differs, to understand how and why their

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<sup>2</sup> TWU’s Motion to Compel at 4-5.

<sup>3</sup> 16 Texas Administrative Code (TAC) § 22.144(j).

<sup>4</sup> Tex. R. Civ. P. 198.1.

view differs,”<sup>5</sup> TWU is requesting Staff to provide an admission related to statements of opinion, not facts. While it is true that Texas Rule of Civil Procedure 198.1 allows admissions related to opinions, Commission procedural rules do not.<sup>6</sup> Thus, TWU is impermissibly attempting to expand the discovery allowed to be sought under Commission procedural rules. SOAH procedural rules regarding admissions can also be referenced, as they do not conflict with the Commission’s rule regarding requests for admission of facts. SOAH procedural rule 1 TAC § 155.3(a)(3) similarly limits requests for admission to facts, providing that “[r]equests for admissions may be used only to address jurisdictional facts or the genuineness of any documents served with the request.”<sup>7</sup> Neither RFI No. TWU 1-7 nor TWU 1-11 were propounded to request an admission of facts. Therefore, TWU’s request for admissions is improper and TWU’s motion to compel Staff’s response to TWU 1-7 and TWU 1-11 should be denied.

#### **TWU 1-8**

Reference the direct testimony of James Harville at 12:1—14:2. Please admit or deny that this recommendation differs from the recommendation in the memorandum of James Harville filed with Commission Staff’s Recommendation on Approval of the Transaction on July 17, 2023. If the response is anything other than an unqualified admit, please explain. The applicable section of that memorandum reads:

***3.12. Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).***

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<sup>5</sup> TWU’s Motion to Compel at 4.

<sup>6</sup> See 16 TAC § 22.144(j) (“Requests for admission of facts. Requests for admission of facts shall be made in accordance with the Texas Rules of Civil Procedure.”).

<sup>7</sup> 1 TAC § 155.255(a)(3).



The customers' rates will be higher than the current rates for the Southern Horizons. Reliability and quality of water service is expected to improve under Texas Water's management.

**RESPONSE:** While the entirety of the direct testimony of James Harville does not duplicate the entirety of the memorandum of James Harville filed with Commission Staff's Recommendation on Approval of the Transaction filed on July 17, 2023, Staff continues to recommend that if the transaction is approved as proposed, the customers' rates will be higher than the current rates for Southern Horizons. Reliability and quality of water service are still expected to improve under TWU's management.

Prepared by: Counsel  
Sponsor: James Harville

**TWU 1-9** Reference the direct testimony of James Harville at 12:1—14:2. Please explain why Mr. Harville's recommendation regarding TWU's request for initial rates under Texas Water Code (TWC) § 13.3011 has changed from the recommendation provided in the memorandum of James Harville filed with Commission Staff's Recommendation on Approval of the Transaction on July 17, 2023.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024. Staff additionally directs TWU to Staff's response to RFI No. TWU 1-8 stated above.

**TWU 1-10** Reference the direct testimony of James Harville at 12:1-14:2. Please admit or deny that "rate shock" is not a defined term in the Texas Water Code, 16 TAC Chapter 24, or Commission precedent addressing applications filed by water and wastewater utilities. If anything other than an unqualified admit, please explain.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024. Staff objects to this question, as it requests Staff to locate easily

accessible publicly available information. Staff suggests that TWU review the Texas Water Code, 16 TAC Chapter 24, and the Commission's Interchange at <https://interchange.puc.texas.gov/>.

**TWU 1-11** Reference the direct testimony of James Harville at 12:1-14:2. Please define the term “rate shock” as used by Mr. Harville and explain the basis for this definition.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024 and as stated above in response to RFI No. TWU 1-7. Staff objects to this question, as it requests Staff to make a legal conclusion regarding the definition of “rate shock”. TWU 1-10 requests Staff to search the Water Code, Texas Administrative Code, and Commission precedent for a legal definition of “rate shock”. Therefore, Staff additionally objects to this question, as it requests Staff to review easily accessible publicly available information.

**TWU 1-12** Reference the direct testimony of James Harville at 3:19-4:2 and 12:1-14:2. Did Mr. Harville testify regarding “rate shock” in any of the dockets listed?

**RESPONSE:** Staff objected to TWU 1-12 on June 10, 2024.<sup>8</sup> In TWU's Motion to Compel Discovery Responses from Commission Staff filed on June 13, 2024, TWU stated that it is not moving to compel a response to RFI No. TWU 1-12.<sup>9</sup> Therefore, Staff does not provide a response to RFI No. TWU 1-12.

Prepared by: Counsel  
Sponsor: N/A

**TWU 1-13** Reference the direct testimony of James Harville at 12:1-14:2. Please admit or deny that the initial rates recommended by Mr. Harville would permit

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<sup>8</sup> Objections of Commission Staff to Texas Water Utilities, LP's First Request for Information to Commission Staff Question Nos. TWU 1-1 through 1-17 at 5 (June 10, 2024) (Staff Objections).

<sup>9</sup> TWU's Motion to Compel at 2.

TWU a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses. Please provide any calculations or reasoning supporting your response.

**RESPONSE:** Staff is unable to determine a return on investment based on the information provided in the application.

Prepared by: Counsel  
Sponsor: James Harville

**TWU 1-14** Please confirm that the dockets listed below are the only dockets in which Mr. Harville has filed a recommendation addressing a request for initial rates under TWC § 13.3011: Docket Nos. 54171, 54341, 55304, and 55817. If this is not a complete list, please provide the additional docket numbers.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024. Staff objects to this question, as it requests Staff to locate easily accessible publicly available information. Staff suggests that TWU continue to visit the Commission's Interchange available at <https://interchange.puc.texas.gov>.

**TWU 1-15** In any sale, transfer, or merger docket in which Mr. Harville has made a recommendation on the transaction, has Mr. Harvell ever recommended an initial rate that differs from the initial rate requested by the transferee? Please provide the docket number that contains each recommendation responsive to this question.

**RESPONSE:** Staff reasserts its objection to this question stated in Staff's filing on June 10, 2024. Staff objects to this question, as it requests Staff to locate easily accessible publicly available information. Staff suggests that TWU continue to visit the Commission's Interchange available at <https://interchange.puc.texas.gov>.

**TWU 1-16** For each docket identified in response to TWU 1-15, please provide the analysis underlying Mr. Harville’s decision to recommend an initial rate that differed from the initial rate requested by the transferee.

**RESPONSE:** Staff reasserts its objections to this question stated in Staff’s filing on June 10, 2024. Additionally, regardless of whether or not RFI No. TWU 1-16 is reasonably calculated to lead to the discovery of admissible evidence, Staff emphasizes that RFI No. TWU 1-16 is not requesting information within the scope of Staff’s direct testimony. Staff notes that if TWU is requesting information which it believes is reasonably calculated to lead to the discovery of admissible evidence but which is not within the scope of Mr. Harville’s direct testimony, as is suggested by TWU’s motion to compel,<sup>10</sup> then TWU’s stated discovery deadline of June 17, 2024<sup>11</sup> and the discovery deadline imposed by SOAH Order No. 3, which states that “[f]or discovery requests on Intervenor Direct Testimony, Staff Direct Testimony, Applicants’ Rebuttal Testimony, and Cross-Rebuttal Testimony” responses are due within 10 calendar days of the date the request is received,<sup>12</sup> should not apply to this RFI. Therefore, the default RFI response deadline of 20 days as stated in the Commission’s procedural rules should apply to this RFI and to any other RFIs requesting information beyond the scope of Staff’s direct testimony.<sup>13</sup>

**TWU 1-17** Please admit or deny that TWU is the only Class A water utility with a Commission-approved tariff that includes one or more phased-in rate schedules with a final phase that is not yet effective. If deny, please list the other Class A water utilities responsive to this question.

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<sup>10</sup> See TWU’s Motion to Compel at 7-8 (“Therefore, RFI No. TWU 1-16 is reasonably calculated to lead to the discovery of admissible evidence regardless of whether it is in the scope of Mr. Harville’s direct testimony, and Commission Staff’s objection should be overruled.”).

<sup>11</sup> Texas Water Utilities, L.P.’s First Request for Information to Commission Staff at 1 (June 5, 2024).

<sup>12</sup> SOAH Order No. 3 – Scheduling Hearing on the Merits at 3 (Apr. 3, 2024).

<sup>13</sup> 16 TAC § 22.144(c)(1).

**RESPONSE:** Staff objected to TWU 1-17 on June 10, 2024.<sup>14</sup> In TWU's Motion to Compel Discovery Responses from Commission Staff filed on June 13, 2024, TWU stated that it is not moving to compel a response to RFI No. TWU 1-17.<sup>15</sup> Therefore, Staff does not provide a response to RFI No. TWU 1-17.

Prepared by: Counsel  
Sponsor: N/A

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<sup>14</sup> Staff Objections at 7.

<sup>15</sup> TWU's Motion to Compel at 2.