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DOCKET NO. 50251

APPLICATION OF JRM WATER LLC §
AND CSWR-TEXAS UTILITY §
OPERATING COMPANY, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN VICTORIA COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and in response to Order No. 9, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On November 18, 2019, CSWR-Texas Utility Operating Company (CSWR or Purchaser) and JRM Water LLC (JRM or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Victoria County, Texas, under Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Purchaser seeks approval to acquire facilities, transfer water service area, obtain a new water Certificate of Convenience and Necessity (CCN), and cancel JRM’s water CCN No. 11548.

On June 29, 2020 the ALJ issued Order No. 9, establishing a deadline for Staff to request a hearing or file a recommendation on the transaction by July 8, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum from Nabaraj Pokharel in the Commission’s Infrastructure Division and workpapers from Fred Bednarski in the Commission’s Rate Regulation Division, Staff’s review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to TWC, Chapter 13, and under TAC, Chapter 24. Additionally, based upon its review, Staff recommends that CSWR has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

Therefore, Staff recommends the entry of an order permitting the proposed transaction to proceed. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n). Staff notes that there are no customer deposits to be addressed as required under 16 TAC § 24.239(m).

III. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the Commission ALJ issue an order approving the transaction.

Dated: July 7, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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**DOCKET NO. 50251
CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 8, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater
Rustin Tawater

PUC Interoffice Memorandum

To: Rustin Tawater, Attorney
Legal Division

From: Nabaraj Pokharel, Engineering Specialist
Infrastructure Division

Fred Bednarski, Financial Analyst
Rate Regulation Division

Date: July 8, 2020

Subject: **Docket 50251:** Application of JRM Water LLC and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Victoria County

On November 18, 2019, CSWR-Texas Utility Operating Company (CSWR or Purchaser) and JRM Water LLC (JRM or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Victoria County, Texas, under Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Purchaser seeks approval to acquire facilities, transfer water service area, obtain a new water Certificate of Convenience and Necessity (CCN) and cancel JRM's Water CCN No. 11548.

Background

Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. For this case, we do not recommend that a hearing be held based on our review of the information in the application and the criteria listed below. Staff believes that the Purchaser demonstrates adequate financial, managerial, and technical capability to provide service in the area subject to this application.

Purchaser is seeking to obtain a water CCN for the service area containing approximately 438 acres and 211 connections. Seller is currently providing water service to the requested area through Coletto Water Public Water System (PWS). Coletto Water PWS is registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 2350036.

Notice

The comment period ended April 16, 2020 and no protests or opt-out requests were received.

Criteria Considered

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Staff also analyzed the application under TWC § 13.241(d) and § 13.246(d). Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the commission to consider the adequacy of service currently provided to the requested area.

A review of TCEQ's central registry database indicates that Seller is currently providing water service to the requested area through Coletto Water PWS. Coletto Water PWS is registered with the Texas

Commission on Environmental Quality (TCEQ) under PWS identification number 2350036. Staff Noticed that Applicants have no unresolved violations. In addition, Applicants have experienced operators that are knowledgeable about operations as well as the requirements for continuous and adequate service.

TWC § 13.246(c)(2) requires the commission to consider the need for service in the requested area.

There are existing customers in the requested areas, which demonstrate a need for service in those areas. Continued water and sewer service in the requested areas will economically benefit the land and region by allowing the areas to develop into residential subdivisions. JRM is currently providing water services to these areas and the quality of retail utility service will not change after the selling process. The Applicants are seeking to obtain a water CCN for the service area containing approximately 438 acres and 211 connections in the Seller's CCN service area, which demonstrates a need for service.

TWC § 13.246(c)(3) requires the commission to consider the effect of granting an amendment on the recipient and on any other retail public utility servicing the proximate area.

Purchaser seeks approval to acquire facilities, transfer water service area, obtain a new water Certificate of Convenience and Necessity (CCN) and cancel JRM's Water CCN No. 11548.

TWC § 13.246(c)(4) requires the commission to consider the ability of the Applicant to provide adequate service.

Staff recommends that the Applicants meets the requirements of 16 TAC §24.227(a)(1) since Seller has a public water system registered with the TCEQ. Seller is currently providing water service to the requested area through Coletto Water Public Water System (PWS). Coletto Water PWS is registered with the TCEQ under PWS identification number 2350036. The public water system will be transferred to the Purchaser after the sale is complete. The Applicants are capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and have access to an adequate supply of water. Applicants do not have any violations listed in the TCEQ database. In addition, Applicants are experienced operators that are knowledgeable about operations as well as the requirements for continuous and adequate service. By adopting Coletto's current rates and tariffs, CSWR will ensure the proposed acquisition has no negative impact on the system's customers.

TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.

Currently, there are no other water service providers in the adjacent areas which could serve the requested areas.

TWC § 13.246(c)(5) requires the commission to consider the feasibility of obtaining service from an adjacent retail public utility.

The requested areas have existing facilities and are currently being served by JRM. Additionally, utilities within a two mile radius were noticed and no protests were received regarding the proposed water CCN STM. Therefore, it is not necessary to obtain service from an adjacent retail public utility. Currently, there are no other water service providers in the adjacent areas which could serve the requested areas. The Seller and Purchaser have an agreement for the transaction; therefore, this requirement was not considered.

Financial Test

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant.

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.¹ The owner or operator (Purchaser) must demonstrate that it meets one of the five tests.²

The Applicant meets one out of five leverage tests, by having a debt to equity ratio of less than one (Attachment FB-1). Staff's analysis is based on the consolidated audited financial statements ending December 31, 2019 and 2018 of the Purchaser's parent company, CSWR, LLC and Subsidiaries. These financial statements were confidentially filed and contained an unqualified auditor's opinion from RSM US LLP which stated that the that the financial statements present fairly, in all material respects, the financial position of the Purchaser as of December 31, 2019 and 2018. The audit and the related opinion indicate the transparency of the Purchaser's parent and indicate sound management capabilities.

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. CSWR-Texas provided an Affidavit³ indicating CSWR, LLC is committed to providing funds necessary for the purchase amounts of the seller's system and other proposed purchases of water and wastewater systems, capital improvements, and equity investments listed in the application and the projected financial statements. Staff's calculations are contained in Attachment FB-1. CSWR, LLC additionally provided a confidential letter from its bank indicating funds exist to help fund the purchase price and capital improvements.⁴ Therefore the Purchaser meets the operations test.

TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

The Applicant meets the financial tests. Staff does not recommend that the Commission require additional financial assurance.

TWC §§ 13.246(c)(7) and (9) require the commission to consider the environmental integrity and the effect on the land to be included in the certificate.

There will be no effect on the environmental integrity of the land since no additional construction is needed to provide service to the requested area.

TWC § 13.246(c)(8) requires the commission to consider the probable improvement in service or lowering of cost to consumers.

The Purchaser will continue to provide the same level of water service to the existing customers in the requested area that the Seller currently provides.

¹ 16 TAC § 24.11(e)(2).

² *Id.*

³ Confidential Attachment B to 1st Supplement to Application at bates 1 (AIS Item No. 18) (March 3, 2020)

⁴ Confidential Attachment 3-2 to Staff 3rd RFI at 1 (AIS Item No. 57) (June 29, 2020)

Staff's review indicates that the Purchaser meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Approving the transaction requested in this application for approval to acquire facilities, transfer water service area, obtain a new water CCN is necessary for the service, accommodation, convenience and safety of the public. Cancellation of JRM's Water CCN No. 11548 will happen after the transfer is complete.

Recommendation on approval of sale

The Staff from the Rate Regulation Division and Infrastructure Division recommend that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes that no deposits are held by Seller for the customers being served in the requested area. Staff further recommends that a public hearing is not necessary.