

Louisiana Public Service Commission

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April 6, 2022

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2022 APR 14 PM 1:22
LA PUBLIC SERVICE
COMMISSION

Re: Docket No. S-35995, Magnolia Water Utility Operating Company, LLC and Total Environmental Solutions, Inc., ex parte In re: Request for Letter of Non-Opposition to the Transfer of All or Substantially All of the Assets of Certain Water and Wastewater Systems Owned by Total Environmental Solutions, Inc. to Magnolia Water Utility Operating Company, LLC.

Dear Mr. Ezell and Ms. Kantrow:

This letter is response to your petition (the "Request") submitted on behalf of Magnolia Water Utility Operating Company, LLC ("Magnolia" or the "Company") and received by the Louisiana Public Service Commission ("LPSC" or the "Commission") on June 8, 2021, requesting Commission's non-opposition to the transfer of certain system assets.

Company's Request

On May 13, 2021, Magnolia Water Utility Operating Company, LLC (“Magnolia” or the “Company”) filed an application requesting that the Louisiana Public Service Commission (“LPSC” or the “Commission”) issue a letter of non-opposition to its acquisition of Six (6) wastewater systems operated by Total Environmental Solutions, Inc. (“TESI”) (the “Request”). Notice of the Request was published in the Commission’s Official Bulletin, dated May 28, 2021. The 15-day intervention period expired without intervention. On June 8, 2021 TESI joined the proceeding as a co-petitioner. Notice of the proceeding was republished for informational purposes only in the Commission’s Official Bulletin, Dated June 11, 2021. On August 16, 2021, Magnolia and TESI made a filing modifying the Request to no longer include just six specific wastewater systems but to include all of the assets of certain water and wastewater systems owned and operated by TESI. Notice of the Request was published in the Commission’s Official Bulletin, Dated August 20, 2021. The 15-day intervention period expired without intervention.

TESI, a Louisiana Corporation with its principal office at 1824 Ryder Drive, Baton Rouge, LA 70808, is an LPSC-regulated utility that provides water and/or wastewater service to approximately 17,786 residential customers and 529 commercial customers in the parishes of Acadiana, Ascension, Assumption, Calcasieu, Iberia, Iberville, Lafayette, Lafourche, Livingston, Pointe Coupee, St. Martin, St. Landry, St. Mary, St. Tammany, Terrebonne and Vermillion

Magnolia is a Louisiana Limited Liability Company, whose principal office is located at 500 Northwest Plaza Drive, Suite 500, St. Ann, Missouri, 63704.¹ Magnolia is a fully-owned subsidiary of Central States Water Resources (“CSWR”), which is a Missouri for-profit Corporation. Magnolia received authority from the Com to operate as a utility providing water and wastewater services in Docket Nos. S-35197 and S-35198 on August 5, 2019.

Magnolia is proposing to buy and TESI is proposing to sell, all, or substantially all, of TESI’s franchises, works, operations, systems, land and related improvements, easements, rights-of-way, permits, leases, service facilities, equipment, machinery, lines, plant, pipes, manholes and

¹ Louisiana Secretary of State filings indicate that the current primary domicile and mailing address of the Company is located at 10761 Perkins Road, Suite A, Baton Rouge, LA 70810, which is associated with the Company’s counsel.

appurtenances, supplies, and other assets currently used to provide regulated water and wastewater services in Louisiana, as outlined in the Purchase and Sale Agreement.

In support of its application, the Company submitted the following documents:

- A chart showing the companies in the affiliate group attached to the petition;
- Responses to the eighteen points in accordance with the March 18, 1994 General Order;
- A copy of the Purchase and Sale Agreement;
- A chart showing the individual systems being purchased; and
- Responses to formal and informal data requests.
- A copy of the Modified Consent Decree.

Commission Authority

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Sec. 21 of the Louisiana Constitution.

La. Const. Art. IV, Sec. 21 provides in pertinent part:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to this authority, the Commission issued its March 18, 1994 General Order, as amended ("1994 General Order"), which requires utilities to respond to the eighteen (18) points. The 1994 General Order provides in pertinent part:

No utility or common carrier subject to the jurisdiction of the Louisiana Public Service Commission shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, nor merge or combine with another person, corporation, partnership, limited liability company,

utility, common carrier, subsidiary, affiliated company or any other entity, or divide into two or more utilities or common carriers, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest, asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intendment and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Louisiana Public Service Commission. This section is intended to apply to any transfer of the ownership and/or control of public utilities and common carriers regardless of the means used to accomplish that transfer.

In determining whether to approve any such transfer of ownership or control the Commission shall take into account the following factors[.]

Staff Review

Magnolia provided Staff with its responses to the eighteen (18) points, summarized as follows:

- Magnolia is committed to operating and upgrading the assets of this utility in a prudent and fiscally responsible manner and to the highest possible level of customer service and satisfaction.
- Magnolia is committed to providing safe, reliable, dependable, and adequate service to its utility customers in Louisiana.
- Magnolia will be in a position to improve the financial condition of the utility following the proposed transfer.
- Magnolia believes that TESI customers will receive equivalent or better service if Magnolia owns and operates the facilities.
- The transfer of TESI assets will not have a negative effect on any local competition.
- The transfer of TESI assets will be fair and reasonable to the affected public utility's employees and owners.
- The transfer of the TESI assets will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.
- Improvements and repairs will be performed after the acquisition. Magnolia believes it has the professional expertise and necessary access to capital to complete all future repairs and improvements.

Staff reviewed the filings, including accompanying exhibits and formal and informal data requests. Staff also contacted other utility regulatory commissions in states where Magnolia's parent company operates to determine the previous actions and due diligence of CSWR. Staff has determined that it primarily concurs with the Company's assessment of the eighteen (18) points that submitted to Staff. Staff agrees that the acquisition of TESI by Magnolia is in the public interest as it will relieve a current and willing seller of duty to operate the utility assets and provide a significant investment in physical plants to bring the utility into compliance with Louisiana Department of Health ("LDH") and Louisiana Department of Environmental Quality ("LDEQ") regulations.

TESI is currently under a Consent Decree filed by the Environmental Protection Agency ("EPA") on September 30, 2016 (the "Consent Decree"). Magnolia has stated that a significant amount of work will be required to bring the TESI systems into compliance. Although a complete engineering evaluation has not been completed, Magnolia has already identified approximately \$3,800,000 in improvements to be made.

LDEQ has indicated that TESI has 196 permitted facilities in the LDEQ system. Of those 196 facilities, 175 facilities are still covered under the Consent Decree. In addition, LDEQ indicated that there are two open compliance orders for Rebecca Plantation and for Grand Marnier. LDH has indicated that TESI has ongoing compliance issues ranging from lack of fencing, lack of secondary pumps, raw sewerage discharges, inoperable equipment, etc. with several wastewater assets. LDH has also indicated that several of TESI's water assets have issues regarding the level of arsenic, barium, chlorine and total haloacetic acids being found. One of these systems, Atchafalaya Acres, includes two water wells that contain high levels of arsenic. In response, TESI and LDH reached an agreement whereby TESI would donate the Atchafalaya Acres system to the separate and non-LPSC regulated Henderson Nina Water System ("Henderson Nina"). Henderson Nina is in the process of building out lines to serve those customers and for the current owners (TESI) to transfer the ownership of the lines to Henderson Nina.

On March 23, 2022, TESI filed notice with the Commission indicating that the Atchafalaya Acres system was donated to Henderson Nina. On March 24, Magnolia filed notice into the record indicating that the Atchafalaya Acres system was removed from the Purchase and Sale Agreement between TESI and Magnolia.

Staff reviewed the purchase price included in the Purchase and Sale Agreement between Magnolia and TESI. Magnolia indicated the purchase price was based on net book value of the existing assets, and the value of existing property and servitudes necessary for utility operation. Magnolia also indicated that there would be transactional costs associated with the purchase that included legal fees, closing costs, and organization expenses. Staff is not taking a stance on rate base in this docket, but does note that the transaction price being based on net book value plus value of property and servitudes is in line with the valuation techniques used in previously allowed acquisitions by Magnolia.

Staff Analysis of the 18 Points

Staff generally agrees with Magnolia's responses to the 18 points, as summarized below:

- Staff finds that the transfer is in the public interest.
- Staff finds that because Magnolia has the necessary access to capital, the Company will be able to make necessary system improvements to achieve compliance that would otherwise not be possible under the present ownership.
- Staff finds that Magnolia has expertise in managing troubled systems that will ultimately improve the quality of service customers of the system receive.
- Staff finds that Magnolia's intent to hire a qualified and experienced third-party contractor to manage and operate the system will benefit the customers of TESI.

Staff Recommendation

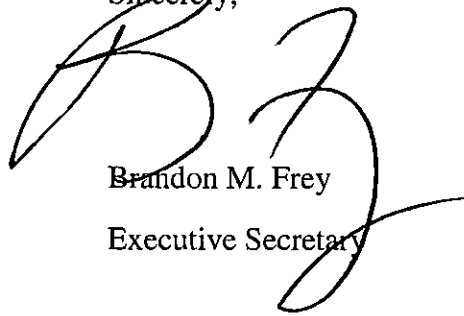
Based on Staff's review of the application, the accompanying financials, LDH and LDEQ system reports, the responses to the eighteen (18) points in accordance with Commission General Order dated March 18, 1994, the responses to Staff's formal and informal data requests, additional research into the activities of the parent company and industry trends regarding valuation, Staff believes that the transfer of TESI to Magnolia is in the best interest of the ratepayers. Accordingly, Staff issues this Letter of Non-Opposition granting Magnolia the right to acquire the assets of TESI contingent upon the fulfillment of following conditions:

1. Magnolia shall file a copy of all signed agreements and accounting journal entries used to record the transfer of system assets into the record of this Docket within thirty (30) days of closing.
2. Should the asset purchase agreement be modified in any way prior to closing, the newly revised agreement shall be filed into the record of this proceeding no later than five (5) business days before closing.
3. Within sixty (60) days of issuance of this Commission letter of non-opposition, Magnolia shall file into the record of this proceeding proof of change in ownership and operating permit filed with and approved by the LDEQ, LDH, or both.
4. Within sixty (60) days of issuance of this Commission letter of non-opposition, Magnolia shall file into the record of this proceeding proof that Magnolia has added the TESI water and/or wastewater system to a current letter of credit as required by LDEQ.

5. If the transfer does not take place within sixty (60) days of the issuance of the Letter of Non-Opposition, the Company be required to file a letter into the record of this Docket explaining why.
6. The Company shall file an updated Tariff into the record of this Docket, with an additional copy served upon the Utilities Division, indicating new ownership of the system assets within thirty (30) days of closing.
7. TESI will provide Magnolia with all financial information, customer lists, and any other information pertaining to the TESI wastewater system at the closing of the transaction.
8. The transfer shall not cause the interruption of wastewater services to the affected customers, and those customers will continue to be billed under the current tariff, with no adjustments in rates until the period specified in Docket No. U-35822.
9. Within ten (10) days of an approval of this transfer by Staff, Magnolia shall submit to Staff for approval a draft of the notice to be sent to customers regarding the new ownership of the system. The approved notice shall be included as an insert during the first billing cycle after closing.
10. Magnolia will make the appropriate accounting entries to record the entire acquisition cost as original cost for ratemaking purposes.
11. TESI shall ensure at the time of closing that TESI's I&S fees are current and shall file a copy of TESI's monthly income statement from January 2021 through the date of closing and a copy of the check being sent to the Louisiana Department of Revenues for the relevant amount.
12. Magnolia shall file reports into Docket No. X-36311, beginning sixty (60) days after this approval and semi-annually thereafter, updating Staff regarding the progress of capital improvements to the TESI systems as well as its compliance with the Modified Consent Decree. These reports shall also include a narrative regarding the system operators, including the qualifications of those operators.
13. Within thirty (30) days of closing, TESI will file notice, into this docket, surrendering authority to operate water and wastewater systems in the state of Louisiana.
14. This approval is made without prejudice to the authority of the Commission to make investigations and require and reasonably necessary change that the Commission may legally find to be in the public interest.

Should you have any questions, please feel free to contact my office at (225) 342-4999.

Sincerely,

A handwritten signature in black ink, appearing to read 'BF', is written over the typed name and title.

Brandon M. Frey

Executive Secretary

**Service List for S-35995
as of 4/14/2022**

Commissioner(s)

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