



November 24, 2020

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LA Public Service Commission

Mr. Brandon Frey
Executive Secretary
Louisiana Public Service Commission
602 North Street
Galvez Building, 12th Floor
Baton Rouge, LA 70802

Re: Magnolia Water Utility Operating Company, LLC
Petition for Letter of Non-Opposition to Transfer of
Water and Wastewater System Assets to Serve the
Square 175 Subdivision

Dear Mr. Frey:

Please find enclosed an original and three copies of Magnolia Water Utility Operating Company, LLC's Petition for Non-Opposition to Transfer of Water and Wastewater System Assets by Developer, with Exhibits (the "Application"), relating to the acquisition of water and wastewater system assets from Black Oak Holdings, LLC that will serve the Square 175 Subdivision development in St. Tammany Parish. As indicated in the Application, this will be a newly-constructed system. Upon completion, Magnolia proposes to provide service to future customers pursuant to standard rates and fees as currently on file with the Commission.

After review and approval of this filing, please see that a docket is opened and that notice is placed in the Official Bulletin to issue on November 27, 2020. Further, we ask that you exercise the discretion provided in Rule 19 and shorten the period to protest this application from twenty-five (25) to fifteen (15) days.

If you have any questions concerning this filing, please notify me.

Sincerely,

Ezell Law Firm, LLC

Andrew B. Ezell

CC: Jaclyn Penzo, Esq.
Theron Levy, Esq.
Mr. Thomas Broady

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DEPT. <u>Bull 65 dup</u>	DATE <u>11/24</u>	DEPT. _____
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F20-58115

7/21/20

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**MAGNOLIA WATER UTILITY
OPERATING COMPANY, LLC, EX PARTE**

DOCKET NO.

In re: Request for Letter of Non-Opposition to Transfer of Water and Wastewater Utility System Assets (Square 175 Subdivision) by Developer to Magnolia Water Utility Operating Company, LLC

**PETITION FOR LETTER OF NON-OPPOSITION TO THE SALE AND TRANSFER OF
THE ASSETS OF A WATER AND WASTEWATER
UTILITY SYSTEM (SQUARE 175 SUBDIVISION) TO BE REGULATED BY
THE LOUISIANA PUBLIC SERVICE COMMISSION**

SELLER: Black Oak Holdings, LLC

BUYER: Magnolia Water Utility Operating Company, LLC

In accordance with the March 18, 1994, *General Order* regarding approval of sales and other changes in ownership or control of public utilities subject to Louisiana Public Service Commission ("Commission") jurisdiction, Magnolia Water Utility Operating Company, LLC ("Magnolia") seeks an order of approval or non-opposition from the Commission to the sale and transfer and assignment by Black Oak Holdings, LLC (hereafter "Seller" or "Black Oak"), of all or substantially all of the assets and property comprising a wastewater utility system for the purpose of providing regulated water and wastewater service to customers in St. Tammany Parish, Louisiana (the "System").

Magnolia is a Louisiana limited liability company, in good standing, formed to acquire the assets of water and wastewater utilities in Louisiana and to own and operate those assets as public utilities subject to the Commission's regulatory jurisdiction. Magnolia currently serves approximately 18,700 sewer connections and approximately 9,810 water connections in regulated systems in parishes throughout Louisiana. Magnolia is part of an affiliate group that includes Central States Water Resources, Inc. ("Central States"), a Missouri corporation in good standing, CSWR, LLC ("CSWR"), a Missouri limited liability company in good standing, and several other companies, some of which currently operate small water or wastewater utilities in Missouri, Arkansas, Kentucky, and Louisiana. A chart showing the companies in the affiliate group is attached hereto as **Exhibit A**. The significance of those affiliate relationships to the proposed transaction is discussed in greater detail below. The principal address of Central States and CSWR is 1650 Des Peres Road, Suite 303, St. Louis, MO 63131. The principal address of Magnolia is 10761 Perkins Road, Suite A, Baton Rouge, LA 70810. All notices and other official documents related to the application should be sent to the attention of Andrew B. Ezell, c/o Ezell Law Firm, LLC, 10761 Perkins Road, Suite A, Baton Rouge, Louisiana 70810, or at the following email address: aezell@ezellfirm.com. Copies also should be sent to Josiah Cox, President, Mike Duncan, Assistant Vice President, and Russ Mitten, General Counsel, at the address shown in the preceding

sentence or at the following email addresses: jcox@cswrgroup.com; mduncan@cswrgroup.com; rmitten@cswrgroup.com .

Seller is currently developing infrastructure for the purpose of providing regulated water and wastewater service to no more than fifteen (15) residential customers in the Square 175 Subdivision (“Square 175”) in St. Tammany Parish. Construction of the System has begun and is expected to be completed in 2021. Black Oak is a Louisiana limited liability company, in good standing, with its principal office address at 2000 Preserve Lake Road, Suite B, Covington, Louisiana 70433. All notices and other official documents related to the application should be sent to the attention of Mr. Matthew Bowers, 2000 Preserve Lake Road, Suite B, Covington, Louisiana 70433, or at the following email address: rpower@developmentwithcore.com.

The Seller proposes to sell, transfer and assign to Magnolia all of its franchises, works, operations, systems, land and related improvements, easements, rights-of-way, permits, leases, service facilities, equipment, machinery, lines, plant, pipes, manholes and appurtenances, supplies, and other assets to be used to provide regulated water and wastewater services to the System. Magnolia and Seller have executed a developer agreement (Utility Services Agreement) specifying the terms of the proposed transaction which is attached hereto as **Exhibit B**. In accordance with Rule 12.1 of the Commission’s rules of practice and procedure, **Exhibit B** has been designated “Confidential” because it contains competitively sensitive information.

The proposed transaction is scheduled to close upon completion of construction of the System, Magnolia’s acceptance of the System and receipt of all required regulatory permits and approvals. Upon closing, Magnolia will provide service to customers in accordance with tariff rates and fees approved by the Commission and currently in effect for Magnolia.

The need to comply with increasingly stringent federal and state health and environmental regulations has imposed cost and compliance burdens small water and wastewater utilities are finding difficult, if not impossible, to bear. Difficulty in securing capital necessary to make investments or expenditures for improvements required to bring their systems into full regulatory compliance has forced many such utilities to seek buyers for those systems whose technical, managerial, and financial resources make them better able to bear those burdens. This motivation is especially strong for system owners, particularly developers, whose primary business is not the operation of regulated water or wastewater utilities.

Magnolia is the type of qualified buyer that small system operators and developers seek out to assure that customers receive safe, efficient and reliable wastewater operations and service. Through its relationship with CSWR (which acts as a service company for the group) and other companies within the affiliate group, Magnolia has access to highly skilled technical, managerial, and financial experts and resources not usually available to small water and wastewater companies. Magnolia’s access to CSWR’s personnel provides extensive experience in the technical, managerial, and financial aspects of the utility industry, particularly small systems, and also innovative operational, marketing, and customer service programs that provide high quality advanced services at fair and reasonable rates.

Magnolia is a Commission-authorized operator of water and wastewater systems in Louisiana. Magnolia currently operates numerous water and wastewater systems throughout the state. Though this will be a new system and relatively no material repairs or improvements will be required, most of the systems Magnolia has previously acquired, if not all, have experienced some degree of operational neglect, with several recording numerous, and oftentimes ongoing violations of applicable health and environmental regulations. Significant capital improvements have been completed in many of the systems currently operated by Magnolia, and most are operating in full compliance with the rules and regulations of all applicable regulatory authorities. Those systems currently not in compliance are being systematically brought into compliance. Magnolia's systems are currently operated pursuant to agreements with the Louisiana Department of Environmental Quality and the Louisiana Department of Health and Hospitals concerning the timing and methodology required to bring troubled systems into post-acquisition compliance.

As previously noted, consummation of the proposed transfer of assets is contingent upon receipt of Commission approval to the transaction of the System. To secure approval of the transaction, Magnolia provides the following information required by the March 18, 1994, *General Order*.

1. The proposed transfer of assets to Magnolia is in the public interest. Magnolia and its affiliates have the technical, managerial, and financial expertise and experience necessary to own and operate the utility assets it proposes to acquire and ready access to sufficient financial resources to make necessary capital investments and expenditures, if necessary, required to bring the system into compliance with current and future health and environmental regulations. Moreover, Magnolia is committed to providing customers safe, efficient and reliable service at fair and reasonable rates.
2. Magnolia is ready, willing, and able to provide safe, reliable, and adequate service to customers of the system it proposes to acquire and to do so at rates that are fair and reasonable.
3. Magnolia's only business is ownership and operation of small water and wastewater systems. Further, because of its ability to readily access any capital necessary to bring the subject system into compliance with health and environmental regulations and operate the System in a manner consistent with those regulations, Magnolia's acquisition of the System assets will certainly enhance the financial condition of the System.
4. The system assets Magnolia proposes to acquire are or will be newly-constructed pursuant to an LDH/OPH Permit which has been applied for with The Louisiana Department of Health, Office of Public Health ("LDH"). The tracking number for that application is 60001798. Upon issuance of the LDH/OPH permit, a "no objection" letter will be sought from St. Tammany Parish. Magnolia is committed to operate the system in a manner that ensures that customers receive safe, efficient and reliable service and to maintain or improve the system so that overall quality of service to customers meets all regulatory requirements. The System will tie into the existing Monterey Water and Wastewater systems which operate under Louisiana Pollutant Discharge Elimination System ("LPDES") General Permit LA0105554 issued by the Louisiana Department of Environmental Quality. The LPDES Permit has been transferred to Magnolia pursuant to

the acquisition of the Monterey Water and Wastewater systems previously operated by H2O Systems, Inc., and the System will be operated in compliance with effluent limits and monitoring guidelines provided therein. The Parish of St. Tammany has also approved the detailed plans and specifications of the System and the connection of the System to the Monterey Water and Wastewater systems.

5. Authorizing Magnolia to acquire the System will bring both short and long-term benefits for customers. Technical, managerial, and financial resources available from its affiliates will enable Magnolia to quickly identify and remedy any deficiencies in the operation or management of the subject system. Also, because of economies of scale available to Magnolia as an affiliate of CSWR, Magnolia can access and utilize those resources at a lower cost than would otherwise be available to a stand-alone company. As explained below, Magnolia's affiliate group also has access to funds required to make capital investments and expenditures necessary to ensure the System provides safe, efficient and reliable service that complies with all applicable health and environmental regulations.
6. The transaction would not adversely affect competition because Black Oak is not in the business of operating a regulated utility and Magnolia will be the only water and wastewater utility authorized to serve customers within Square 175.
7. As noted elsewhere herein, personnel from Central States and CSWR have far greater technical, managerial, and financial expertise and experience than is available to most small wastewater utilities. These personnel would be actively involved in overseeing Magnolia's day-to-day operations and in assisting Magnolia in planning any system improvements and additions necessary to provide safe, efficient and reliable service. As a result of the involvement of these highly skilled and experienced utility professionals, the quality of service that Magnolia can provide to customers will be greatly improved and enhanced.
8. Magnolia intends to hire a qualified and experienced third-party contractor to manage and operate the System day-to-day. No qualified employees of Black Oak exist nor will they exist in the future. Accordingly, the third-party contractor will not make offers of employment to any of Seller's employees.
9. The Seller is an entity specializing in the development of real property. It is not and does not wish to be in the business of providing regulated water or wastewater services. Thus, the proposed transaction is in the best interest of Seller's shareholders. Further, Magnolia has no other business relationship or family affiliations with the Seller or any person or entity affiliated with Seller. The terms of the transaction satisfy Magnolia and Seller and are the result of fair, arms-length negotiation.
10. The proposed transaction will have an overall positive effect on state and local economies. From a local property tax standpoint, the transfer of assets should have no adverse effect on state or local taxing authorities. If the transaction is approved, only the identity of the taxpayer would change. Overall, the proposed transaction should prove beneficial to the state of Louisiana and the local communities where Square 175 homebuyers will reside.

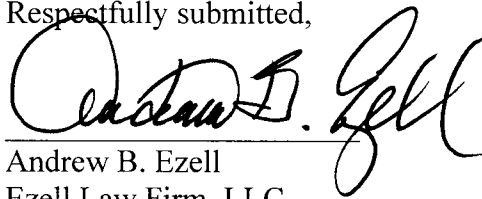
All of those entities have an interest in growing local employment and ensuring that their citizens receive safe, efficient, and reliable wastewater service at fair and reasonable rates. Authorizing Magnolia to acquire Black Oak's water and wastewater system assets will produce that desired result.

11. Magnolia concedes the Commission's authority to regulate its rates and operations in the manner prescribed by Louisiana law. Therefore, the proposed transfer would have no effect on the Commission's jurisdiction over the System.
12. Neither Black Oak nor Magnolia anticipates any adverse consequences to customers or other interested stakeholders if the Commission approves the transaction proposed in the petition. Both parties are committed to ensuring the sale of assets is concluded and operational authority over those assets is transferred in a manner that is as transparent as possible and causes no adverse effects to customers at any time.
13. Magnolia was formed for the purpose of acquiring and operating water and wastewater utilities in Louisiana. It has a good, but limited, track record of regulatory compliance in Louisiana. However, Central States, through its work with other companies within Magnolia's affiliated group, has compiled an enviable record of acquiring severely distressed systems, bringing them into compliance, and then successfully operating those systems in full compliance with health and environmental regulations. Affiliated companies within the group operating in Missouri and Kentucky have a good customer service and operating reputation with utility regulators in that state. Arkansas, the other state where Magnolia's affiliates currently operate, does not regulate rates or operations of small water and wastewater utilities.
14. Through its affiliated group, Magnolia has ready access to capital required to make necessary investments and expenditures in the subject system. CSWR will provide the equity financing necessary to make the proposed asset acquisition. Ongoing capital needs will be financed through debt from providers approved by the Commission on terms and conditions that accurately reflect the current state of this system. Current plans envision a capital structure for Magnolia consisting of fifty percent (50%) equity and fifty percent (50%) debt. CSWR's consolidated income statement and balance sheet for 2019 is attached to the petition as **Exhibit C** and incorporated by reference. In accordance with Rule 12.1 of the Commission's rules of practice and procedure, **Exhibit C** has been designated "Confidential" because it contains competitively sensitive information.
15. Though no major repairs or improvements are required at this time, Magnolia has identified certain investments in system upgrades, improvements, and replacements it plans to make if the Commission approves the transaction. Magnolia will add flow metering and remote monitoring equipment to the wastewater facility to facilitate more timely response and minimize the length and impact of any service-related issue.
16. Magnolia's affiliates always hire a qualified and experienced third-party contractor to manage and operate the subject wastewater system day-to-day and will ensure the contractor's personnel have or obtain all required health, safety, and other permits.

17. Magnolia will invest no equity capital to purchase Black Oak's water and wastewater system assets, as the value of the assets will be treated as a contribution in aid of construction. Consequently, the asset purchase would not encumber the utility's assets in any way. Ongoing capital needs will be financed through debt from providers approved by the Commission on terms and conditions that accurately reflect the current state of this system.

18. The acquisition of assets proposed in the petition is fair and reasonable in all respects. Consequently, the Commission should not impose or attach any conditions to the transaction.

Respectfully submitted,



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