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DOCKET NO. 55304

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	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**TEXAS WATER UTILITIES, L.P.’S OBJECTION TO
OFFICE OF PUBLIC UTILITY COUNSEL’S MOTION TO ABATE**

Texas Water Utilities, L.P. (TWU), on behalf of itself and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (Hornsby) (collectively, Applicants), files this objection to the Motion to Abate filed by the Office of Public Utility Counsel (OPUC) on December 15, 2023. Pursuant to 16 Texas Administrative Code (TAC) § 22.78(a), this objection is timely filed on or before December 22, 2023.

I. OBJECTION

Applicants object to OPUC’s request to abate this proceeding because it will cause undue and unnecessary delay in the processing of this application, it is premature, and the assertion relied upon by OPUC to support its request is incorrect. OPUC claims that an abatement of this proceeding is proper because the request in this application is “nearly identical” to the request in Docket No. 55157.¹ However, there are stark differences between the two dockets, and treating them as nearly identical would be inappropriate.

The primary difference between the instant docket and Docket No. 55157 is one of procedural posture. Specifically, in Docket No. 55157, numerous customers have intervened and many have requested that the case be referred to hearing. Conversely, in the instant docket, there have been no requests for intervention save OPUC’s and no requests for hearing. Further, Commission Staff has already recommended (1) “that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction” and (2) “that a public hearing is not necessary.”² Accordingly, abating this

¹ Office of Public Utility Counsel’s Motion to Abate at 2 (Dec. 15, 2023); *see also Application of Texas Water Utilities, L.P. and Midway Water Utilities, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Grayson, Harris, Hill, Johnson, Montgomery, and Palo Pinto Counties*, Docket No. 55157 (pending).

² Commission Staff’s Final Recommendation on the Transaction at 7 (Dec. 19, 2023).

proceeding to address threshold issues that have not been identified for a hearing that has not been requested is both premature and inappropriate.

Even if a request for hearing had been made and threshold issues were identified and ripe for consideration, an abatement of this proceeding is still improper because the Proposal for Publication (PFP) approved by the Commission in Project No. 53924 does not prohibit a request for an initial rate under Texas Water Code (TWC) § 13.3011 that is made in conjunction with a sale, transfer, or merger (STM) between affiliates, which is the type of transaction being considered in this docket. Instead, it provides that a request for initial rates must include “a disclosure of whether the acquired and acquiring systems are affiliates or have been affiliates in the five year period before the proposed transaction.”³ Rather than arguing for a prohibition on a request for initial rates in conjunction with an STM between affiliates, OPUC’s comments on the PFP stated that “the Commission should not impose an outright prohibition of the use of authorized acquisition rates when requested where the owners of the acquiring and acquired systems are affiliates” and recommended that new 16 TAC § 24.240 “comport with the aims of TWC § 13.185(e) relating to affiliate transaction [*sic*].”⁴ Therefore, neither the PFP nor OPUC’s comments on the PFP could serve as grounds for abatement at this time because neither supports barring the consideration of TWU’s request for initial rates in this case.

Finally, TWU’s arguments in this proceeding should not be construed as a waiver of the arguments TWU presented in Docket No. 55157 asserting: (1) that the application of the rule adopted in Project No. 53924 to any request for initial rates that was made before the rule takes effect would constitute retroactive rulemaking; and (2) that the retroactive application of new 16 TAC § 24.240 to this proceeding after the application and notice have been found sufficient would severely prejudice TWU’s rights by adding application criteria that is not enumerated in TWC § 13.3011 and could not have been known with certainty at the time the application was filed.⁵ In addition, TWU is filing a motion for reconsideration of the Commission’s decision in Docket Nos. 55157 and 54617 contemporaneously with this objection. While the Commission

³ *Water and Sewer Utility Rates After Acquisition*, Project No. 53924, Proposal for Publication of New 16 TAC §24.240 as Approved at the September 14, 2023 Open Meeting at 8 (Sept. 14, 2023).

⁴ Project No. 53924, Office of Public Utility Counsel’s Initial Comments on Proposal for Publication of New 16 TAC § 24.240 as Approved at the September 14, 2023 Open Meeting, Attachment A at 10–11 (Oct. 16, 2023). Applicants note that OPUC has not propounded any discovery whatsoever in this proceeding, including discovery related to the affiliate standard in TWC § 13.185.

⁵ Docket No. 55157, Texas Water Utilities, L.P.’s and Midway Water Utilities, Inc.’s Brief on Threshold Issues at 13–15 (Nov. 29, 2023).

has broad authority to regulate and supervise the business of each water and sewer utility within its jurisdiction, that authority does not extend to refusing to apply a statute that has been in effect since September 1, 2021 in favor of a rule that, at the earliest, will take effect in February 2024.

II. CONCLUSION

Applicants respectfully request the entry of an order sustaining their objection, declining to abate this proceeding, and directing the continued processing of this application under the deadlines established in Order No. 5. Applicants also request that they be granted any further relief to which they may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS WATER
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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 December 21, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Eleanor D' Ambrosio