

# LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. S-35579

**WATER TREATMENT & CONTROLS COMPANY  
D/B/A PEOPLES WATER SERVICE COMPANY  
AND PEOPLES OF BASTROP, LLC,  
EX PARTE**

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***Docket No. S-35579, In re: Request for Letter of Non-Opposition and/or Approval to Transfer and Sell Water Utility System, Incur Indebtedness, Grant Security Interest, and Amend LPSC Order No. U-34690.***

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(Decided at the May 19, 2021 Business and Executive Session.)

## **Overview**

On June 23, 2020, Water Treatment & Controls Company d/b/a Peoples Water Service Company of Bastrop (“WTCC”) and Peoples of Bastrop, LLC (“POB”) (collectively, the “Companies”) jointly filed a request (“Request”) pursuant to the Louisiana Public Service Commission’s (“Commission’s”) General Order dated November 13, 1996 (“1996 General Order”) and General Order dated March 18, 1994 (“1994 General Order”). The Request sought the Commission’s non-opposition to WTCC selling its water utility system and related assets to POB. The Companies’ Request also sought the Commission’s non-opposition to POB incurring bond indebtedness to finance the purchase of WTCC’s water utility system and encumbering the transferred assets with a mortgage or security interest to secure the bond indebtedness. The Request was published in the Commission’s Official Bulletin No. 1222 on June 26, 2020, for a twenty-five-day intervention period. No interventions were received during or subsequent to this intervention period.

On March 30, 2021, the Companies filed a Supplemental and Amending Request (“Supplemental and Amending Request”) to address changed circumstances which occurred as a result of the Louisiana Department of Health’s (“LDH’s”) Drinking Water Advisory Notice for Manganese (“Advisory Notice”) issued to WTCC on December 18, 2020. Among other amendments to their initial Request, the Companies requested the Commission’s non-opposition to POB incurring an increased par amount of bond indebtedness of \$10,635,000 to finance capital improvements to resolve the manganese issue indicated in the Advisory Notice. The Companies also requested to amend the Commission’s Order No. U-34690 dated November 5, 2018, to authorize WTCC to implement at the time of closing a portion of the Phase Two rate increase approved by the Commission in that Order and to require a twenty-day, prior notice of the proposed rate increase to customers. Notice of the Supplemental and Amending Request was published in the Commission’s Official Bulletins Nos. 1242 and 1243 on April 1, 2021, and April 16, 2021, respectively, for fifteen-day intervention periods. No interventions were received during or subsequent to these intervention periods.

On January 14, 2021, Staff issued its initial findings and conclusions in the Staff Report and Recommendation filed into the record of this proceeding. On May 5, 2021, Staff issued further findings and conclusions in the Amended Staff Report and Recommendation filed into the record of this proceeding. On May 5, 2021, the Companies filed a Joint Response of Applicants to

Amended Staff Report and Recommendation, in which the Companies stated their agreement with the Amended Staff Report and Recommendation.

POB proposed to buy and WTCC proposed to sell WTCC's physical plant; regulatory authorizations; and right, title, and interest in related immovable property currently used to provide regulated water service in WTCC's service territory, as outlined in the Utility Asset Purchase and Sale Agreement and its two addenda (collectively, "Sale Agreement") negotiated by the Companies. The agreed-upon purchase price was for a sum of \$8,568,000, which valuation was determined by the Companies on a per-customer basis taking into account asset maintenance, the service record, and the lack of a franchise agreement. Under POB's proposal, POB's purchase of the WTCC system was to be facilitated through the issuance of taxable water revenue bonds approved by the Louisiana State Bond Commission and a security interest was to be placed on revenues from the assets to secure the bond indebtedness. POB planned to issue thirty-year, fixed-rate bonds using the Louisiana Community Development Authority as a conduit, with the bonds requiring a rate covenant based upon a debt service coverage ratio ("DSCR") of approximately 1.25 to 1.33.

#### **Commission Jurisdiction and Authority**

The Commission exercises jurisdiction over public utilities in Louisiana, including WTCC and POB, pursuant to Article IV, Section 21(B) of the Louisiana Constitution, which states the following:

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 its constitutional authority, the Commission promulgated the 1996 General Order, which provides in pertinent part the following:

No public utility shall issue any security or assume any obligation or liability as guarantor, endorser, surety or otherwise in respect of any security of any other public utility, or of any person, until it has been authorized to do so by Order of this Commission.

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The Commission shall not approve any issue or assumption of any security, obligation or liability, unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the Commission finds that the issue or assumption is for some lawful object within the corporate purposes of the public utility, it is necessary or appropriate for or consistent with the performance by the public utility of its service to the public and will not impair its ability to perform that service, and it is consistent with the public interest and the best interest of ratepayers.

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This General Order does not modify in any manner the General Order issued by this Commission dated 3/18/94 related to



Commission approval of sales, leases, etc. Any security issuance that requires a utility to “sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber” the property or assets of the utility must be approved by the Commission under the standards set forth in the 3/18/94 General Order as well.

The approval of the Commission required under this Order does not apply unless the value of the transaction exceeds ten percent of the gross assets of the public utility or \$1,000,000, whichever is lower.

In accordance with its constitutional authority, the Commission also promulgated the 1994 General Order, which provides in pertinent part the following:

No utility or common carrier subject to the jurisdiction of the Louisiana Public Service Commission shall sell,...transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system,...nor transfer control or ownership of any assets...of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated company or any other entity...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 intent 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.

The Commission’s 1994 General Order sets forth eighteen factors which the Commission shall take into account in determining whether to approve a transaction coming within the General Order’s scope.

### **Staff Review**

Staff conducted a thorough review of the Companies’ Request, Supplemental and Amending Request, all supporting documentation, and responses to Staff’s formal and informal data requests. Staff generally agreed with POB’s responses to the eighteen-factor analysis required by the 1994 General Order. Nevertheless, Staff raised concerns related to POB’s proposed 100% debt capital structure and the associated risk to be borne fully by ratepayers. Bearing these concerns in mind, Staff worked with POB to form an agreement that, if the Commission granted the Companies’ Supplemental and Amending Request, a significant majority of earnings in excess of the actual debt service would be required to be reinvested for future improvements of the system.

Based upon its review, Staff found that the proposed transfer of WTCC’s assets to POB was in the public interest. Additionally, Staff found that the proposed bond financing and related mortgage were for a lawful object within POB’s corporate purposes, were necessary and appropriate for and consistent with POB’s performance of its service to the public, would not impair POB’s ability to perform that service, and were consistent with the public interest and the best interest of ratepayers. Finally, Staff found the requested amendments to the Commission’s Order No. U-34690 dated November 5, 2018, in the public interest. The requested amendments proposed authorizing WTCC to implement at the time of the sale’s closing a portion of the Phase

Two rate increase approved by the Commission in that Order for recovery of certain capital improvement costs and proposed requiring a twenty-day, prior notice of the rate increase to customers.

**Commission Consideration**

This matter was considered at the Commission's May 19, 2021 Business and Executive Session. On motion of Commissioner Campbell, seconded by Chairman Greene, and unanimously adopted, the Commission voted to accept Staff's Amended Report and Recommendation filed into the record on May 5, 2021.

**THEREFORE, IT IS ORDERED:**

That the Commission grants the Companies' Supplemental and Amending Request; amends Ordering Paragraphs Nos. 3, 4, and 5 of the Commission's Order No. U-34690 dated November 5, 2018, to authorize implementation of a partial rate increase and to require a twenty-day, prior notice of the rate increase to customers; and expresses its non-opposition to the proposed sale of WTCC's utility assets to POB for the sum of \$8,568,000, POB's issuance of bond indebtedness in the amount of \$10,635,000 to finance the sale, and the establishment of a security interest on revenues from POB's utility assets to secure POB's bond indebtedness, subject to all of the following conditions:

1. To the extent not already provided, the Companies shall file into the record of this proceeding a copy of the signed and executed Sale Agreement, outlining final terms and conditions, as well as any related instruments and documentation within thirty (30) days of the closing date. Such related documentation shall include accounting journal entries used to record the transfer of WTCC's system assets.
2. If the Sale Agreement is modified in any way prior to the closing, the Companies shall file a copy of the modified Sale Agreement into the record of this proceeding no later than five (5) days after the date on which the modification was agreed.
3. To the extent not already provided, WTCC shall provide POB with all necessary financial and engineering data, customer lists, and any other relevant information pertaining to the WTCC water system at the closing of the sale.
4. If the closing of the sale does not take place within sixty (60) days of the issuance of this Order and/or if a copy of the signed and executed sale documents is not filed within sixty (60) days of the issuance of this Order, the Companies shall file a status update on the closing of the sale into the record of this proceeding on or before sixty (60) days from the issuance of this Order.
5. WTCC shall file proof of payment to the Louisiana Department of Revenue of all owed inspection and supervision fees up to the closing date within thirty (30) days of the closing date as well as a calculation of all costs and supporting documentation.
6. Within sixty (60) days of the issuance of this Order, POB shall file into the record of this proceeding proof of the change in ownership of WTCC's assets filed with and approved by the Louisiana Secretary of State's office.



7. Within sixty (60) days of the issuance of this Order, POB shall file into the record of this proceeding proof of all necessary operating permits filed with and granted by LDH.
8. For ratemaking purposes only, POB shall be granted the right to issue bonds in an amount up to \$10,635,000 for a maturity of no more than thirty (30) years with an interest rate not to exceed six and a quarter percent (6.25%).
9. By this Order, the Commission makes no determination on the reasonableness of the actual interest rates of POB's bond issuances.
10. If POB shall not have issued and sold any bonds within forty-five (45) days of the issuance of this Order, POB shall file into the record of this proceeding correspondence explaining why no bonds have been issued and sold.
11. Within fifteen (15) days of each sale of bonds issued by POB, POB shall file into the record of this proceeding copies of all bond notes, including all covenants and associated security interest agreements. In a cover letter accompanying each such filing, POB shall indicate the interest rate applicable to the bonds sold.
12. The transfer of WTCC's assets to POB shall not cause the interruption of water services to any affected customers.
13. Effective upon the closing date, POB shall be authorized to increase its water rates to \$22.80 for the first 2,000 gallons for residential, commercial, and industrial customers under the default rate schedule and to \$4.23 per each additional 1,000 gallons for residential, commercial, and industrial customers under both default and optional rate schedules. POB shall also be authorized to make clerical amendments to its tariff consistent with this Order. Otherwise, POB shall bill customers for water service under the same rates and terms and conditions as are in WTCC's current tariff, with no other adjustment in rates without the Commission's approval in a rate review proceeding.
14. POB shall notify Staff when its capital improvements to comply with LDH's Water Advisory have been completed and shall, at the same time, provide Staff with a detailed, post-construction report, including supporting documentation, regarding its capital improvements to comply with LDH's Water Advisory.
15. WTCC shall send a letter or bill insert to all affected customers at least twenty (20) days before implementation of the rate increase authorized by this Order. Such letter or bill insert shall notify all affected customers of both the new ownership of the system and the implementation of the rate increase authorized by this Order. Within five (5) days of the issuance of this Order, WTCC shall submit to Staff for review and approval a draft of the letter or bill insert. Such letter or bill insert shall be sent only after Staff has reviewed and approved the same.
16. Within sixty (60) days of the issuance of this Order, POB shall submit an updated and revised tariff and terms and conditions of service to the Commission's Utilities Division. The tariff shall reflect the change in ownership of WTCC's water system, shall list all subdivisions and other discrete groups of residential and commercial customers served by POB, shall reflect all authorized rates, and shall include all necessary clerical amendments consistent with this Order and no other clerical amendments. Within ten (10) days of the Utilities Division's acceptance of POB's tariff

and terms and conditions of service, POB shall file a copy of its accepted tariff and terms and conditions of service into the record of this proceeding.

17. POB shall submit to a full base rate proceeding before the Commission following the 2022 test year or one (1) year after the capital improvements authorized for recovery by this Order are in use and useful, whichever is sooner. POB's filing for the full base rate proceeding shall be made no later than sixty (60) days after the expiration of the test year period. In the full base rate proceeding, the establishment of any fair and allowable return on equity, the rate of return, the capital structure based on POB's assets, and the rate-setting methodology and tariff based on POB's known operating expenses shall be at the Commission's discretion. Furthermore, following a prudence review of capital improvements and/or *pro forma* adjustments and a review of purchase prices and values of existing plant assets, the Commission shall determine the final value of POB's rate base. The Commission specifically reserves its right to review POB's current rate structure in this full base rate review, including, but not limited to, the use of a DSCR methodology to determine POB's revenue requirement, based upon the mutual understanding between Staff and POB that a significant portion of revenues in excess of the actual debt service coverage will be subject to reinvestment in utility plant and not subject to withdrawals as profit.
18. The Commission specifically reserves its right to review POB's rate structure in any future rate proceedings.
19. Within thirty (30) days of the closure of this docket, WTCC shall submit to the Commission a request to cancel its authority to operate as a jurisdictional water utility in the State of Louisiana, together with all necessary documentation attached thereto.
20. The Commission specifically reserves its right to rescind its non-opposition if any of the conditions of this Order are not satisfied. All future requests by POB for rate increases shall be contingent upon adherence to this Order, including its conditions. If the Companies fail to comply with this Order, including its conditions, the revenue gained from the rate increase authorized by this Order shall be subject to refund with legal interest and/or the Companies may be cited for non-compliance with Commission regulations.
21. No precedential weight shall be attributed to this Order.

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22. The Commission expresses its non-opposition without prejudice to the Commission's authority to make any investigation and require any reasonably necessary change that the Commission may legally find to be in the public interest.

**This Order is effective immediately.**

**BY ORDER OF THE COMMISSION**  
**BATON ROUGE, LOUISIANA**  
May 21, 2021



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

**BRANDON M. FREY**  
**SECRETARY**

A handwritten signature in blue ink, appearing to read "Craig Greene".  
**DISTRICT II**  
**CHAIRMAN CRAIG GREENE**A handwritten signature in blue ink, appearing to read "Eric F. Skrmetta".  
**DISTRICT I**  
**VICE CHAIRMAN ERIC F. SKRMETTA**A handwritten signature in blue ink, appearing to read "Foster L. Campbell".  
**DISTRICT V**  
**COMMISSIONER FOSTER L. CAMPBELL**A handwritten signature in blue ink, appearing to read "Lambert C. Boissiere, III".  
**DISTRICT III**  
**COMMISSIONER LAMBERT C. BOISSIERE, III**A handwritten signature in blue ink, appearing to read "Mike Francis".  
**DISTRICT IV**  
**COMMISSIONER MIKE FRANCIS**