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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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**ORDER NO. 13
APPROVING SALE AND TRANSACTION TO PROCEED**

This Order addresses the application of Texas Water Utilities, L.P. and SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. for approval of the sale, transfer, or merger of facilities and certificate rights in Travis County. The applicants seek approval of the following: (1) the sale and transfer of all of all facilities and service areas held under Hornsby Bend’s certificate of convenience and necessity (CCN) numbers 11978 and 20650 to Texas Water Utilities; (2) the amendment of Texas Water Utilities’ CCN numbers 12983 and 20899 to include the facilities and service areas previously held by Hornsby Bend under CCN numbers 11978 and 20650; and (3) the cancellation of Hornsby Bend’s CCN numbers 11978 and 20650. The Commission approves the transaction between Texas Water Utilities and Hornsby Bend and authorizes it to be completed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Texas Water Utilities is a Texas limited partnership registered with the Texas secretary of state under file number 800034797.
2. Texas Water Utilities holds CCN number 12983 which obligates it to provide retail water service in its certificated service area in multiple counties, including Travis County.
3. Texas Water Utilities holds 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 CCN number 11978 which obligates it to provide retail water service in its certificated service area in Travis County.
7. Hornsby Bend holds CCN number 20650 which obligates it to provide retail sewer service in its certificated service area in Travis County.
8. Hornsby Bend owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) as Austin's Colony, under identification number 2270255.
9. Hornsby Bend owns a sewer system permitted by the TCEQ as Austin's Colony, under Texas Pollutant Discharge Elimination System permit number WQ0013138001.
10. SWWC Utilities and Texas Water Utilities are both wholly owned subsidiaries of SouthWest Water Company, a Delaware corporation registered with the Texas secretary of state under filing number 800099536.

Application

11. On July 31, 2023, Texas Water Utilities and Hornsby Bend filed the application at issue in this proceeding. In the application, Texas Water Utilities requested approval of initial rates under Texas Water Code (TWC) § 13.3011.
12. On August 28, 2023, Texas Water Utilities supplemented the application with revised mapping.
13. In the application, as supplemented, the applicants seek approval of the following:
 - a. the transfer of all of Hornsby Bend's facilities and certificated service areas under CCN numbers 11978 and 20650 to Texas Water Utilities;
 - b. the amendment of Texas Water Utilities' CCN numbers 12983 and 20899 to include the facilities and service areas previously included in Hornsby Bend's CCN numbers 11978 and 20650; and

- c. the cancellation of Hornsby Bend's CCN numbers 11978 and 20650.
14. The total requested water service area is comprised of approximately approximately 5,629.4 acres and 3,340 current customers.
15. The requested water service area is located approximately eight miles east of downtown Austin, Texas, and is generally bounded 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 Road 973.
16. The total requested sewer service areas is comprised of approximately 14,442.1 acres and 3,767 current customers.
17. The requested sewer service area is comprised of two areas:
 - a. Requested sewer service area one is comprised of approximately 10,483.5 acres and 3,767 customer connections and is located approximately eight miles east of downtown Austin, Texas, and is generally bounded on the north by Braker Lane; on the east by Caldwell Lane; on the south by the Colorado River; and on the west by Farm-to-Market Road 973.
 - b. Requested sewer service area two is comprised of approximately 3,958.6 acres and zero customer connections and is located approximately one 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 administrative law judge (ALJ) found the application, as supplemented, administratively complete.
19. On February 9, 2024, Texas Water Utilities withdrew its request for initial rates under TWC § 13.3011.

Notice

20. On November 9, 2023, Texas Water Utilities filed the affidavit of Brian D. Bahr, director of rates and regulatory affairs for Texas Water Utilities, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on November 3, 2023.

21. On November 9, 2023, Texas Water Utilities 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 areas on November 3, 2023.
22. In Order No. 5 filed on November 21, 2023, the ALJ found notice sufficient.

Intervenor

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

Evidentiary Record

24. In Order No. 11 filed on April 19, 2024, the ALJ admitted the following evidence into the record:
 - a. The application of Hornsby Bend and Texas Water Utilities, including the confidential attachments, filed on July 31, 2023;
 - b. Texas Water Utilities' revised mapping filed on August 28, 2023;
 - c. Texas Water Utilities' 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. Texas Water Utilities' 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. Texas Water Utilities' withdrawal of request for initial rates filed on February 9, 2024;

- j. 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. Texas Water Utilities' response to Order No. 9, including all confidential portions, filed on March 4 and 5, 2024;
- m. Texas Water Utilities' 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.

Texas Water Utilities' Compliance History

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

Adequacy of Existing Service

- 31. There are currently 3,340 water and 3,767 sewer customer connections in the requested areas that are being served by Hornsby Bend.

32. The last TCEQ compliance investigation of the Austin's Colony public water system was on March 8, 2023.
33. The last TCEQ compliance investigation of the Austin's Colony sewer system was on March 30, 2021.
34. Hornsby Bend has two pending violation listed in the TCEQ database for the Austin's Colony public water system and the Austin's Colony sewer system and is working with the TCEQ to resolve the violations.
35. The Commission's complaint records, which date back five years, show 36 complaints against Hornsby Bend. The complaints have been reviewed and closed by the Commission's Consumer Protection Division.
36. There is no evidence in the record that Hornsby Bend has failed to comply with any Commission or TCEQ order.
37. No capital improvements are necessary for Texas Water Utilities to continue providing continuous and adequate service to the requested areas.

Need for Additional Service

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

Effect of Approving the Transaction and Granting the Amendment

41. Texas Water Utilities will be the certificated entity for the requested areas and be required to provide continuous and adequate service to current and future customers in the requested areas.
42. There will be no adverse effect on landowners in the requested areas because the areas are currently certificated and served by Hornsby Bend.

43. All retail public utilities in the proximate areas were provided notice of the application and none filed a protest or motion to intervene.
44. There will be no effect on any retail public utility providing service in the proximate areas.

Ability to Serve: Managerial and Technical

45. Texas Water Utilities owns and operates numerous public water systems in Texas registered with the TCEQ and numerous sewer systems in Texas permitted with the TCEQ.
46. Texas Water Utilities employs or contracts with TCEQ-licensed operators who will be responsible for the operation of the public water system and sewer system being transferred.
47. Texas Water Utilities has the managerial and technical capability to provide continuous and adequate service to the requested areas.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

48. Hornsby Bend is currently serving customers in the requested areas.
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. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

51. It will not be necessary for Texas Water Utilities to construct a physically separate public water system or sewer system to serve the requested areas.
52. Because the requested areas will not require construction of a physically separate public water system or sewer system, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Financial Ability and Stability

53. Texas Water Utilities' 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. Therefore, Texas Water Utilities satisfies the leverage test.

54. SouthWest Water Company provided a written guarantee of coverage of temporary cash shortages and demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages during the first five years after the completion of the proposed transfer. Therefore, Texas Water Utilities satisfies the operations test.
55. Texas Water Utilities has demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate water and sewer service to the requested areas.

Financial Assurance

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

Environmental Integrity and Effect on the Land

57. There will be no effect on environmental integrity or the land as a result of the transaction as the requested areas will continue to be served by existing facilities.

Improvement of Service or Lowering Costs to Consumers

58. Texas Water Utilities will continue to provide water and sewer service to Hornsby Bend's existing customers in the requested areas.
59. The current rates charged to existing customers will not change as a result of the proposed transaction because Texas Water Utilities will adopt the rates currently in effect in the tariffs 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. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239(e).
2. After consideration of the factors in TWC § 13.246(c), Texas Water Utilities demonstrated that it is capable of rendering continuous and adequate service to every customer in the requested areas, as required by TWC §§ 13.241(a) and 13.301(b).

3. Texas Water Utilities demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested areas as required by TWC §§ 13.241(a) and 13.301(b).
4. Hornsby Bend and Texas Water Utilities have demonstrated that the sale and transfer of Hornsby Bend's facilities and certificated service areas under CCN numbers 11978 and 20650 to Texas Water Utilities will serve the public interest and are necessary for the service, accommodation, convenience, or safety of the public under 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 Hornsby Bend and Texas Water Utilities 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, Hornsby Bend and Texas Water Utilities must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. Hornsby Bend and Texas Water Utilities 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 Hornsby Bend and Texas Water Utilities must reapply for approval.
5. CCN numbers 11978 and 20650, and associated facilities and service areas, will continue to 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 on the 7th day of May 2024.

PUBLIC UTILITY COMMISSION OF TEXAS



**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**