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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**

**§ PUBLIC UTILITY COMMISSION
§ OF TEXAS
§
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§**

COMMISSION STAFF’S RESPONSE TO ORDER NO. 9

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 9. 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 (STM) of facilities and certificate of convenience and necessity (CCN) rights in Aransas County. Copano Heights seeks to transfer its water service area held under CCN number 11960 to CSWR-Texas under a newly issued water CCN number. The requested sale and transfer includes approximately 61 acres and 110 connections.

On August 6, 2020 the administrative law judge (ALJ) issued Order No. 9, establishing a deadline of September 3, 2020, for Staff to either affirm its previous recommendation that the sale and transfer be allowed to proceed or issue a new recommendation. Therefore, this pleading is timely filed.

II. RESPONSE TO ORDER NO. 9

Staff affirms its recommendation that the sale and transfer be allowed to proceed. Order No. 9 instructed Staff to either:

- affirm that its July 8, 2020 recommendation took into consideration the capacity of CSWR to serve the water system being acquired in this docket plus the system being acquired in Docket No. 50251; or

- submit a new recommendation that is based on consideration the capacity of CSWR to serve the water system being acquired in this docket plus the system being acquired in Docket No. 50251.

When granting or amending a CCN, the Commission must consider the ability of the applicant to provide continuous and adequate service, including the factors in Texas Water Code (TWC) § 13.246(c). Although many of the factors considered are application specific, and are not conducive to a cumulative review,¹ Staff did consider the cumulative impact of the pending CSWR-Texas acquisitions when evaluating the following factors:

- TWC §§ 13.241(b) and 13.246(c)(4) – Managerial and technical ability of CSWR-Texas to provide adequate service
- TWC § 13.246(c)(6) and 16 TAC § 24.11 – CSWR-Texas’ financial ability and stability
- TWC § 13.246(d) – whether CSWR-Texas must provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided.

In analyzing this application, Staff took into consideration the ability of CSWR-Texas to serve the water system being acquired in this docket in addition to the systems being acquired in Docket Nos. 50251 and 50276. This analysis is more thoroughly detailed in attached memorandum of Heidi Graham, Lead Engineering Specialist in the Commission’s Infrastructure Division.

Staff recommends a finding that CSWR-Texas has the financial, managerial, and technical ability to provide adequate service, and therefore, affirms its July 8, 2020 recommendation that the sale and transfer be allowed to proceed.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that an order be issued allowing the sale and transfer to proceed, as detailed in the Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed filed on July 22, 2020.

¹ For example, TWC § 13.246(c)(1)-(2) and (5) ask about the adequacy of existing service in the requested area, the need for additional service, and the feasibility of obtaining service from an adjacent retail public utility. All three of these factors are specific to the application because each STM filed by CSWR-Texas is for a unique requested area.

Dated: September 3, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 September 3, 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: Heidi Graham, Lead Engineering Specialist
Infrastructure Division

Fred Bednarski, Financial Analyst
Rate Regulation Division

Date: September 3, 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 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 facilities and 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 March 30, 2020, and no protests or intervention or opt-out requests were received.

Criteria Considered

TWC Chapter 13 and 16 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 to serve the requested area.

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 and will remain certificated upon completion of the transaction.

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

In this docket, Copano Heights has its own public water system registered with TCEQ under PWS No. 0040017 and an existing purchase water agreement with the City of Rockport, which is adequate to supply potable water to its customers. Copano Heights public water system has no outstanding violations with TCEQ. In addition, no additional construction is necessary for CSWR-Texas to serve the requested area in this docket. In Docket No. 50251, JRM Water, LLC, has its own public water system, which adequately supplies potable water to its customers. JRM Water, LLC's public water system, Coletto Water, is registered with TCEQ under PWS No. 2350036, has no outstanding violations, and no additional construction is required to provide service to its customers. In Docket No. 50276, North Victoria has its own public water system which adequately supplies potable water to its customers. However, the application states that North Victoria's public water system, registered with TCEQ under PWS No. 2350036, has numerous deficiencies that will require immediate capital investment to remedy. CSWR-Texas indicates that it has worked with an engineer to identify the shortcomings in the system and has outlined a plan to address these deficiencies to ensure that, after closing the sale, the full operation of the public water system can continue in accordance with Commission and TCEQ rules.

TCEQ rule, 30 TAC § 290.46(e)(3)(A), Minimum Acceptable Operating Practices for Public Drinking Water Systems, require the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Copano Heights has 110 existing customers who are provided potable water by a purchase agreement with the City of Rockport. According to 30 TAC § 290.46(e)(3)(A), purchased water systems serving no more than 250 connections, must use an operator who holds a Class D or higher license. For JRM Water, LLC's and North Victoria's public water systems, the applicable TCEQ rule is 30 TAC § 290.46(e)(4)(A), which requires that public water systems that are ground water systems, serving no more than 250 connections, use an operator with a Class D or higher license, which would be a Class A, B or C license.

In each of its pending applications, CSWR-Texas has stated that it intends to contract with an operations company. In its applications filed under Docket Nos. 50311 and 50276, CSWR-Texas indicates that it has a contract with Professional General Management Services, Inc. to operate the Copano Heights Water Company and the North Victoria Utilities public water system and a Class A and Class C operator will be the responsible operators.

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.

Construction of a physically separate water system is not 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, which proposes to transfer only certificated area and the associated facilities, 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.¹ The owner or operator (Purchaser) must demonstrate that it meets one of the five tests.²

The Purchaser meets one out of five leverage tests, with 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 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 that CSWR, LLC is committed to providing funds necessary for the purchase of the Seller's system as well as the 15 other proposed water and wastewater system acquisitions, including Docket Nos. 50251 and 50276, and all estimated capital improvements and equity investments. Staff's calculations are contained in Attachment FB-1.⁴ CSWR, LLC additionally provide a confidential letter from its bank confirming that CSWR, LLC has sufficient levels of cash on hand to fund the purchases price of this system and the 15 other proposed systems and improvements as indicated in Attachment FB-1.⁵ 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 Purchaser meets the financial tests. Staff does not recommend that the Commission require additional financial assurance.

¹ 16 TAC § 24.11(e)(2).

² *Id.*

³ Confidential – Attachment B to the First Supplement to Application at bates 1 (Mar. 3, 2020).

⁴ Confidential – Attachment A to the First Supplement to Application at bates 1 through 6)

⁵ Confidential – Attachment Staff–CSWR RFI 3-2 at page 1 (Jun. 29, 2020).

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 and the rates charged to customers will not change as a result of approving the transaction.

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 some of the customers being served in the requested area. Staff further recommends that a public hearing is not necessary.