

Louisiana Public Service Commission



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July 5, 2022

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LOUISIANA PUBLIC SERVICE
COMMISSION

Re: Docket No. S-36351, Magnolia Water Utility Operating Company, LLC, ex parte. In re: Request for a Letter of Non-Opposition to the transfer of system assets of Imperial Landing Subdivision, phases A, B, C and D to Magnolia Water.

Dear Mr. Ezell:

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 May 9, 2022, requesting the Commission's non-opposition to the transfer of certain system assets.

Company's Request

The Request seeks Commission approval to transfer the wastewater system, as well as three (3) extensions, owned by Onshore Materials, LLC ("Seller", "Company", or "Onshore Materials") and to provide regulated service to customers in a residential development known as Imperial Landing Subdivision (the "System"), located in Terrebonne Parish. Notice of this request was

published in the Commission's Official Bulletin No. 1271, Dated May 13, 2022. The 15-day intervention period expired without intervention.

Onshore Materials has developed sewer infrastructure for the purpose of providing regulated wastewater service to approximately thirty-eight (38) residential customers in Phase A of the System, and is developing Phases B, C, and D of Imperial Landing, containing an additional forty (40), thirty-eight (38), and thirty-eight (38) residential connections, respectively. Construction of Phase A of the System was completed in December 2020. Magnolia indicates that subsequent phases will be added every fourteen (14) months. Onshore Materials is a Louisiana Limited Liability Company, in good standing, whose principal office address is 127 Lincoln Ln., Thibodaux, Louisiana 70301. Magnolia is a wholly-owned subsidiary of Central States Water Resources ("CSWR"), which is a Missouri for-profit corporation. Magnolia applied for and was granted authority by the LPSC 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 acquire and the Seller is proposing to transfer all, or substantially all, of its built or newly constructed 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 wastewater service in Louisiana, as outlined in the Agreement for Sale of Utility System. The proposed transfer will involve a nominal payment of funds.

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

- Responses to the eighteen points in accordance with the March 18, 1994 General Order;
- A copy of the Agreement for Sale of Utility System;
- A copy of CSWR's consolidated Income Statement and Balance Sheet for 2020; and

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 Audit 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 customers of the system it proposes to acquire and to do so at fair and reasonable rates.
- Magnolia will be in position to improve the financial condition of the utility following the proposed transfer.
- Magnolia believes that future customers will receive equivalent or better service if Magnolia owns and operates the facilities.
- The transfer of Seller assets will not have a negative effect on any local competition.
- The transfer of Seller assets will be fair and reasonable to the affected public utility's employees and owners.
- Improvements will be performed after acquisition. Magnolia asserts it has the professional expertise and necessary access to capital to complete all future repairs and improvements.
- Magnolia will invest no equity capital to purchase the System. The assets will be treated as a contribution in aid of construction, thus the asset purchase would not encumber Magnolia's assets.
- The transfer of Seller assets will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.

Audit Staff reviewed the filings, including accompanying exhibits, and referred to the responses from one formal data request regarding Docket No. S-35896¹. Docket No. S-35896 involved the transfer of the System, but did not state if, or when, any other phases were to be completed. This request, Docket No. S-36351, only differs in that it includes the addition of the additional Phases B, C, and D and an explanation that Phase A, not Phase C, was completed in December 2020.

During the review, Audit 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. Audit Staff has determined that it primarily concurs with the Company's assessment of the eighteen (18) points as submitted to Staff. Audit Staff agrees that the acquisition of the System by Magnolia is in the public interest as it will relieve a current and willing seller of the duty to operate the utility assets.

¹ The conditional Staff approval was filed into the record on June 18, 2021.

Magnolia has identified certain investments in system upgrades, improvements, and replacements it plans to make if the Commission approves of the transfer. These improvements include adding flow metering and remote monitoring equipment to the wastewater facility to facilitate more timely responses and minimize the length and impact of any service related issues.

Audit Staff Analysis of the 18 Points

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

- Audit Staff finds that the transfer is in the public interest.
- Audit Staff finds that Magnolia has the necessary access to capital to make necessary system investments and improvements as needed in the future.
- Audit Staff finds that Magnolia has both the experience and expertise in successfully managing a significant number of water and wastewater systems, and that experience will ultimately improve the quality of service of the affected ratepayers.
- Staff finds that Magnolia's intent to hire a qualified and experienced third-party contractor to manage and operate the systems will benefit the future customers utilizing the systems.
- This transaction does involve an exchange a minimal amount of funds.
- Audit Staff finds that the transfer will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.

Staff Recommendation

Based on Staff's review of the application, the responses to the eighteen (18) points in accordance with Commission General Order dated March 18, 1994, and the responses to Staff's formal data request in conjunction with Docket No. S-35896, and additional research into the activities of the parent company and industry trends regarding valuation, Staff believes that the transfer of the System from the Seller 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 Magnolia shall file a copy of all signed agreements and accounting journal entries used to

record the transfer of the Seller's system assets into the record of this Docket within thirty (30) days of closing.

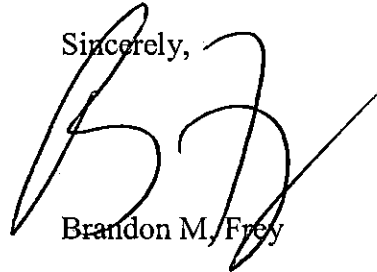
1. Should the Agreement for Sale of Utility System agreement be modified in any way, prior to closing, the newly revised agreement shall be filed into the record of this proceeding no later than five (5) business days before closing.
2. Within sixty (60) days of issuance of this Commission Letter of Non-Opposition, Magnolia shall file into record of this proceeding proof of change in ownership and operating permit(s) filed with and approved LDEQ.
 - a. Upon receiving this proof, Magnolia shall add the Imperial Landing Subdivision to Magnolia's existing tariff.
3. 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 wastewater system to a current letter of credit as required by LDEQ.
4. If the transfer does not take place within sixty (60) days of issuance of the Letter of Non-Opposition, Magnolia shall be required to file a letter into the record of the Docket explaining why.
5. Seller shall provide Magnolia with all financial information, customer lists, and any other information pertaining to the wastewater system at the closing of the transaction.
6. The transfer shall not cause the interruption of wastewater service to the affected future customers.
7. Magnolia shall, in good faith, seek and obtain multiple bids for the performance of work in making all Capital Improvements to the acquired systems, for the purpose of evaluating costs comparatively. The Company shall file into this Docket, proof of its due diligence in obtaining and evaluating bids for all capital improvements and include a short narrative regarding the selection of any birds that may be considered an outlier of more than 10% in a cost comparison. All improvements shall be reviewed for prudence as part of the rate proceeding.
8. Magnolia shall file reports into this docket, beginning sixty (60) days after this approval and semi-annually thereafter, updating Staff regarding the progress of capital

improvements to the water and wastewater systems. These reports shall also include a narrative regarding the system operators, including the qualifications of those operators.

9. 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 'Brandon M. Frey', written over the printed name.

Brandon M. Frey

Executive Secretary

**Service List for S-36351
as of 7/5/2022**

Commissioner(s)

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Eric Skrmetta
Craig Greene

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