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

APPLICATION OF TEXAS WATER	§	BEFORE THE STATE OFFICE
UTILITIES, L.P. AND SOUTHERN	§	
HORIZONS DEVELOPMENT, INC.	§	
FOR SALE, TRANSFER, OR MERGER	§	OF
OF FACILITIES AND CERTIFICATE	§	
RIGHTS IN LIBERTY AND	§	
MONTGOMERY COUNTIES	§	ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY

OF

BRIAN D. BAHR

ON BEHALF OF

TEXAS WATER UTILITIES, L.P.

JUNE 20, 2024

**REBUTTAL TESTIMONY OF
BRIAN D. BAHR**

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ATTACHMENTS

Attachment BDB-R-1	Commission Staff’s July 17, 2023 Recommendation on Approval of the Transaction
Attachment BDB-R-2	Estimated Rate Calculation – 2022 Water O&M and Southern Horizons Ratemaking Rate Base (Confidential)
Attachment BDB-R-3	Commission Staff’s recommendations on the transactions in Docket Nos. 54171, 54341, and 55304
Attachment BDB-R-4	Workpaper with Calculations
Attachment BDB-R-5	Commission Staff’s Response to TWU 1-3

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MONTGOMERY COUNTIES § ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY OF
BRIAN D. BAHR

I. INTRODUCTION

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Brian D. Bahr. My business address is 1620 Grand Avenue Parkway,
Suite 140, Pflugerville, Texas 78660.

**Q. ARE YOU THE SAME BRIAN D. BAHR WHO PROVIDED DIRECT
TESTIMONY IN THIS CASE?**

A. Yes.

II. PURPOSE OF REBUTTAL TESTIMONY

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
PROCEEDING?**

A. The purpose of my rebuttal testimony is to respond to the direct testimony of James
Harville on behalf of the Staff (Staff) of the Public Utility Commission of Texas
(Commission). More specifically, I respond to Mr. Harville’s recommendation
regarding the initial rates Texas Water Utilities, L.P. (Texas Water Utilities) has
requested under Texas Water Code (TWC) § 13.3011.

1 **III. RESPONSE TO DIRECT TESTIMONY OF JAMES HARVILLE**

2 **Q. WHAT DOES MR. HARVILLE RECOMMEND REGARDING THE INITIAL**
 3 **RATES REQUESTED UNDER TWC § 13.3011?**

4 A. Mr. Harville recommends the “potential implementation” of the rates that took effect
 5 for the customers served by the Villas of Willowbrook public water system (PWS) on
 6 June 1, 2024.¹ These rates constitute the fourth phase of the seven-phased rate schedule
 7 approved for the Villas of Willowbrook in Docket No. 50944.

8 **Q. HAS MR. HARVILLE PREVIOUSLY OPINED ON THE INITIAL RATES**
 9 **REQUESTED UNDER TWC § 13.3011 FOR CUSTOMERS TO BE**
 10 **TRANSFERRED FROM SOUTHERN HORIZONS?**

11 A. Yes. In Commission Staff’s Recommendation on Approval of the Transaction filed on
 12 July 17, 2023, Mr. Harville recommended approval of the proposed transaction and,
 13 notably, did not recommend approval of a rate that differed from the initial rates
 14 requested by Texas Water Utilities in the application. The relevant portions of Mr.
 15 Harville’s memorandum read as follows:

16 3.12. *Consideration of the probable improvement in*
 17 *service or lowering of cost to consumers (TWC*
 18 *§ 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(If)).*

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

23
 24 4. **Recommendation.**

25 Based on the above information, I recommend that the
 26 Commission find that the transaction will serve the public
 27 interest and that the Applicants be allowed to proceed with
 28 the proposed transaction.

29 A copy of Commission Staff’s recommendation is included as Attachment BDB-R-1.

¹ Direct Testimony of James Harville at 12:11–13:1 (May 30, 2024) (Harville Direct).

1 **Q. WHAT IS THE BASIS FOR MR. HARVILLE’S REVERSAL OF THE**
2 **RECOMMENDATION IN HIS TESTIMONY RELATIVE TO HIS PREVIOUS**
3 **RECOMMENDATION?**

4 A. To support his recommendation, Mr. Harville States that the Villas of Willowbrook
5 rates “could be applied as a contingency to alleviate rate shock for the current customers
6 and ratepayer parties in this docket.”²

7 **Q. DOES MR. HARVILLE PRESENT ANY ANALYSIS TO SUPPORT HIS**
8 **CHANGE IN POSITION?**

9 A. Mr. Harville included a billing comparison of the Southern Horizons current rates, the
10 initial rates requested by Texas Water Utilities, and the Villas of Willowbrook rates at
11 2,000, 5,000, and 10,000 gallons of usage.³ He does not provide any narrative analysis
12 interpreting this billing comparison, an explanation of its significance, or a defense of
13 why his opinion differs from his original recommendation.

14 **Q. HAVE YOU PERFORMED AN ANALYSIS TO DEMONSTRATE WHY THE**
15 **INITIAL RATES REQUESTED BY TEXAS WATER UTILITIES ARE IN THE**
16 **PUBLIC INTEREST?**

17 A. Yes. Using the total water operations and maintenance expense of [REDACTED] and
18 the normalized water customer count of [REDACTED] from Texas Water Utilities’
19 2022 Annual Report, results in an operations and maintenance cost of service of [REDACTED]
20 per month on a per customer basis. Using the ratemaking rate base for Southern
21 Horizons of [REDACTED], Texas Water Utilities’ pre-tax weighted average cost of

² *Id.* at 12:9–11.

³ *Id.* at Attachment JH-2.

1 capital of [REDACTED], and the Southern Horizons customer count of 461 results in a capex
2 cost of service of [REDACTED] per customer per month. Please refer to Confidential
3 Attachment BDB-R-2 for these calculations. These calculations would result in an
4 average bill of [REDACTED] per month for Southern Horizons customers, which is higher
5 than the initial rate requested by Texas Water Utilities.

6 **Q. HAS MR. HARVILLE MADE RECOMENDATIONS ON THE INITIAL RATE**
7 **REQUESTED BY TEXAS WATER UTILITIES IN OTHER PROCEEDINGS?**

8 A. Yes. Mr. Harville has made recommendations in at least two other dockets for a sale,
9 transfer, or merger (STM) in which Texas Water Utilities is the transferee, Docket
10 Nos. 54171⁴ and 55304.⁵ He has also made a recommendation in a fourth proceeding,
11 Docket No. 54341,⁶ which is for approval of a transaction that does not include Texas
12 Water Utilities. Copies of Mr. Harville’s recommendations in these proceedings are
13 included as Attachment BDB-R-3.

14 **Q. DID ANY OF MR. HARVILLE’S RECOMMENDATIONS IN THE DOCKETS**
15 **IDENTIFIED ABOVE USE THE TERM “RATE SHOCK?”**

16 A. No, “rate shock” was not raised as a concern in his recommendations in any docket
17 other than this one, even though he noted in all three other cases that the requested

⁴ *Application of Monarch Utilities I L.P. and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*, Docket No. 54171, Commission Staff’s Recommendation on Approval of the Sale and on the CCN Amendment (Jan. 31, 2023).

⁵ The request for initial rates in this case was ultimately withdrawn by Texas Water Utilities, and Mr. Harville amended his recommendation to reflect this. *Application of Texas Water Utilities, L.P. and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Travis County*, Docket No. 55304, Commission Staff’s Amended Final Recommendation on the Transaction (Feb. 15, 2024).

⁶ *Application of Aqua Texas, Inc. and Forest Grove, Inc. dba Southern Oaks Water Supply for Sale, Transfer, or Merger of Facilities and Certificate Rights in Navarro and Freestone Counties and for Dual Certification with Winkler Water Supply Corporation*, Docket No. 54341, Commission Staff’s Recommendation on Approval of the Sale and CCN Amendment (Apr. 6, 2023).

1 initial rates were higher than the transferor's existing rates before then recommending
2 that the transaction was in the public interest.

3 **Q. DID ANY OF MR. HARVILLE'S RECOMMENDATIONS IN THE DOCKETS**
4 **IDENTIFIED ABOVE SUGGEST THAT THE COMMISSION APPROVE A**
5 **DIFFERENT INITIAL RATE THAN THE INITIAL RATE REQUESTED BY**
6 **THE TRANSFEREE?**

7 A. No.

8 **Q. DOES MR. HARVILLE'S TESTIMONY IN THIS PROCEEDING CITE TO**
9 **ANY OF THE RATEMAKING STANDARDS FOUND IN STATUTE OR**
10 **RULE?**

11 A. No.

12 **Q. IS THE TERM "RATE SHOCK" DEFINED IN MR. HARVILLE'S**
13 **TESTIMONY IN THIS PROCEEDING?**

14 A. No.

15 **Q. IS "RATE SHOCK" DEFINED IN THE TEXAS WATER CODE OR 16 TAC**
16 **CHAPTER 24?**

17 A. No.

18 **Q. WHAT IS DRIVING THE INCREASE BETWEEN SOUTHERN HORIZONS'**
19 **EXISTING RATES AND THE INITIAL RATES REQUESTED BY TEXAS**
20 **WATER UTILITIES?**

21 A. The main driver of the increase is the difference in the gallonage rates. More
22 specifically, for a customer using 5,000 gallons per month, 63% of the increase in rates
23 would be attributable to the difference in the gallonage charges. Please see

1 Attachment BDB-R-3 for this calculation. Southern Horizons' current rates include:
 2 (1) 2,000 gallons of usage in the \$32.20 minimum monthly charge; and (2) a flat rate
 3 of \$3.18 per 1,000 gallons. The portion of a customer's bill that is based on usage is
 4 the portion of the bill over which the customer has some control. However, both of
 5 these rate design features do not encourage, and may in some cases discourage,
 6 conservation. Mr. Harville admitted in response to discovery that a flat gallonage rate
 7 does not encourage conservation.⁷

8 If 2,000 gallons was not included in the minimum monthly charge, the
 9 difference in a customer bill for 5,000 gallons of usage at Southern Horizons' current
 10 rates and the Villas of Willowbrook Rates would only be \$9.46.⁸ This, combined with
 11 the fact that the \$31.17 minimum monthly charge for the Villas of Willowbrook is
 12 lower than the current Southern Horizons minimum monthly charge of \$32.20,
 13 suggests that the Villas of Willowbrook rates are not just and reasonable for customers
 14 to be transferred from Southern Horizons.

15 **Q. DOES MR. HARVILLE'S TESTIMONY COMPORT WITH TWC § 13.001(c)?**

16 A. It is not clear that Mr. Harville considered TWC § 13.001(c), which states that the
 17 regulatory structure enacted in TWC Chapter 13 should "assure rates, operations, and
 18 services that are just and reasonable to the consumers and to the retail public utilities."
 19 While Mr. Harville seems to have considered the effect of Texas Water Utilities'
 20 requested initial rates on customers, his testimony merely speculates as to the possible
 21 effects on Texas Water Utilities stating: "Considering Southern Horizons' active TCEQ

⁷ Commission Staff's Response to Texas Water Utilities First Request for Information at TWU 1-3 (Jun. 17, 2024).

⁸ Attachment BDB-R-4.

1 capacity violations, the rate change is potentially necessary for the reliability and
2 quality of water service to be improved upon under Texas Water's management."⁹

3 **Q. ARE THERE ANY OTHER CONSIDERATIONS YOU BELIEVE SHOULD BE**
4 **TAKEN INTO ACCOUNT IN LIGHT OF MR. HARVILLE'S**
5 **RECOMMENDATION?**

6 A. Yes. Generally, customer assistance programs like the Low-Income Household Water
7 Assistance Program (LIHWAP) are a more effective tool for mitigating bill impacts
8 than artificially depressing the rates for an entire group of customers below the
9 approved cost of service. In Texas, LIHWAP is administered by the Texas Department
10 of Housing and Community Affairs which then relies on local administering
11 agencies—community action agencies and local governments (cities and counties)—
12 to actually award funds. These local administering agencies are part of the
13 communities they serve and often manage other funds such as Low-Income Energy
14 Assistance Program funds. Therefore, they are uniquely positioned to understand their
15 clients and work with them to provide a comprehensive solution to utility needs.

16 Texas Water Utilities also offers different forms of payment assistance. The
17 Elderly Assist Rates provide qualifying customers over the age of sixty-five with a \$20
18 discount on monthly water bills and another \$20 discount on monthly wastewater bills.
19 Our customers may also apply for Texas Water Utilities' Water Assist program, which
20 works through third-party agencies to provide qualified customers a \$20 discount on
21 monthly water bills and another \$20 discount on monthly wastewater bills. In addition,
22 Texas Water Utilities has published communications encouraging customers to avail

⁹ Harville Direct at 12:6–8.

1 themselves to the extent possible of the LIHWAP funds discussed above. Finally,
2 TWU makes payment arrangements available to customers requiring temporary
3 assistance.

4 These various measures appropriately address bill impacts by providing
5 economic assistance specifically to those customers who actually require it.
6 Conversely, artificially depressing rates through the phasing in of rate increases and
7 implementing other such measures that benefit broad groups of customers, including
8 those who don't really need the assistance and/or who use large amounts of water, is
9 less effective, less efficient, and less likely to result in assistance being directed at those
10 who need it most.

11 IV. DATE OF NEXT RATE CASE

12 **Q. IS THERE ANYTHING YOU WOULD LIKE TO CLARIFY REGARDING**
13 **THE DATE OF TEXAS WATER UTILITIES NEXT RATE CASE?**

14 A. Yes. Mr. Harville's testimony references Texas Water Utilities' response to Question
15 No. 15.B. in the STM application.¹⁰ This response states that Texas Water Utilities
16 does not anticipate filing a general rate case in the next 12 months. The application
17 was filed on February 2, 2023, so the 12-month period referenced in the application has
18 passed. Further, Question No. 15B asks if Texas Water Utilities plans to file a rate case
19 "as a result of the transaction" and not whether it plans to file a rate case generally.
20 Texas Water Utilities has requested a docket number for its next general rate case¹¹ and

¹⁰ *Id.* at 13:3–14:2.

¹¹ *Application of Texas Water Utilities, L.P. for Authority to Change Rates*, Docket No. 56665, Request for Docket Number (May 29, 2024).

1 anticipates that the application will be filed within a week of the date this rebuttal
2 testimony is filed.

3 **Q. ARE THE SOUTHERN HORIZONS SYSTEMS AND CUSTOMERS**
4 **INCLUDED IN THE SOON-TO-BE-FILED TEXAS WATER UTILITIES**
5 **RATE CASE?**

6 A. No. Because is not known exactly when Texas Water Utilities and Southern Horizons
7 will receive approval to close the transaction proposed in this proceeding, the Southern
8 Horizons systems and connection counts will not be included in the application to
9 change rates, and the rates approved by the Commission in Docket No. 56665 will not
10 be applicable to the current Southern Horizons customers.

11 **V. CONCLUSION**

12 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

13 A. Yes, it does. However, I reserve the right to supplement this testimony based on any
14 discovery responses received on or after June 20, 2024. The current deadline for
15 Commission Staff to respond to Texas Water Utilities' Request for Information
16 Nos. 1-5, 1-6, 1-7, 1-9, 1-10, 1-14, 1-15, and 1-16 is June 24, 2024.¹²

¹² Order Granting Motion to Compel (Jun. 17, 2024).

Attachment BDB-R-1

**Commission Staff's July 17, 2023 Recommendation on
Approval of the Transaction**



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DOCKET NO. 54617

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	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE TRANSACTION

I. INTRODUCTION

On February 2, 2023, Texas Water Utilities, LP (Texas Water) and Southern Horizons Development, Inc. (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Liberty and Montgomery counties. Texas Water filed supplemental information on February 16, March 15, April 6, and June 23, 2023.

On June 22, 2023, the administrative law judge (ALJ) filed Order No. 9, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the transaction by July 17, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON APPROVAL OF THE SALE

Staff has reviewed the application, as supplemented, and, as supported by the memoranda of James Harville, Infrastructure Division, and Fred Bednarski III, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 TAC § 24.239(i), and TWC §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(l).

Staff notes that the approval of the sale expires 180 days from the date of the Commission’s written approval of the sale. If the sale is not consummated within that period, and unless the

Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for the approval of the sale, as required by 16 TAC § 24.239(m).

III. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Date: July 17, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

John Harrison
Senior Managing Attorney

/s/ Margaux Fox
Margaux Fox
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DOCKET NO. 54617

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 July 17, 2023 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Margaux Fox
Margaux Fox

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: July 17, 2023

RE: Docket No. 54617 – *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*

1. Application

On February 2, 2023, Texas Water Utilities, LP (Texas Water) and Southern Horizons Development, Inc. (Southern Horizons) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Liberty and Montgomery counties, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, Texas Water, Certificate of Convenience and Necessity (CCN) No. 12983, seeks approval to acquire facilities and to transfer all of the water service area from Southern Horizons under water CCN No. 12863.

Based on the mapping review by Hank Journey, Infrastructure Division:

- The requested area includes 452 customer connections and approximately 728.2 acres, comprised of:
 - 102.5 acres of uncertificated area to amend to CCN No. 12983;
 - 527 acres of transferred area from Southern Horizons (CCN No. 12863) to Texas Water (CCN No. 12983); and
 - 98.7 acres of decertified area from CCN No. 12863.
- The application proposes the subtraction of approximately 625.7 acres from CCN No. 12863 and the addition of approximately 629.5 acres to CCN No. 12983.

2. Notice

Texas Water provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was May 22, 2023; motions to intervene were submitted.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).*

Southern Horizons has two Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Southern Crossing Water System Phase 2, PWS ID No. 1460158, and Southern Oaks Water System Phase 2, PWS ID No. 1460150. The last TCEQ compliance investigation of each system was on August 12, 2022. Southern Horizons has violations listed in the TCEQ database being addressed. The Commission's complaint records, which date back 5 years, show 4 complaints against Southern Horizons. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

The purpose of the transaction is to transfer Southern Horizons to Texas Water. The customers are currently receiving water service from Southern Horizons' water systems.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Texas Water will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated. There are no landowners with 25 or more acres in the additional requested area.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Texas Water will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Texas Water will have licensed operators to run the system operations. Class B, C, and D operators will be the responsible operators for the systems.

Texas Water has the ability to provide adequate service in the requested area. Texas Water has several registered TCEQ approved public water systems. Texas Water has violations listed in the TCEQ database which are being addressed. In addition, the Commission's complaint records, which date back 5 years, show 34 complaints against Texas Water. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Texas Water to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

Southern Horizons is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

Texas Water is proposing to make improvements to the Southern Horizons' water system. The proposed capital improvements are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required. Construction of the water system facilities is expected to be in 2023 and 2024.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

- 3.8. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.10. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.

- 3.11. *Consideration of the initial rates for certain water or sewer systems after purchase or acquisition (TWC § 13.3011).*

As allowed by the statute, Texas Water has requested that the customers' rates be changed to match Texas Water's currently effective approved rates. Texas Water's currently approved rates have been in effect since September 6, 2022¹ which is the most recent date prior to the date the application was deemed administratively complete, April 5, 2023.²

- 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)).*

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.

4. Recommendation

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by Southern Horizons for the customers being served by Southern Horizons. I further recommend that a public hearing is not necessary.

¹ Docket 52201, Item 54, Stamped Approved Tariff

² In Order No. 4 filed on 4/5/2023, the administrative law judge found the application administratively complete.

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: July 17, 2023

RE: Docket No. 54617 – *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*

On February 2, 2023, Texas Water Utilities, LP (TWU) and Southern Horizons Development, Inc. (Southern Horizons) filed an application for the sale and transfer of facilities and certificate rights in Liberty and Montgomery counties under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. TWU must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

TWU filed an affidavit stating that SouthWest Water Company (SouthWest) is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on financial statements ending December 31, 2021. These financial statements contain an unqualified auditor’s opinion from PricewaterhouseCoopers LLP stating that

¹ Confidential attachments to STM application at pdf 98 and 99 (Feb. 2, 2023).

the financial statements present fairly, in all material respects, the financial position of SouthWest as of December 31, 2021.²

SouthWest's financial statements demonstrate a debt service coverage ratio of 7.56, as provided in confidential attachment FB-1. Because the ratio is greater than 1.25, I recommend a finding that SouthWest meets the leverage test specified in 16 TAC § 24.11(e)(2)(B). Therefore, I recommend a finding that—through its affiliate—TWU meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by TWU demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. TWU projects no net operating and maintenance shortages, as provided in confidential attachment FB-1. Therefore, I recommend a finding that TWU meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

TWU has filed documentation demonstrating a firm capital commitment for funding of the purchase price and planned system improvements for Southern Horizons' water system alongside all of TWU's other purchased systems and planned system improvements, as shown in confidential attachment FB-1. Therefore, I recommend a finding that TWU satisfies the requirements of 16 TAC § 24.11(e)(5)(A) and that a good cause exception should be granted if needed.

Fair market value and ratemaking rate base (TWC 13.305(i))

² *Id.* at pdf 107 and 108.

Because TWU has filed notice with the Commission of its intent to use a fair market value (FMV) process to determine the ratemaking rate base of Southern Horizons, the following provisions of TWC § 13.305 apply to this proceeding:

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

(1) the ratemaking rate base of the selling utility as determined under Subsection (g); and

(2) any additional conditions for the acquisition the utility commission requires.

Consistent with the above statutory provisions, the table in confidential Attachment FB-1 shows the FMV appraisal amount reported by each of the utility valuation experts and the resulting average amount.

Because the average of the three appraisals yields a FMV which equals the sales price, the ratemaking rate base for Southern Horizons is the average of the three appraisal amounts, provided in confidential attachment FB-1, as prescribed by the provisions of TWC § 13.305(g).

Recommendation

Because TWU meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that TWU demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application.

My conclusions are based on information provided by TWU before the date of this memorandum and may not reflect any changes in TWU's status after this review.

**Attachment BDB-R-2 is CONFIDENTIAL
and being filed under seal.**

Attachment BDB-R-3

Commission Staff's recommendations on the transactions in Docket Nos. 54171, 54341, and 55304



Filing Receipt

Received - 2023-01-31 01:58:50 PM

Control Number - 54171

ItemNumber - 35

DOCKET NO. 54171

APPLICATION OF TEXAS WATER UTILITIES, LP AND CS WATER CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BOSQUE COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S RECOMMENATION ON APPROVAL OF THE SALE AND ON THE CNN AMENDMENT

I. INTRODUCTION

On September 30, 2022, Texas Water Utilities, LP (Texas Water) and CS Water Corporation (CS Water) (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Bosque County, under Texas Water Code (TWC) § 13.301 and 17 Texas Administrative Code (TAC) § 24.239. Texas Water filed supplemental information on October 4, October 25, and October 26, 2022, November 1, November 21, and November 23, 2022, and December 12, 2022.

On January 3, 2023, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale and on the CCN amendment by January 31, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the application, as supplemented, and, as supported by the attached memoranda of James Harville, Infrastructure Division, and of Fred Bednarski, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 TAC § 24.239(i) and TWC §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(1).

Staff notes that the approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for the approval of the sale, as required by 16 TAC § 24.239(m).

III. CONCLUSION

Staff respectfully requests entry of an order permitting the proposed transaction to proceed.

Date: January 31, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

John Harrison
Managing Attorney

/s/ Margaux Fox
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DOCKET NO. 54171

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 January 31, 2023 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Margaux Fox
Margaux Fox

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: January 31, 2023

RE: Docket No. 54171 – *Application of Texas Water Utilities, LP and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*

1. Application

Texas Water Utilities, LP (Texas Water) and the CS Water Corporation (CS Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Bosque County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Texas Water, water Certificate of Convenience and Necessity (CCN) No. 12983 seeks approval to acquire facilities and to transfer all of the water service area from CS Water under water CCN No. 11441.

Based on the mapping review by Tracy Montes, Infrastructure Division:

- The requested area includes 178 customer connections and approximately 726 acres, comprised of transferred area from CCN No. 11441.
- The application proposes the subtraction of approximately 726 acres from CCN No. 11441 and the addition of approximately 726 acres to CCN No. 12983.

In addition, the Applicants requested approval of the transaction using the fair market value of the assets rather than their original cost as allowed under TWC § 13.305.

2. Notice

Texas Water provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was December 19, 2022; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(D)).*

CS Water has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as CS Water, PWS ID No. 0180033. The last TCEQ compliance investigation of the CS Water system was on June 30, 2020. CS Water does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show 2 complaints against CS Water.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

The purpose of the transaction is to transfer CS Water to Texas Water. The customers are currently receiving water service from CS Water's water system.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Texas Water will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Texas

Water will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Texas Water will have licensed operators to run the system operations. A Class B, C, and D operator will be the responsible operator for the system.

Texas Water has the ability to provide adequate service in the requested area. Texas Water has several TCEQ approved public water system. In addition, the Commission's complaint records, which date back to 2017, show 400 complaints against Texas Water which have been addressed by the Commission's Customer Protection Division. Texas Water provides service to approximately 30,345 connections.

- 3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Texas Water to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

CS Water is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. *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)).*

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

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

4. Recommendation

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by CS Water for the customers being served by CS Water. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: January 31, 2023

RE: Docket No. 54171 *Application of Texas Water Utilities, L.P. and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*

On September 30, 2022, Texas Water Utilities, L.P. (Texas Water) and CS Water Corporation (CS Water) filed an application for the sale and transfer of facilities and certificate rights in Bosque County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Texas Water must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

Texas Water filed an affidavit stating that SouthWest Water Company (SouthWest Water) is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on financial statements ending December 31, 2021. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers LLP stating that

¹ Texas Water Utilities, L.P.'s Response to Commission Staff's Second Request for information at pdf 9 and 10 (Jan. 4, 2023).

the financial statements present fairly, in all material respects, the financial position of SouthWest Water as of December 31, 2021.²

Texas Water provided the financial statements of SouthWest Water, which demonstrate a debt service coverage ratio of 7.56 as provided in confidential attachment FB-1. Because the ratio is more than 1.25, I recommend a finding that Southwest Water meets the leverage test specified in 16 TAC § 24.11(e)(2)(B). Therefore, I recommend a finding that—through its affiliate—Texas Water meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by Texas Water demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. Texas Water projects no operating shortages as provided in confidential attachment FB-1. Therefore, I recommend a finding that Texas Water meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

Texas Water has filed documentation demonstrating adequate sources of funding, in the form of a line of credit, for the purchase price and planned system improvements for the CS water system alongside all of Texas Water's other purchased systems and planned system improvements provided in confidential attachment FB-1. Therefore, I recommend a finding that Texas Water satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

² Confidential Supplemental Attachments 2-5(1) and 2-5(2) at pdf 4 and 5 (Jan. 20, 2023).

Fair market value and ratemaking rate base (TWC 13.305(i))

Because Texas Water has filed notice with the Commission of its intent to use a fair market value (FMV) process to determine the ratemaking rate base of CS Water, the following provisions of TWC § 13.305 apply to this proceeding:

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

(1) the ratemaking rate base of the selling utility as determined under Subsection (g); and

(2) any additional conditions for the acquisition the utility commission requires.

Consistent with the above statutory provisions, the table in confidential Attachment FB-1 shows the FMV appraisal amount reported by each of the utility valuation experts and the resulting average amount.

Because the average of the three appraisals yields a FMV which is more than the sales price, the ratemaking rate base for CS Water is the sales price amount, provided in confidential attachment FB-1, as prescribed by the provisions of TWC § 13.305(g).

Recommendation

Because Texas Water meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Texas Water demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this

application. My conclusions are based on information provided by Texas Water before the date of this memorandum and may not reflect any changes in Texas Water's status after this review.



Filing Receipt

Received - 2023-04-06 12:19:27 PM

Control Number - 54341

ItemNumber - 27

DOCKET NO. 54341

APPLICATION OF AQUA TEXAS, INC.	§	PUBLIC UTILITY COMMISSION
AND FOREST GROVE, INC. DBA	§	
SOUTHERN OAKS WATER SUPPLY	§	OF TEXAS
FOR SALE, TRANSFER OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN NAVARRO AND	§	
FREESTONE COUNTIES AND FOR	§	
DUAL CERTIFICATION WITH	§	
WINKLER WATER SUPPLY	§	
CORPORATION	§	

**COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE SALE AND
CCN AMENDMENT**

I. INTRODUCTION

On November 14, 2022, Aqua Texas, Inc. (Aqua Texas) and Forest Grove, Inc. dba Southern Oaks Water Supply (Southern Oaks) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Navarro and Freestone counties and for dual certification with the Winkler Water Supply Corporation (Winkler WSC). Aqua Texas filed supplemental information on December 2 and 14, 2022 and on February 23 and April 5, 2023.

On April 3, 2023, the administrative law judge (ALJ) filed Order No. 8, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment by April 6, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the application, as supplemented, and, as supported by the attached memoranda of James Harville, Infrastructure Division, and of Fred Bednarski III, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 Texas Administrative Code (TAC) § 24.239(i) and Texas Water Code §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have

been transferred to the acquiring entity and that the disposition or any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(I).

Staff notes that the approval of the sale expires 180 days from the date of the Commission’s written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for the approval of the sale, as required by 16 TAC § 24.239(m).

III. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Date: April 6, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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Interim Division Director

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/s/ Margaux Fox
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DOCKET NO. 54341

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 April 6, 2023 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Margaux Fox
Margaux Fox

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: April 6, 2023

RE: Docket No. 54341 – *Application of Aqua Texas, Inc. and Forest Grove, Inc. dba Southern Oaks Water Supply for Sale, Transfer or Merger of Facilities and Certificate Rights in Navarro and Freestone Counties and for Dual Certification with Winkler Water Supply Corporation*

1. Application

On November 14, 2022, Aqua Texas, Inc. (Aqua Texas) and Forest Grove, Inc. dba Southern Oaks Water Supply (Southern Oaks) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights and for dual certification with the Winkler Water Supply Corporation (WSC) in Navarro and Freestone counties, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, Aqua Texas, Certificate of Convenience and Necessity (CCN) No. 13201, seeks approval to acquire facilities and to transfer all of the water service area from Southern Oaks under water CCN No. 12344 and for dual certification with a portion of Winkler WSC, water CCN No. 10754.

Based on the mapping review by Hank Journey, Infrastructure Division:

- The requested area includes 758 customer connections and approximately 2,472 acres, comprised of:
84 acres of uncertificated area to amend (add) to Aqua Texas (CCN No. 13201);
1,332 acres of transferred area from Southern Oaks (CCN No. 12344); and
1,056 acres of dual certificated area with Winkler WSC (CCN No. 10754).
- The application proposes the subtraction of approximately 1,332 acres from Southern Oaks (CCN No. 12344) and the addition of approximately 2,472 total acres to Aqua Texas (CCN No. 13201). The requested area includes 84 acres that will be single

certification with Aqua Texas (CCN No. 13201) and 2,388 acres that will be dual certification with Winkler WSC (CCN No. 10754).

2. Notice

Aqua Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was March 3, 2023; Winkler WSC filed a motion to intervene stating that no efforts were made by Aqua Texas or Southern Oaks for the dual certification with Winkler WSC. The motion to intervene was granted on February 15, 2023. On March 10, 2023, Winkler WSC provided an amended motion to intervene confirming that an agreement for dual certification was signed and their desire to remain an intervenor in the docket.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(D)).*

Southern Oaks has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Southern Oaks Water Supply, PWS ID No. 0810034. The last TCEQ compliance investigation of the Southern Oaks system was on July 7, 2021. Southern Oaks does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show one complaint against Southern Oaks. The Commission's Customer Protection Division has evaluated the complaint.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

There are currently 758 existing customers in the requested area, therefore, there is a need for service.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Aqua Texas will be the certificated entity for the requested area and will be required to provide continuous and adequate service to the requested area with 1,056 of these acres being dual certificated with Winkler WSC.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Aqua Texas will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Aqua Texas will have licensed operators to run the system operations. A Class B operator will be the responsible operator for the system.

Aqua Texas has the ability to provide adequate service in the requested area. Aqua Texas has several TCEQ approved public water systems registered. In addition, the Commission's complaint records, which date back to 2017, show 942 complaints against Aqua Texas. Aqua Texas, Inc. is a large utility that operates multiple water and wastewater systems with approximately 19,500 connections. The complaints have been evaluated by the Commission's Customer Protection Division.

3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Aqua Texas to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

3.6. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

Aqua Texas provided documentation regarding incremental capital data for project prioritization and cost estimates spanning 5 years.

3.7. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

Southern Oaks is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.8. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(h); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.10. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

- 3.11. *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)).*

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

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

4. Recommendation

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by Southern Oaks for the customers being served by Southern Oaks. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Margaux Fox,
Legal Division

FROM: Fred Bednarski III,
Rate Regulation Division

DATE: April 06, 2023

RE: Docket No. 54341 *Application of Aqua Texas, Inc. and Forest Grove, Inc. dba Southern Oaks Water Supply for Sale, Transfer or Merger of Facilities and Certificate Rights in Navarro and Freestone Counties and for Dual Certification with Winkler Water Supply Corporation*

On November 14, 2022, Aqua Texas, Inc. (Aqua Texas) and Forest Grove, Inc. dba Southern Oaks Water Supply (Southern Oaks) filed an application for the sale and transfer of facilities and certificate rights in Navarro and Freestone Counties under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Aqua Texas must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

My analysis is based on Aqua Texas's financial statements ending December 31, 2021, which demonstrate a debt service coverage ratio of 3.79, as calculated in Attachment FB-1. Because the ratio is greater than 1.25, I recommend a finding that Aqua Texas meets the leverage test specified in 16 TAC § 24.11(e)(2)(B).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an

affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Aqua Texas' s projected financial statements show that there are no projected operating losses in the first of five years of operations as provided in attachment FB-1. Therefore, I recommend a finding that Aqua Texas meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

Aqua Texas has filed documentation demonstrating adequate funding of the purchase price and planned systems improvements for Southern Oak's water system alongside all of Aqua Texas's other purchased systems and planned system improvements provided in Attachment FB-1. Therefore, I recommend a finding that Aqua Texas satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

Fair market value and ratemaking rate base (TWC 13.305(i))

Because Aqua Texas has filed notice with the Commission of its intent to use a fair market value (FMV) process to determine the ratemaking rate base of Aqua Texas, the following provisions of TWC § 13.305 apply to this proceeding:

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

- (1) the ratemaking rate base of the selling utility as determined under Subsection (g); and
- (2) any additional conditions for the acquisition the utility commission requires.

Consistent with the above statutory provisions, the table in confidential Attachment FB-1 shows the FMV appraisal amount reported by each of the utility valuation experts and the resulting average amount.

Because the average of the three appraisals yields a FMV which is more than the sales price, the ratemaking rate base for Aqua Texas is the sales price amount, provided in attachment FB-1, as prescribed by the provisions of TWC § 13.305(g).

Recommendation

Because Aqua Texas meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Aqua Texas demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Aqua Texas before the date of this memorandum and may not reflect any changes in Aqua Texas's status after this review.



Filing Receipt

Filing Date - 2023-12-19 10:22:28 AM

Control Number - 55304

Item Number - 24

DOCKET NO. 55304

APPLICATION OF TEXAS WATER UTILITIES, LP AND SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY COMPANY, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN TRAVIS COUNTY	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S FINAL RECOMMENDATION ON THE TRANSACTION

On July 31, 2022, Texas Water Utilities, LP (Texas Water) and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Travis County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

On November 21, 2023, the administrative law judge filed Order No. 5 directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment by December 19, 2023. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON THE TRANSACTION

Staff has reviewed the application and supplemental information and, as supported by the attached memoranda of James Harville of the Infrastructure Division and Fred Bednarski III of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and under 16 TAC Chapter 24. Additionally, based upon its review, Staff recommends that Texas Water has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction will serve the public interest and should be allowed to proceed without a public hearing.

In addition, Staff recommends that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required under 16 TAC §§ 24.109(m)-(n).

If the Commission enters an order permitting the transaction to proceed, such approval expires 180 days from the date of the Commission’s written approval of the sale. If the sale is not

effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for approval of the sale.

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that the sale be approved.

Date: December 19, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Marisa Lopez Wagley
Division Director

Margaux Fox
Managing Attorney

/s/ Markel Perkins
Markel Perkins
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DOCKET NO. 55304

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 December 19, 2023 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Markel Perkins
Markel Perkins

Public Utility Commission of Texas

Memorandum

TO: Markel Perkins, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: December 19, 2023

RE: Docket No. 55304 – *Application of Texas Water Utilities, LP and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Travis County*

1. Application

On July 31, 2023, Texas Water Utilities, L.P. (Texas Water Utilities) and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (SWWC Utilities) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Travis County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, Texas Water Utilities, Certificate of Convenience and Necessity (CCN) No. 12983 and 20899, seeks approval to acquire facilities and to transfer all of the water and sewer service area from SWWC Utilities under water CCN No. 11978 and sewer CCN No. 20650.

As allowed by the statute, Texas Water has requested that the customers' rates be changed to match Texas Water's currently effective approved rates. Texas Water's currently approved rates have been in effect since September 28, 2023¹ which is the most recent date prior to the date the application was deemed administratively complete, October 9, 2023².

Based on the mapping review by Hank Journey, Infrastructure Division:

- The requested water area includes 3,340 customer connections and approximately 5,629.4 acres of transferred area from SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (CCN No. 11978) to Texas Water Utilities, L.P. (CCN No. 12983).
- The requested sewer area 1 includes 3,767 customer connections and approximately

¹ Docket 54201, Item 215, Stamped Approved Tariff

² In Order No. 3 filed on 10/9/2023, the administrative law judge found the application administratively complete.

10,483.5 acres of transferred area from SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (CCN No. 20650) to Texas Water Utilities, L.P. (CCN No. 20899).

- The requested sewer area 2 includes 0 customer connections and approximately 3,958.6 acres of transferred area from SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (CCN No. 20650) to Texas Water Utilities, L.P. (CCN No. 20899).
- **The total water area includes 3,340 customer connections and approximately 5,629.4 acres of transferred area from SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (CCN No. 11978) to Texas Water Utilities, L.P. (CCN No. 12983).**
- **The total sewer area includes 3,767 customer connections and approximately 14,442.1 acres of transferred area from SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (CCN No. 20650) to Texas Water Utilities, L.P. (CCN No. 20899).**
- The application proposes the subtraction of approximately 5,629.4 acres from CCN No. 11978 and the addition of approximately 5,629.4 acres to CCN No. 12983.
- The application proposes the subtraction of approximately 14,442.1 acres from CCN No. 20650 and the addition of approximately 14,442.1 acres to CCN No. 20899.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, and 163 landowners owning 25 acres partially or wholly located in the requested area.

Texas Water Utilities provided notice consistent with 16 TAC § 24.239(e). The deadline to intervene was December 4, 2023; a motion to intervene was submitted.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).

SWWC Utilities has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) and a wastewater treatment plant (WWTP) registered as Austin's Colony, PWS ID No. 2270255, and Austin's Colony WWTP, Wastewater Discharge Permit No. WQ0013138001, respectively. The last TCEQ compliance investigation of the Austin's Colony system was on March 8, 2023. The last TCEQ compliance investigation of the Austin's Colony WWTP system was on August 31, 2023. SWWC Utilities has violations listed in the TCEQ database which are being addressed.

The Commission's complaint records, which date back 5 years, show 36 complaints against SWWC Utilities. All the complaints have been reviewed and closed by the Commission's Consumer Protection Division.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

The purpose of the transaction is to transfer SWWC Utilities to Texas Water Utilities. The customers are currently receiving water and sewer service from SWWC Utilities' water and sewer systems.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Texas Water Utilities will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Texas Water Utilities will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

TCEQ rule, 30 TAC §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Texas Water Utilities will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Texas Water Utilities will have licensed operators to run the system operations. Class B and C operator's will be the responsible operator for the system.

Texas Water Utilities has the ability to provide adequate service in the requested area. Texas Water Utilities has several TCEQ approved PWS's and WWTP's registered. Texas Water Utilities has violations listed in the TCEQ database which are being addressed. In addition, the Commission's complaint records, which date back 5 years, show 132

complaints against Texas Water Utilities, with 8 open complaints. All the complaints have been reviewed and are being addressed by the Commission's Consumer Protection Division.

- 3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Texas Water Utilities to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

SWWC Utilities is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

There are no improvements necessary to provide continuous and adequate service to the requested area; therefore, a capital improvements plan is not necessary.

- 3.8. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.10. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.11. 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)).

As shown in Attachment No. 1³ to this memo, the customers' rates will be higher than the current rates for the SWWC Utilities. Reliability and quality of water service is expected to improve under Texas Water Utilities' management.

4. Recommendation

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by SWWC Utilities for the customers being served by SWWC Utilities. I further recommend that a public hearing is not necessary.

³ Attachment No. 1 – Rate comparison worksheet

Public Utility Commission of Texas

Memorandum

TO: Markel Perkins, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: December 19, 2023

RE: Docket No. 55304 *Application of Texas Water Utilities, LP and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Travis County*

On July 31, 2023, Texas Water Utilities, LP (TWU) and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (Hornsby Bend) filed an application for the sale, transfer, or merger of water and sewer facilities and certificates rights in Travis County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. TWU must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

TWU filed an affidavit stating that SouthWest Water Company (SouthWest) is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on financial statements ending December 31, 2022. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers LLP stating that

¹ Confidential application attachments at pdf 70 and 71 (Jul. 31, 2023).

the financial statements present fairly, in all material respects, the financial position of SouthWest as of December 31, 2022.²

SouthWest's financial statements demonstrate a debt service coverage ratio greater than 1.25, as shown in confidential attachment FB-1. Because the ratio is greater than 1.25, I recommend a finding that SouthWest meets the leverage test specified in 16 TAC § 24.11(e)(2)(B). Therefore, I recommend a finding that—through its affiliate—TWU meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by TWU demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest.³ TWU projects no net operating and maintenance shortages, as shown in confidential attachment FB-1. Therefore, I recommend a finding that TWU meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

Capital improvements are not required per the memorandum provided by James Harville, Infrastructure Analyst. Therefore, TWU should not be required to satisfy 16 TAC § 24.11(e)(5)(A).

Recommendation

Because TWU meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that TWU demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application.

² *Id.* at pdf 79 and 80.

³ *Id.* at pdf 70 and 71.

My conclusions are based on information provided by TWU before the date of this memorandum and may not reflect any changes in TWU's status after this review.

**Attachment BDB-R-4 is being filed in
native file-format.**

Attachment BDB-R-5

Commission Staff's Response to TWU 1-3



Filing Receipt

Filing Date - 2024-06-17 12:36:19 PM

Control Number - 54617

Item Number - 95

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

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	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**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**

Marisa Lopez Wagley
Division Director

Phillip Lehmann
Managing Attorney

/s/ Kelsey Daugherty
Kelsey Daugherty
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**SOAH DOCKET NO. 473-24-13127.WS
PUC DOCKET NO. 54617**

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

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

The following files are not convertible:

Attachment BDB-R-4 Workpaper with
Calculations.xlsx

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.