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8-35995

August 4, 2021

**RECEIVED**

**AUG - 4 2021**

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

LA Public Service Commission

Re: Magnolia Water Utility Operating Company, LLC and  
Total Environmental Solutions, Inc., ex parte.  
Joint Petition for Non-Opposition to the Sale or  
Transfer of All or Substantially All of Certain Water  
and Wastewater System Assets Operated by Total  
Environmental Solutions, Inc. to Magnolia Water  
Utility Operating Company, LLC.

Dear Mr. Frey:

Please find enclosed an original and three copies of Magnolia Water Utility Operating Company, LLC and Total Environmental Solutions Inc.'s *Joint Petition for Non-Opposition* to the sale of the water and wastewater system assets currently operated by Total Environmental Solutions, Inc. After review, please see that a docket is opened in connection with this filing and that notice is placed in the Official Bulletin on August 20, 2021. Further, we ask that you exercise your discretion pursuant to Rule 19 of the Commission's Rules and shorten the period to protest this application from twenty-five (25) to fifteen (15) days. Upon filing, we request that the Records Division date stamp and return one copy to our courier.

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

Sincerely,

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Andrew K. Nicolas

Ezell Law Firm, LLC

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AUG - 4 2021

BEFORE THE  
LOUISIANA PUBLIC SERVICE COMMISSION

LA Public Service Commission

MAGNOLIA WATER UTILITY  
OPERATING COMPANY, LLC  
AND TOTAL ENVIRONMENTAL  
SOLUTIONS, INC., EX PARTE

DOCKET NO.

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In re: Request for Letter of Non-Opposition to the Sale or Transfer of All or Substantially All of Certain Water and Wastewater System Assets Operated by Total Environmental Solutions, Inc. to Magnolia Water Utility Operating Company, LLC

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**JOINT PETITION FOR NON-OPPOSITION TO THE TRANSFER OF  
ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF CERTAIN WATER AND  
WASTEWATER SYSTEMS CURRENTLY REGULATED BY  
THE LOUISIANA PUBLIC SERVICE COMMISSION**

NOW BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION (hereinafter referred to as the “Commission” or “LPSC”), through undersigned counsel, come Magnolia Water Utility Operating Company, LLC (hereinafter referred to as “Magnolia” or “Buyer”) and Total Environmental Solutions, Inc. (hereinafter referred to as “TESI” or “Seller”) (and collectively referred to herein as the “Parties”), who respectfully jointly file this “Joint Petition For Non-Opposition to the Transfer of All or Substantially All of the Assets of Certain Water and Wastewater System Assets Operated by Total Environmental Solutions, Inc.<sup>1</sup> to Magnolia Water Utility Operating Company, LLC” (hereinafter referred to as the “Parties’ Request”) pursuant to the Commission’s General Order *In Re: Commission Approval Required of Sales, Leases, Mergers, Consolidations, Stock Transfers, and All Other Changes of Ownership or Control of Public Utilities Subject to Commission Jurisdiction*, issued March 18, 1994 (hereinafter referred to as the “1994 General Order”).

1.

**THE PARTIES**

**SELLER:** Total Environmental Solutions, Inc.

Seller currently provides water and wastewater services 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. TESI is a Louisiana

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<sup>1</sup> Exhibit A lists the system assets, which are the subject of this docket.

corporation, in good standing, whose principal office address is 1824 Ryder Drive, Baton Rouge, LA 70808.

**Seller Notice:**

All notices and other official documents for TESI related to the Parties' Request should be sent to the attention of:

Kara Kantrow  
Marionneaux Kantrow, LLC  
Jefferson Highway, Building C  
Baton Rouge, LA 70809  
[kara@mklawla.com](mailto:kara@mklawla.com)

Mr. Wayne Owens  
P.O. Box 14059  
Baton Rouge, LA 70898-4059  
[wowens@tesi-usa.com](mailto:wowens@tesi-usa.com).

**BUYER: Magnolia Water Utility Operating Company, LLC**

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 23,027 sewer connections and approximately 12,967 water connections in regulated systems in parishes throughout Louisiana. Magnolia is part of an affiliate group that includes Central States Water Resources, Inc. (hereinafter referred to as "**Central States**"), a Missouri corporation in good standing, CSWR, LLC (hereinafter referred to as "**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, Texas, Tennessee, Mississippi,<sup>2</sup> and Louisiana. A chart showing the companies in the affiliate group is attached hereto as **Exhibit B**. 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.

The need to comply with increasingly stringent federal and state health and environmental regulations has imposed cost and compliance burdens small 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

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<sup>2</sup> On June 8, 2021, a Magnolia affiliate received approval from the Mississippi Public Service Commission to acquire and operate forty-four (44) regulated water and wastewater systems in Mississippi. It is anticipated that acquisition of those systems will be completed within sixty (60) days, transferring operational control to the Magnolia affiliate.

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 system operators and developers seek out to assure that customers receive safe, efficient and reliable water and 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.

**Buyer Notice:**

All notices and other official documents for Magnolia related to the Parties' Request should be sent to the attention of:

Andrew B. Ezell,  
Andrew K. Nicolas  
c/o Ezell Law Firm, LLC,  
10761 Perkins Road, Suite A,  
Baton Rouge, Louisiana 70810  
[aezell@ezellfirm.com](mailto:aezell@ezellfirm.com).

Josiah Cox, President  
1650 Des Peres Road, Suite 303,  
St. Louis, MO 63131  
[jcox@cswrgroup.com](mailto:jcox@cswrgroup.com)

Mike Duncan, Assistant Vice President  
1650 Des Peres Road, Suite 303,  
St. Louis, MO 63131  
[mduncan@cswrgroup.com](mailto:mduncan@cswrgroup.com)

Russ Mitten, General Counsel  
1650 Des Peres Road, Suite 303,  
St. Louis, MO 63131  
[rmitten@cswrgroup.com](mailto:rmitten@cswrgroup.com)

2.

**OVERVIEW OF THE PARTIES' REQUEST AND PROPOSED TRANSACTION**

In accordance with the 1994 General Order the Parties are requesting an order of approval or non-opposition from the Commission to transfer and assign all or substantially all of the assets and property operated by TESI, which comprise of two-hundred four (204) Commission regulated

water and/or wastewater utility systems currently providing service to customers in various parishes in south Louisiana (hereinafter referred to as the “**Systems**”). A list of the Systems proposed to be transferred and acquired is attached hereto as **Exhibit A**.

3.

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 used to provide regulated water and wastewater services to the Systems. Magnolia and Seller have entered into a formal Purchase and Sale Agreement (hereinafter referred to as the “**Sale Agreement**”) specifying the terms of the proposed transaction, which is attached hereto as Confidential **Exhibit C** and incorporated herein 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 information regarding strategies employed in contract negotiations and other competitively sensitive information.

4.

The purchase price of the Systems as set out in **Exhibit C** is based on the net book value of the assets plus the appraised value of the Systems’ real property and was agreed upon between Magnolia and TESI through an arms-length negotiation. Magnolia notes that there are no transactional costs in excess of the purchase price associated with the transaction other than usual and customary legal costs and expenses.

5.

The proposed transaction is scheduled to close within forty-five (45) days of the effective date of any required regulatory approval or at such other time as the parties have mutually agreed. The proposed transaction is also contingent upon the approval of the U.S. Environmental Protection Agency and the Louisiana Department of Environmental Quality to substitute Magnolia for TESI as a party in that matter entitled *United States of America and State of Louisiana through the Department of Environmental Quality v. Acadiana Woods Add. #2 Sewer Co., Acadiana Treatment Systems, et al., and Total Environmental Solutions, Inc.*, Civil Action No. 6:98-0687, United States District Court for the Western District of Louisiana as modified by the 2017 “Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI” in that same matter (hereinafter collectively referred to herein as the “**Consent Decree**”). During the period between the date of the Commission’s order and the scheduled closing date, Seller and Magnolia will cooperate to satisfy all remaining closing conditions specified in the Sale Agreement and take other steps necessary to ensure the proposed sale does not adversely affect customers. At closing, Magnolia will adopt and provide service in accordance with tariff rates and fees currently in effect for Seller.

## **COMPLIANCE AND CAPITAL IMPROVEMENTS**

### **Magnolia**

Magnolia is a Commission-authorized operator of water and wastewater systems in Louisiana. Magnolia is compliant with regard to the Commission's Annual Reporting and Inspection and Supervision Fee requirements.

Magnolia currently operates numerous small to mid-size water and wastewater systems throughout the state. Thus far, most of the systems Magnolia has acquired, 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.

### **TESI**

As way of background as it relates to TESI's compliance matters, one hundred and sixty-one (161) of the sewer systems subject to the proposed transfer to Magnolia were originally subject to the Consent Decree. As of the date of the filing of this Joint Petition: (a) sixty-one (61) of these sewer systems have satisfied the requirements mandated by the Consent Decree for removal and have been removed from the Consent Decree; (b) eleven (11) have been approved for removal upon specified conditions; and (c) eighty-nine (89) have not yet been approved for removal from the Consent Decree.

Although TESI's implementation of the mandated Consent Decree remedial actions has generally improved the ability of the TESI sewer systems to comply with their respective Louisiana Pollutant Discharge Elimination System (hereinafter referred to as "LPDES") effluent limits, an appreciable number of sewer systems continue to struggle with LPDES permit compliance, particularly those systems which use treatment lagoons to treat the sewage influent.

Similarly, a number of TESI's twenty-four (24) water systems have struggled to comply with regulatory requirements mandating minimum residual chlorine levels or maximum treatment residuals in the water distribution system, and various other operational and/or water quality related requirements.

**1994 GENERAL ORDER**

As previously noted, consummation of the proposed transfer of assets is contingent upon receipt of Commission approval of the proposed transaction. To secure approval of the proposed transaction, the Parties provide the following information required by the 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 comply 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 water and wastewater systems. Further, because of its ability to readily access any capital necessary to bring the subject systems into compliance with health and environmental regulations and operate the Systems in a manner consistent with those regulations, Magnolia's acquisition of the system assets will certainly enhance the financial condition of the Systems.
4. The Systems Magnolia proposes to acquire have been operational for years. Some repair and rehabilitation work has been performed on some of the Systems; however, some of the Systems are in need of repair and rehabilitation. Prior to submitting a purchase offer, Magnolia conducted sight visits over a one-week period to all of the Systems and developed a good understanding of the condition of the systems, as well as the amount of work that will have to be done to achieve regulatory compliance. Based on that limited due diligence, Magnolia is aware that a sizeable investment of capital will be required to bring the systems into regulatory compliance, as well as continued compliance. A more definitive estimate of the required capital costs will be contained in an engineering report to be submitted pursuant to the discovery process. After the proposed transaction is completed, former TESI ratepayers will enjoy benefits of an improved level of service.
5. Authorizing Magnolia to acquire the Systems 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 Systems. 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 Systems provide safe, efficient and reliable service that complies with all applicable health and environmental regulations.

6. The transaction would not adversely affect competition because Seller is the only water and wastewater utility authorized to serve customers within its service area.
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 Systems day-to-day. Should Seller have any qualified employees, Magnolia will require the third-party contractor to offer employment to any such employees of Seller.
9. The proposed transfer would be fair and reasonable to TESI's sole shareholder. The Parties have agreed to terms for the Systems, conditioned on Commission approval. Further, Magnolia and Seller have no other business relationship or family affiliations. The terms of the transaction satisfy both 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. And overall, the proposed transaction should prove beneficial to the state of Louisiana and the local communities where Seller's customers reside. All of those entities have an interest in ensuring their citizens receive safe, efficient, and reliable wastewater services at fair and reasonable rates. Authorizing Magnolia to acquire Seller's assets would 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 Systems.
12. Neither Seller 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.
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 small to mid-size water and wastewater systems, including many severely distressed systems, bringing them into compliance, then successfully operating those systems in full compliance with health and environmental regulations. Affiliated companies within the group operating in Missouri, Kentucky and Texas have a good customer service and operating reputation with utility regulators in those states. Arkansas, the other state where Magnolia's affiliates currently operate, does not regulate rates or operations of small water and wastewater utilities.<sup>3</sup>

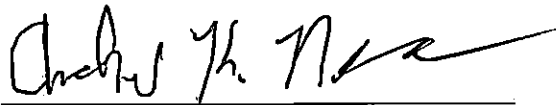
14. Through its affiliated group, Magnolia has ready access to capital required to make necessary investments and expenditures in the Systems. CSWR will provide the equity financing necessary to make the proposed asset acquisition. Ongoing capital needs will be financed through debt from providers approved by the Commission on terms and conditions that accurately reflect the current state of the Systems. Current plans envision a balanced capital structure for Magnolia. CSWR's consolidated income statement and balance sheet for 2020 is attached hereto as **Exhibit D** and incorporated by reference. In accordance with Rule 12.1 of the Commission's Rules of Practice and Procedure, **Exhibit D** has been designated "Confidential" because it contains competitively sensitive information.
15. In addition to the repairs and improvements that are required, Magnolia has identified certain investments in system upgrades, improvements, and replacements that it plans to make if the Commission approves the transaction, including installation of flow metering and remote monitoring equipment to facilitate more timely response and minimize the length and impact of any service-related issue. Though a complete engineering evaluation has not yet been completed, it is currently estimated that the cost of these system upgrades will be approximately \$3,800,000. A more refined projection of the cost of these upgrades will be included in the engineering report to be submitted pursuant to the discovery process.
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, through CSWR, will invest equity capital to purchase Seller's assets. Consequently, the asset purchase would not encumber Magnolia'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 the Systems.
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.

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<sup>3</sup> Due to the relatively recent nature of the Mississippi approval, Magnolia has no relevant information to share regarding the relationship of Magnolia's Mississippi affiliate with the Mississippi Public Service Commission or other regulatory bodies.

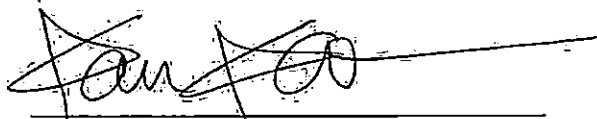
**WHEREFORE**, for the foregoing reasons, the Parties respectfully request that the LPSC act expeditiously to issue a letter of non-opposition to the proposed transaction. In accordance therewith, the Parties respectfully request that the Commission approve the Parties' "Joint Petition For Non-Opposition to the Transfer of All or Substantially All of the Assets of Certain Water and Wastewater System Assets Operated by Total Environmental Solutions, Inc. to Magnolia Water Utility Operating Company, LLC" and that the instant request be published in the Official Bulletin #1252, dated August 20 , 2021, and interested parties be given **fifteen (15) days** to file any notice of intervention and/or protest.

Respectfully submitted,



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*Counsel for Magnolia Water Utility Operating Company, LLC*



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