



## **Filing Receipt**

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## 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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**TEXAS WATER UTILITIES, L.P.'S OBJECTIONS TO COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION**

Texas Water Utilities, L.P. (TWU) objects to Request for Information (RFI) No. Staff 1-1 because it seeks information that is not relevant to this proceeding and not required under applicable Public Utility Commission of Texas (Commission) rules.<sup>1</sup> TWU has negotiated diligently and in good faith with Commission Staff as required by 16 Texas Administrative Code (TAC) § 22.144(d), but negotiations have been unsuccessful. The discovery request at issue was filed and served after 3:00 p.m. on August 21, 2023 and is treated as if filed on August 22, 2023.<sup>2</sup> Therefore, this objection is timely filed on or before September 1, 2023, under 16 TAC § 22.144(d).

**I. APPLICABLE LAW**

**A. Relevance**

The Commission's procedural rules permit parties to obtain discovery regarding any matter that is relevant to the subject matter of a proceeding and is not privileged or exempted under the rules of evidence or civil procedure.<sup>3</sup> Under Texas Rule of Evidence 401, "evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." As detailed below, the application form for a sale, transfer, or merger (STM) requires the provision of a capital improvement plan

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<sup>1</sup> 16 TAC § 22.144(a); Tex. R. Evid. § 401.

<sup>2</sup> 16 TAC § 22.144(b)(2).

<sup>3</sup> 16 TAC § 22.141(a).

(CIP) only in specific circumstances and for the purpose of demonstrating specific facts. Because those circumstances are not present in this case, a CIP does not constitute evidence of facts that are of consequence in determining whether the proposed transaction between TWU and SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc. (Hornsby Bend) should be approved. Thus, RFI No. Staff 1-1 does not seek information that is relevant to this proceeding.

**B. Capital Improvement Plan—Texas Water Code (TWC) § 13.244(d)(3) and 16 TAC § 24.133(a)(6)**

Under TWC § 13.244(d)(3) an application for an amendment to a certificate of convenience and necessity must include “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.” The corresponding Commission rules requires a CIP “[i]f the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the requested area.”<sup>4</sup> The CIP provided must include a budget and timeline for construction of facilities “necessary to provide full service to the requested area.”<sup>5</sup>

Notwithstanding these requirements, 16 TAC § 24.233(a) clearly states that the application materials listed are required “unless otherwise specified in the application form[.]” The application form for an STM addresses when a CIP must be provided. More specifically, Part C-10 of the STM application requires projected financial information if the transferee is proposing new service connections and new investment in plant, or if requested by Commission Staff, and lists a CIP as one four acceptable forms for documenting the required projections.<sup>6</sup>

## II. OBJECTION

TWU objects to RFI No. 1-1 for two reasons: (1) the request is not made for a purpose that is consistent with the STM form application; and (2) the request is seeking information regarding “proposed” improvements in addition to required improvements. Specifically, the RFI states in part:

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<sup>4</sup> 16 TAC § 24.233(a)(6).

<sup>5</sup> *Id.*

<sup>6</sup> Application for Sale, Transfer, or Merger of a Retail Public Utility at 6, available at: [https://www.puc.texas.gov/industry/water/forms/stm\\_form.pdf](https://www.puc.texas.gov/industry/water/forms/stm_form.pdf).

Under TWC § 13.244(d)(3) and 16 TAC § 24.233(a)(6), if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the requested area, a capital improvement plan is required.

Please provide the following information with consideration of the responses to Question(s) 12.A, 20, and 24.A and B on the application:

- a) If there are no proposed or required improvements, upgrades, or additional facilities necessary to provide continuous and adequate service to the requested area, please affirmatively state so; otherwise, provide the following...

Although Staff's RFI cites to TWC § 13.244(d)(3) and 16 TAC § 24.133(a)(6) as the basis for the request, a CIP falls under the exception set forth in 16 TAC § 24.133(a) because the STM application directly addresses when a CIP is required. Accordingly, the STM application controls. TWU is not proposing new service connections in the requested area and RFI No. Staff 1-1 does not indicate that the request is for the purpose of reviewing TWU's projected financial information. Therefore, the information requested is not required by the STM application, and by extension, not relevant to the review of the proposed transaction.

Assuming *arguendo* that TWC § 13.244(d)(3) and 16 TAC § 24.133(a)(6) are applicable to this case, RFI No. Staff 1-1 is still irrelevant to the extent it requests information about proposed, rather than required, capital improvements. The question references TWU's responses to Questions 12A, 20, and 24A of the application. Questions 12A and 24A address improvements or construction required to meet TCEQ minimum requirements or Commission standards.<sup>7</sup> Question 20 addresses how the proposed transfer will serve the public interest.<sup>8</sup>

As stated in the application, there are no capital improvements that are required to meet TCEQ or Commission requirements. Moreover, the capital improvements referenced in the response to Question 20 are not needed or required to ensure that TWU can provide continuous and adequate service to the CCN area transferred from Hornsby Bend. In other words, the infrastructure necessary to provide full service to the requested area is already in place and no repairs or improvements are needed to provide continuous and adequate service in the near term, post transfer. Consequently, a request for a CIP that includes proposed capital improvements is

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<sup>7</sup> *Id.* at 6, 9.

<sup>8</sup> *Id.* at 8.

irrelevant because it will not adduce facts that are of consequence in determining whether the proposed transaction should be approved.

### III. CONCLUSION

For the reasons discussed above, TWU respectfully requests the entry of an Order sustaining the objections to RFI No. Staff 1-1. Additionally, TWU requests any further relief to which it have shown itself 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 September 1, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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