



Control Number: 50311



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**DOCKET NO. 50311**

**APPLICATION OF COPANO  
HEIGHTS WATER COMPANY AND  
CSWRTEXAS UTILITY OPERATING  
COMPANY, LLC FOR SALE,  
TRANSFER, OR MERGER OF  
FACILITIES AND CERTIFICATE  
RIGHTS IN ARANSAS COUNTY**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF’S AMENDED 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. 7, files this Amended Recommendation on the Transaction. In support thereof, Staff shows the following:

**I. BACKGROUND**

On December 4, 2019, Copano Heights Water Company (Copano Heights) and CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) filed an application for approval of the sale, transfer, or merger of facilities and CCN rights in Aransas County. Copano Heights seeks to transfer its water service area held under CCN number 11960 to CSWR-Texas and issue a new CCN to CSWR-Texas. The requested sale and transfer includes approximately 61 acres and 110 connections.

On July 6, 2020 the administrative law judge (ALJ) issued Order No. 7, establishing a deadline for Staff to request a hearing or file a recommendation on approval of the sale by July 8, 2020. That pleading was timely filed.

**II. AMENDED RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED**

In Staff’s recommendation and in the memorandum attached to Staff’s recommendation, filed on July 8, 2020, Staff incorrectly stated that there were no customer deposits that needed to be addressed. In fact, there are customer deposits to be addressed as required under 16 TAC § 24.239(m). A redlined and clean amended memorandum reflecting that change is attached hereto. These amendments do not change the ultimate recommendation to approve the transaction, as detailed in the attached memorandum from Heidi Graham in the Commission’s Infrastructure Division and attached workpapers of 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 incorporating the changes made by the amended recommendation. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n). As stated above, Staff notes that there are 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 15, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Heath D. Armstrong  
Managing Attorney

/s/ Rustin Tawater  
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**DOCKET NO. 50311  
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 15, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater  
Rustin Tawater

## PUC Interoffice Memorandum

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**To:** Rustin Tawater, Attorney  
Legal Division

**From:** Heidi Graham, Program Specialist  
Infrastructure Division

Fred Bednarski, Financial Analyst  
Rate Regulation Division

**Date:** July 15, 2020

**Subject:** **Docket No. 50311**, *Application of Copano Heights Water Company and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Aransas County*

On December 4, 2019, CSWR-Texas Utility Operating Company, LLC (CSWR-Texas or Purchaser) and the Copano Heights Water Company (Copano Heights or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Aransas County, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

### **Background**

CSWR-Texas is seeking to obtain a CCN and approval to acquire the water service area of Copano Heights held under CCN No. 11960 which contains approximately 61 acres and 110 existing customers.

### **Notice**

The comment period ended February 17, 2020, and no protests or opt-out requests were received.

### **Criteria Considered**

The TWC, Chapter 13, and TAC, Chapter 24, require the Commission to consider nine factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered:

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

Copano Heights has a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS No. 0040017 and purchases 100% of its water from the City of Rockport. The purchase water agreement will be transferred to CSWR-Texas. The water system has 110 connections, with tank storage capacity of 82,786 gallons and pump capacity of 400 gallons per minute, which is adequate capacity.

#### ***TWC § 13.246(c)(2) requires the Commission to consider the need for additional service in the requested area.***

There are currently 110 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area.***

There will be no effect on any retail public utility servicing the proximate area because this transaction does not include uncertificated area. There will be no effect on landowners as the area is currently certificated.

***TWC §§ 13.241(b), 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.***

Copano Heights does not have any outstanding violations. No additional construction is necessary for CSWR-Texas to serve the requested area.

***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.***

No additional construction is necessary to serve the requested area.

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

Given the nature of this transaction, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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

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.<sup>1</sup> The owner or operator (Purchaser) must demonstrate that it meets one of the five tests.<sup>2</sup>

The Applicant meets one out of five leverage tests, by having a debt to equity ratio of less than one since (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 Affidavit<sup>3</sup> 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

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<sup>1</sup> 16 TAC § 24.11(e)(2).

<sup>2</sup> *Id.*

<sup>3</sup> Confidential – Attachment B at bates 1 (3/3/2020).

calculations are contained in Attachment FB-1.<sup>4</sup> CSWR, LLC additionally provide a confidential letter from its bank indicating funds exist to help fund the purchases price and capital improvements and (Attachment FB-1).<sup>5</sup> 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 certificated area.*

The environmental integrity of the land will not be affected as 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.*

CSWR-Texas will continue to provide water service to the existing customers in the requested area.

The Applicants meet all the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area, the water service area held under CCN No. 11960, cancel CCN No. 11960, issue CCN No. 13290 to CSWR-Texas and amend the transferred area to CSWR-Texas' CCN No. 13290 is necessary for the service, accommodation, convenience and safety of the public.

#### **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 deposits are held by Copano Heights for the customers being served in the requested area. Staff further recommends that a public hearing is not necessary.

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<sup>4</sup> Confidential – Attachment A at bates 1 through 6 (3/3/2020).

<sup>5</sup> Confidential – Attachment Staff–CSWR RFI 3-2 at page 1 (06/29/20).

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<sup>5</sup> Confidential – Attachment Staff–CSWR RF1 3-2 at page 1 (06/29/20)