



## **Filing Receipt**

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**Item Number - 43**

**DOCKET NO. 55304**

<b>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</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED**

Texas Water Utilities, L.P. (TWU) and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (Hornsby Bend) (collectively, Applicants), together with Public Utility Commission of Texas (Commission) Staff and the Office of Public Utility Counsel (OPUC) (collectively, the Parties), file this Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed. In support thereof, the Parties 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 §§ 13.301 and 13.3011 and 16 Texas Administrative Code (TAC) § 24.239.

On January 4, 2024, the administrative law judge (ALJ) filed Order No. 7, abating the proceeding pending a Commission order addressing the threshold issues relating to a request for initial rates under TWC § 13.3011 in connection with a transaction between affiliates. On February 9, 2024, TWU withdrew its request for initial rates, and the Parties filed a Joint Motion to Unabate and Proposed Procedural Schedule. On February 16, 2024, the ALJ issued Order No. 9, unabating the proceeding and requesting supplemental information.

Applicants filed supplemental information responsive to Order No. 9 on March 4, 5, and 14, 2024, and Staff recommended that it be found sufficient. In Order No. 10 filed on March 25, 2024, the ALJ established April 10, 2024, as the deadline for the Parties to file a Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Allowing the Transaction to Proceed. Therefore, this pleading is timely filed.

## II. JOINT MOTION TO ADMIT EVIDENCE

The Parties move to admit the following evidence into the record of this proceeding:

- a. The Application of Hornsby Bend and TWU, including the confidential attachments, filed on July 31, 2023 (Interchange Item Nos. 1 and 2);
- b. TWU's revised mapping, filed on August 28, 2023 (Interchange Item No. 6);
- c. TWU's Response to Commission Staff's First Request for Information, including all attachments, filed on September 7, 2023 (Interchange Item No. 10);
- d. Commission Staff's Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule, filed on October 3, 2023 (Interchange Item No. 11);
- e. TWU's Proof of Notice and Confidential Mailing List, filed on November 9, 2023 (Interchange Item Nos. 15 and 16);
- f. Commission Staff's Recommendation on Notice and Proposed Procedural Schedule, filed on November 20, 2023 (Interchange Item No. 19);
- g. OPUC's Motion to Abate, filed on December 15, 2023 (Interchange Item No. 23);
- h. Commission Staff's Final Recommendation on the Transaction, including the confidential attachment, filed on December 19, 2023 (Interchange Item Nos. 24 and 25);
- i. TWU's Withdrawal of Request for Initial Rates, filed on February 9, 2024 (Interchange Item No. 33);
- j. the Joint Motion to Unabate and Proposed Procedural Schedule, filed on February 9, 2024 (Interchange Item No. 34);
- k. Commission Staff's Amended Final Recommendation on the Transaction, including all attachments, filed on February 15, 2024 (Interchange Item Nos. 35 and 36);
- l. TWU's Response to Order No. 9, including all confidential portions, filed on March 4 and 5, 2024 (Interchange Item Nos. 38 and 39);
- m. TWU's Supplemental Response to Order No. 9, filed on March 14, 2024 (Interchange Item No. 40); and
- n. Commission Staff's Recommendation on the Capital Improvement Plan in Response to Order No. 9, filed on March 22, 2024 (Interchange Item No. 41).

### **III. JOINT PROPOSED ORDER**

The attached Joint Proposed Order Approving the Sale and Transfer to Proceed would approve the transaction between the Applicants and allow it to proceed as proposed.

### **IV. CAPITAL IMPROVEMENT PLAN AND LOAN DOCUMENTATION**

The Parties note that Order No. 10 does not opine on the sufficiency of the capital improvement plan filed on March 5, 2024 in response to Order No. 9. TWU and Commission Staff assert that a capital improvement plan is not required for this application but provided the requested information in the event the ALJ or the Commission disagrees. TWU also continues to assert that financial assurance is not required under 16 TAC § 24.11(e)(5) and incorporates the arguments made in its response to Order No. 9 by reference.<sup>1</sup> In the alternative, TWU asserts that the line of credit available to it through its parent company, Southwest Water Company, constitutes a loan sufficient to satisfy 16 TAC § 24.11(e)(5)(A). Evidence of this line of credit was provided with the application as a confidential attachment. In the event the ALJ or the Commission disagrees, TWU renews its motion for good cause exception to allow TWU to rely on its line of credit as loan documentation for the purposes of 16 TAC § 24.11(e)(5)(A).

### **V. CONCLUSION**

The Parties respectfully request that the Commission grant the Joint Motion to Admit Evidence and adopt the attached Joint Proposed Order Approving the Sale and Transfer to Proceed.

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<sup>1</sup> Texas Water Utilities, L.P.'s Response to Order No. 9 at 2–4 (Mar. 4, 2024).

Respectfully submitted,

SPENCER FANE, LLP  
816 Congress Avenue  
Suite 1200  
Austin, Texas 78701  
Telephone: (512) 840-4550  
Facsimile: (512) 840-4551

William A. Faulk, III  
State Bar No. 24075674  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
Taylor P. Denison  
State Bar No. 24116344  
[tdenison@spencerfane.com](mailto:tdenison@spencerfane.com)

  
Eleanor D'Ambrosio  
Eleanor D'Ambrosio  
State Bar No. 24097559  
[edambrosio@spencerfane.com](mailto:edambrosio@spencerfane.com)

**ATTORNEYS FOR TEXAS WATER  
UTILITIES, L.P.**

Courtney K. Hjaltman  
Chief Executive & Public Counsel  
State Bar No. 24070294

/s/ Kourtnee Jinks

Kourtnee Jinks  
Assistant Public Counsel  
State Bar No. 24097146  
Justin Swearingen  
Senior Assistant Public Counsel  
State Bar No. 24096794  
Chris Ekoh  
Deputy Public Counsel  
State Bar No. 06507015  
1701 N. Congress Avenue, Suite 9-180  
P.O. Box 12397  
Austin, Texas 78711-12397  
512-936-7500 (Telephone)  
512-936-7525 (Facsimile)  
[kourtnee.jinks@opuc.texas.gov](mailto:kourtnee.jinks@opuc.texas.gov) (Service)  
[opuc\\_eservice@opuc.texas.gov](mailto:opuc_eservice@opuc.texas.gov) (Service)

**ATTORNEYS FOR THE OFFICE OF PUBLIC  
UTILITY COUNSEL**

**PUBLIC UTILITY COMMISSION OF TEXAS**

**LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

Jena Able  
Deputy Division Director

/s/ Markel Perkins

Markel Perkins  
State Bar No. 24126428  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7099  
(512) 936-7268 (facsimile)  
[Markel.Perkins@puc.texas.gov](mailto:Markel.Perkins@puc.texas.gov)

**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 10, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

Eleanor D' Ambrosio  
Eleanor D' Ambrosio

**DOCKET NO. 55304**

<b>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</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (Hornsby Bend) and Texas Water Utilities, L.P. (TWU) for the sale, transfer, or merger of facilities and certificate rights in Travis County. The applicants seek approval of the transfer of all of Hornsby Bend's facilities and certificated service area under water certificate of convenience and necessity (CCN) number 11978 and sewer CCN number 20650 to TWU's water CCN number 12983 and sewer CCN number 20899, respectively; to cancel Hornsby Bend's water CCN number 11978 and sewer CCN number 20650; to amend TWU's water CCN number 12983 to include the facilities and service area previously included in Hornsby Bend's water CCN number 11978; and to amend TWU's sewer CCN number 20899 to include the facilities and service area previously included in Hornsby Bend's sewer CCN number 20650. The administrative law judge (ALJ) approves the transaction between TWU and Hornsby Bend and authorizes the transaction to be completed as proposed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. TWU is a limited partnership registered with the Texas secretary of state under file number 800034797.
2. TWU holds water CCN number 12983 which obligates it to provide retail water service in its certificated service area in multiple counties, including Travis County.
3. TWU holds sewer CCN number 20899 which obligates it to provide retail sewer service in its certificated service area in multiple counties, including Travis County.
4. SWWC Utilities is a Delaware corporation registered with the Texas secretary of state under filing number 800832416.



5. SWWC Utilities is registered to do business as Hornsby Bend Utility Company, Inc. with the Texas secretary of state.
6. Hornsby Bend holds water CCN number 11978 which obligates it to provide retail water service in its certificated service area in Travis County.
7. Hornsby Bend holds sewer CCN number 20650 which obligates it to provide retail sewer service in its certificated service area in Travis County.
8. Hornsby Bend owns and operates a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) as Austin's Colony, identification number 2270255.
9. Hornsby Bend owns and operates a wastewater treatment plant (WWTP) permitted by the TCEQ as Austin's Colony, discharge permit number WQ0013138001.
10. SWWC Utilities and TWU are both wholly owned subsidiaries of SouthWest Water Company.

**Application**

11. On July 31, 2023, the applicants filed the application at issue in this proceeding.
12. On August 28, 2023, the applicants supplemented the application with revised mapping.
13. In the application, as supplemented, the applicants seek approval for the following:
  - a. the transfer of all of Hornsby Bend's facilities and certificated service area under water CCN number 11978 and sewer CCN number 20650 to TWU's water CCN number 12983 and sewer CCN number 20899, respectively;
  - b. the cancellation of Hornsby Bend's water CCN number 11978 and sewer CCN number 20650;
  - c. the amendment of TWU's water CCN number 12983 to include the facilities and service area previously included in Hornsby Bend's water CCN number 11978; and
  - d. the amendment of TWU's sewer CCN number 20899 to include the facilities and service area previously included in Hornsby Bend's sewer CCN number 20650.
14. The requested water service area includes approximately 5,629.4 acres and 3,340 current customers.

15. The total requested sewer service area includes approximately 14,442.1 acres and 3,767 current customers.
16. The requested water area and the requested sewer area 1 is located approximately eight (8) miles east of downtown Austin, Texas, and is generally abounded on the north by Decker Lake Road, on the east by Caldwell Lane, on the south by the Colorado River, and on the west by Farm to Market 973.
17. The requested sewer area 2 is located approximately one (1) mile east of downtown Manor, Texas, and is generally bounded on the north by Littig Road, on the east by Hibbs Road, on the south by Blake Manor Road, and on the west by Farm to Market Road 973.
18. In Order No. 3 filed on October 9, 2023, the ALJ found the application administratively complete.

**Notice**

19. On November 9, 2023, the applicants filed the affidavit of Brian D. Bahr, Director of Rates and Regulatory Affairs for TWU, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on November 3, 2023.
20. On November 9, 2023, the applicants filed the affidavit of Mr. Bahr attesting that notice was provided to all owners of tracts of land of 25 acres or more that are wholly or partially located in the requested area on November 3, 2023.
21. In Order No. 5 filed on November 21, 2023, the ALJ found notice sufficient.

**Intervenors**

22. In Order No. 6 filed on December 12, 2023, the ALJ granted the motion to intervene of the Office of Public Utility Counsel.

**Evidentiary Record**

23. In Order No. \_\_ filed on April \_\_, 2024, the ALJ admitted the following evidence into the record:
  - a. The application of Hornsby Bend and TWU, including the confidential attachments, filed on July 31, 2023;
  - b. TWU's revised mapping, filed on August 28, 2023;

- c. TWU's response to Commission Staff's first request for information, including all attachments, filed on September 7, 2023;
- d. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on October 3, 2023;
- e. TWU's proof of notice and confidential mailing list, filed on November 9, 2023;
- f. Commission Staff's recommendation on notice and proposed procedural schedule, filed on November 20, 2023;
- g. OPUC's motion to abate, filed on December 15, 2023;
- h. Commission Staff's final recommendation on the transaction, including the confidential attachment, filed on December 19, 2023;
- i. TWU's withdrawal of request for initial rates, filed on February 9, 2024;
- j. the joint motion to unabate and proposed procedural schedule, filed on February 9, 2024;
- k. Commission Staff's amended final recommendation on the transaction, including all attachments, filed on February 15, 2024;
- l. TWU's response to Order No. 9, including all confidential portions, filed on March 4 and 5, 2024;
- m. TWU's supplemental response to Order No. 9, filed on March 14, 2024; and
- n. Commission Staff's recommendation on the capital improvement plan in response to Order No. 9, filed on March 22, 2024.

**TWU's Compliance History**

24. TWU has been subject to enforcement actions by the Commission, TCEQ in the past five years for non-compliance with rules, orders, or state statutes.
25. TWU has resolved, or is in the process of resolving, the compliance issues related to the open TCEQ enforcement actions listed in the application.
26. TWU does not have a history of continuing mismanagement or misuse of revenues as a utility provider.
27. The Commission's complaint records, which date back five years, show 132 complaints against TWU with eight open complaints.
28. The complaints have been evaluated by the Commission's Consumer Protection Division.

29. TWU demonstrated a compliance history that is adequate for approval of the proposed transaction to proceed.

**Adequacy of Existing Service**

30. There are currently 3,340 water and 3,767 sewer customer connections in the requested area that are being served by Hornsby Bend and such service has been continuous and adequate.
31. The last TCEQ compliance investigation of the Austin's Colony PWS was on March 8, 2023.
32. The last TCEQ compliance investigation of the Austin's Colony WWTP was on March 30, 2021.
33. SWWC Utilities has one pending violation listed in the TCEQ database for the Austin's Colony PWS and the Austin's Colony WWTP and is in the process of resolving both violations.
34. The Commission's complaint records, which date back five years, show 36 complaints against SWWC Utilities, which have been reviewed and closed by the Consumer Protection Division.
35. There is no evidence in the record that Hornsby Bend has failed to comply with any Commission or TCEQ order.
36. No capital improvements are necessary for TWU to continue providing continuous and adequate service to the requested area.

**Need for Additional Service**

37. There are 3,340 existing water customers and 3,767 existing sewer customers in the requested area that are receiving service from Hornsby Bend and have an ongoing need for service.
38. This application is to transfer only existing facilities, customers, and service area.
39. There is no evidence in the record indicating a need for additional service.

**Effect of Approving the Transaction and Granting the Amendment**

40. All retail public utilities in the proximate area were provided notice of the application and none filed a protest or motion to intervene.

41. There is no evidence that approval of the transaction will have any adverse effect on any other retail public utility providing service in the proximate area.
42. Hornsby Bend and TWU are the only utilities affected by this transfer.
43. There will be no adverse effect on landowners in the requested area because the requested area is currently certificated.
44. Approving the sale and transaction to proceed and granting the CCN amendments will obligate TWU to provide continuous and adequate water and sewer service to current and future customers in the requested area.

**Ability to Serve: Managerial and Technical**

45. TWU owns and operates numerous public water systems in Texas registered with the TCEQ and serves approximately 35,500 retail water connections and 6,900 retail sewer connections.
46. TWU has TCEQ-licensed operators who will be responsible for the operation of the public water system and wastewater treatment plant being transferred.
47. TWU has the managerial and technical capability to provide continuous and adequate service to the requested area.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

48. It is not feasible for an adjacent utility to provide service to the requested area because Hornsby Bend's existing facilities possess sufficient capacity to provide continuous and adequate service.
49. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.
50. Utilities within a two-mile radius were noticed and no protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility in this docket.

**Regionalization or Consolidation**

51. The construction of physically separate systems is not necessary for TWU to serve the requested area; therefore, it is not necessary to consider regionalization or consolidation.

**Ability to Serve: Financial Ability and Stability**

52. TWU's affiliate, SouthWest Water Company, is capable, available, and willing to cover temporary cash shortages and has a debt-service ratio of greater than 1.25, satisfying the leverage test.
53. TWU projects no net operations and maintenance shortages.
54. Through SouthWest Water Company, TWU has sufficient cash available to cover any projected operations and maintenance shortages should they occur during the first five years after the completion of the proposed transfer, satisfying the operations test.
55. TWU has demonstrated the financial capability and stability to provide continuous and adequate water service.

**Financial Assurance**

56. There is no need to require TWU to provide a bond or other financial assurance to ensure continuous and adequate service.

**Environmental Integrity and Effect on the Land**

57. The proposed transaction will not adversely affect the environmental integrity of the land as the requested area will continue to be served with existing facilities.

**Improvement of Service or Lowering Costs to Consumers**

58. TWU will continue to provide water and sewer service to Hornsby Bend's existing customers in the requested area.
59. The rates charged to customers will not change as a result of the transaction.

**Initial Rates**

60. TWU, as an entity, is entitled to request approval to charge initial rates and service charges that are shown in the water tariff issued to TWU at the time the application was filed.
61. As filed, TWU's application included a request to charge initial rates shown in a water tariff issued to TWU at the time the application was filed.
62. On February 9, 2024, TWU withdrew its request to charge initial rates and OPUC withdrew its hearing request.

63. The rates charged to customers of the transferred water and sewer system will not change as a result of the proposed transaction because TWU will adopt the rates currently in effect in the tariff for the acquired water system and sewer system upon final approval of the application.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The applicants are affiliates under Texas Water Code (TWC) § 13.002(2) and 16 Texas Administrative Code (TAC) § 24.3(3).
2. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239(e).
3. After consideration of the factors in TWC § 13.246(c), TWU demonstrated that it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.
4. TWU demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
5. The applicants demonstrated that the transfer of Hornsby Bend's facilities and certificated service area under water CCN number 11978 and sewer CCN number 20650 to TWU, the cancellation of Hornsby Bend's water CCN number 11978 and sewer CCN number 20650, and the amendment of TWU's water CCN number 12983 and sewer CCN number 20899 will serve the public interest and are necessary for the service, accommodation, convenience, and safety of the public, as required TWC §§ 13.246(b) and 13.301(d) and (e).

## **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The transaction between the applicants in this proceeding is approved and may be completed.

2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period, or an extension is not granted, this approval is void and the applicants must reapply for approval.
5. The applicants are advised that the facilities and service area will remain under water CCN number 11978 and sewer CCN number 20650, and will be held by Hornsby Bend until the final order or notice of approval is issued in this matter, in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was completed.
7. Within 15 days following the filing of the applicants' proof that the transaction has been completed and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the \_\_\_\_\_ day of April, 2024.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**CHRISTINA DENMARK**  
**ADMINISTRATIVE LAW JUDGE**