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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
RESPONSE TO ORDER NO. 9**

Texas Water Utilities, L.P. (TWU) on behalf of itself and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (Hornsby Bend) (collectively, Applicants) files this Response to Order No. 9. In support thereof, TWU would show the following:

I. BACKGROUND

On July 31, 2023, 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 (TWC) §§ 13.301 and 13.3011 and 16 Texas Administrative Code (TAC) § 24.239. On February 16, 2024, the Public Utility Commission of Texas (Commission) administrative law judge (ALJ) issued Order No. 9, which set a deadline of March 4, 2024, for Applicants to provide supplemental information outlined therein.¹

II. RESPONSE TO ORDER NO. 9

Order No. 9 requested supplemental information from the Applicants related to Texas Commission on Environmental Quality (TCEQ) violations, capital improvements, and loan documentation. TWU provides the supplemental information related to each issue below:

TCEQ Violations

SWWC Utilities has two pending TCEQ violations for its public water system (PWS) and wastewater treatment plant (WWTP) registered as Austin's Colony, PWS ID No. 2270255, and Austin's Colony WWTP, Wastewater Discharge Permit No. WQ0013 138001, respectively.

¹ Order No. 9 Lifting Abatement, Requiring Supplemental Information and Recommendations from Commission Staff, Establishing Deadlines, and Making a Determination to Hold a Hearing (Feb. 16, 2024).

Hornsby Bend previously submitted compliance documentation to the TCEQ describing the corrective action taken and including the required documentation demonstrating that compliance has been achieved for the outstanding violations. Applicants are working with the TCEQ Regional Office to close the violations and expect that the TCEQ database will reflect that these violations are resolved soon, at no additional cost to either TWU or Hornsby Bend.

Capital Improvements Plan

TWU disagrees that a capital improvement plan conforming with the Commission's discussions in Docket Nos. 51646 and 52391 and the requirements in TWC § 13.244(d)(3) and 16 TAC § 24.233(a)(6) applies to this proceeding.² Despite the foregoing, TWU's Capital Improvements Plan is attached to this Response as Confidential Attachment 1.

Loan Documentation

TWU objects to the premise that 16 TAC § 24.11(e)(5) applies to this proceeding. As a general matter, the Commission may require TWU to demonstrate adequate financial, managerial, and technical capability to provide service to the requested area and its existing certificated area.³ If TWU cannot demonstrate adequate financial capability, the Commission may require TWU to provide a bond or other financial assurance.⁴ Further, 16 TAC § 24.11 clearly states that it applies to "new and existing owners or operators of retail public utilities that are required to provide financial assurance under this chapter."⁵ The Commission has not determined that TWU cannot demonstrate adequate financial capability, nor has it exercised its discretion to require TWU to provide financial assurance. Accordingly, 16 TAC § 24.11(e)(5) does not apply to this proceeding.⁶

² See *Application of Texas Water Utilities, L.P. and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*, Docket No. 54171, Texas Water Utilities, L.P.'s Request for Good Cause Exception and Brief in Response to Order No. 19 at 10–11 (Nov. 3, 2023).

³ TWC § 13.301(b).

⁴ TWC § 13.301(c); 16 TAC § 24.239(f).

⁵ 16 TAC § 24.11(a) (emphasis added).

⁶ See generally, *Application of Texas Water Utilities, L.P. and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*, Docket No. 54171, Proposed Interim Order - Approving Sale and Transfer to Proceed (Jan. 5, 2024); *Application of Texas Water Utilities, L.P. and Woodland Oaks Utility L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights and for a Name Change to Certificates of Convenience and Necessity in Montgomery County*, Docket No. 54546, Order No. 12 - Approving Sale and Transfer to Proceed (Jul. 19, 2023).

Further, Commission Staff opined that the requirements of 16 TAC § 24.11(e)(5) do not apply to this proceeding, and TWU agrees.⁷ 16 TAC § 24.11(e)(5) references a substantial addition to a CCN *requiring* capital improvements in excess of \$100,000. This language is reinforced in subparagraph (A), which references improvements *necessary to provide continuous and adequate service* to the existing customers.⁸ The phrase “capital improvements in excess of \$100,000” only modifies “substantial addition to its current CCN area.”⁹ A substantial addition to existing CCN area can include certificated area that includes an existing system that will be transferred under TWC § 13.301, such as the case here. Therefore, the term “capital improvements” can apply to repairs, replacements, or upgrades for an existing system. When read with subparagraph (A), the term applies narrowly to capital improvements to the existing system that will be acquired through an STM because the required loan documentation is limited to funds available for capital improvements necessary to serve existing customers.

Therefore, the capital improvements referenced in 16 TAC § 24.11(e) must be required in that they are necessary to provide continuous and adequate service, *i.e.*, service that meets minimum requirements established by the TCEQ. A definition of “continuous and adequate service” is not provided in the Texas Water Code or the Commission’s rules. Absent a definition, it is reasonable to look to other regulatory standards as a benchmark for what constitutes “continuous and adequate service” as it relates to the question of what capital improvements are necessary. One set of readily available benchmarks is the TCEQ rules applicable to public water systems.¹⁰ These regulations address issues ranging from the proper design of a system and related facilities; to the capacity of a system as it compares to system demand; to minimum disinfectant residuals for the distribution system. The TCEQ rules should be well known to anyone seeking to own and operate a utility. If a utility cannot meet these requirements, then the utility is arguably not providing continuous and adequate service. As

⁷ Commission Staff’s Amended Final Recommendation on the Transaction, Memorandum of James Harville, Infrastructure Division (“There are no improvements necessary to provide continuous and adequate service to the requested area therefore a capital improvements plan is not necessary.”); Memorandum of Fred Bednarski III, Rate Regulation Division (“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).”) (Feb. 15, 2024).

⁸ 16 TAC § 24.11(e)(5)(A).

⁹ 16 TAC § 24.11(e)(5).

¹⁰ *See generally*, 30 TAC Chapter 290, Subchapter D.

such, relying on these rules as the standard for what constitutes required capital improvements in excess of \$100,000 and capital improvements necessary to provide continuous and adequate service to existing customers results in a rule that is both easy to understand and straightforward to apply.

Here, even if the Commission had directed TWU to provide financial assurance, which it did not, 16 TAC § 24.11(e)(5) is not applicable because TWU is not proposing a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000. There are no capital improvements to the system to be transferred that are required or necessary to meet the TCEQ's minimum requirements for a public water system. The estimated capital expenditures provided with TWU's application are for anticipated improvements and are based on preliminary estimates. TWU could forego these improvements and still be able to provide continuous and adequate service in the near-term post acquisition.

Despite the foregoing, TWU's confidential attachments filed with the Application provided evidence of the line of credit available to TWU through its parent company, Southwest Water Company.¹¹ A line of credit is a defined amount of money made available by a financial institution that can be accessed as needed and repaid immediately or over a period of time. In other words, a line of credit is a loan that provides the borrower with flexibility as opposed to a more traditional loan for a lump sum that is to be paid back by a date certain.

There is nothing in the plain language of 16 TAC § 24.11(e) to indicate that evidence of a line of credit, including the amount of credit currently available, does not constitute "loan approval documents indicating funds are available" Accordingly, TWU has already submitted loan documentation in accordance with 16 TAC § 24.11(e)(5)(A). If the ALJ or Commission disagrees with the conclusion that a line of credit constitutes loan documentation under 16 TAC § 24.11(e)(5)(A), TWU requests a good cause exception to allow the use of a line of credit to satisfy the requirements of 16 TAC § 24.11(e)(5)(A).

¹¹ Confidential Application Attachments 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 (Jul. 31, 2023).

III. CONCLUSION

TWU respectfully submits this supplemental information and requests the entry of an order approving the transaction to proceed and be consummated, as proposed. Additionally, Applicants request any further relief to which they have shown themselves entitled.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS WATER
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CERTIFICATE OF SERVICE

I hereby 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 March 4, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Taylor P. Denison
Taylor P. Denison

**Attachment 1
is CONFIDENTIAL
and being filed under seal**