



## **Filing Receipt**

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**Item Number - 24**

**DOCKET NO. 55304**

<b>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</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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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**

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/s/ 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*

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## **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*

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### **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, 2023<sup>1</sup> which is the most recent date prior to the date the application was deemed administratively complete, October 9, 2023<sup>2</sup>.

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

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<sup>1</sup> Docket 54201, Item 215, Stamped Approved Tariff

<sup>2</sup> 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. 1<sup>3</sup> 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.

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<sup>3</sup> Attachment No. 1 – Rate comparison worksheet



# *Public Utility Commission of Texas*

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## **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*

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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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>2</sup> *Id.* at pdf 79 and 80.

<sup>3</sup> *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.