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Item Number: 51

Addendum StartPage: 0

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APPLICATION OF OAK HILL RANCH §
ESTATES WATER AND CSWR-TEXAS §
UTILITY OPERATING COMPANY, §
LLC FOR SALE, TRANSFER, OR §
MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN §
GUADALUPE AND WILSON §
COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS
COMMISSIONER
FILING CLERK

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

On July 1, 2020, Oak Hills Ranch Estates Water Company (Oak Hills) and CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Guadalupe and Wilson counties. The total requested area includes 196 connections and 1,857 acres comprised of existing service area that will be transferred, existing service area that will be decertified, and uncertificated area.

On January 4, 2021, Order No. 8 was filed, requiring Commission Staff to file a recommendation on approval of the sale and on the certificate of convenience and necessity (CCN) amendment by February 11, 2021. This pleading, therefore, is timely filed.

I. RECOMMENDATION ON THE TRANSACTION AND THE CCN AMENDMENT

As detailed in the attached memorandum of Jolie Mathis of the Commission's Infrastructure Division, Staff's review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code (TWC) Chapter 13 and under 16 Texas Administrative Code (TAC) Chapter 24. Additionally, based upon its review, Staff recommends that CSWR-Texas has demonstrated 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 and that the CCN amendment be subsequently approved. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and customer deposits properly refunded or transferred as required by 16 TAC § 24.239(j) through (n).

II. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

Dated: February 11, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 51003

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 on February 11, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray

Public Utility Commission of Texas

Memorandum

TO: Creighton Murray, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: February 11, 2021

RE: Docket No. 51003 – *Application of Oak Hill Ranch Estates Water and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Guadalupe and Wilson Counties*

1. Application

CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Oak Hills Ranch Estates Water Company (Oak Hills)¹ (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Guadalupe and Wilson Counties, Texas, under Texas Water Code (TWC) §§ 13.242 to 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

CSWR-Texas, water certificate of convenience and necessity (CCN) No. 13290,² seeks approval to acquire facilities and to transfer a portion of Oak Hills' water service area under water CCN No. 12051. The portion of the service area under CCN No. 12051 that is not transferred will be decertified. In addition, CSWR-Texas seeks to add uncertificated area to CCN No. 13290. The total requested area includes approximately 1,857 acres and 196 connections.

The area to be transferred is approximately 903 acres. The area to be decertified is approximately 88 acres. The area to be newly certificated is approximately 866 acres. After removing the area to be decertified, the requested final certificated area will be approximately 1,769 acres.

These adjustments were requested to clean up boundaries between neighboring CCNs and ensure that CCN No. 13290 includes all customers currently served by Oak Hills.

¹ The application refers to "Oak Hills Ranch..." while the Commission's Water Utility Database refers to "Oak Hill Ranch..."

² CSWR-Texas will receive approval to obtain water CCN No. 13290 in one of five dockets, which are ahead of this docket procedurally: Docket No. 50251, 50276, 50311, 51065, or 51118.

2. Notice

CSWR-Texas provided notice consistent with 16 TAC § 24.239(c) and § 24.235(b) and (c) for the portion of the requested area that is uncertificated. The deadline to intervene was January 12, 2021, and no protests or opt-out requests were received. Kenneth Aplon's motion to intervene was granted on January 4, 2021.

3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).*

Oak Hills has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Oak Hills Ranch Water, PWS ID No. 0940085. Oak Hills has several violations and additional issues that need to be addressed, including reworking water wells, replacing the ground storage tank, and installing additional pumps. CSWR-Texas stated that it intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water system into compliance with TCEQ regulations and to ensure customers receive safe and reliable service. The needed improvements will begin when the system is officially transferred to CSWR-Texas. Once the water system is compliant with TCEQ regulations, the service provided to the requested area will be adequate.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

The purpose of the transaction is to transfer Oak Hills' facilities and a portion of its service area to CSWR-Texas, and to add uncertificated area that includes customers currently served by Oak Hills. Customers in Oak Hills' certificated service area are currently receiving water service from the Oak Hills' public water system. No additional service is needed at this time.

3.3. *Consideration of 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 (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

CSWR-Texas will be the certificated entity for the requested area and will be required to provide adequate and continuous water service to the requested area.

There will be an effect on landowners. CSWR-Texas is requesting to decertify area, to clean up boundaries between neighboring CCNs, and to add area to include all customers currently served by Oak Hills.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction proposed in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

Oak Hills has a TCEQ approved public water system registered as Oak Hills Ranch Water, PWS ID No. 0940085. Oak Hills has several violations and additional issues that need to be addressed, including reworking water wells, replacing the ground storage tank, and installing additional pumps. CSWR-Texas indicated that it intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water system into compliance with TCEQ regulations and to ensure customers receive safe and reliable service. The needed improvements will begin when the system is officially transferred to CSWR-Texas. Once the water systems is compliant with TCEQ regulations, the service provided to the requested area will be adequate.

Order No. 3 requires Staff take into consideration all prior CSWR-Texas STM dockets in which Staff recommends the transaction should be allowed to proceed. Staff reviewed the following dockets to comply with Order No. 3:

- In Docket No. 50251, JRM Water, LLC has its own public water system, Coletto Water, which adequately supplies potable water to its customers. 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. For this docket, CSWR-Texas is seeking to transfer approximately 438 acres and 211 connections in Victoria County, Texas.
- In Docket No. 50276, North Victoria Utilities, Inc. (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. 2350049, 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. For this docket, CSWR-Texas is seeking to transfer approximately 307 acres and 77 connections in Victoria County, Texas.
- In Docket No. 50311, Copano Heights Water Company (Copano Heights) has its own public water system registered with TCEQ under PWS No. 0040017 and an existing water purchase 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, and no additional construction is necessary for CSWR-Texas to serve the requested area in that docket. For this docket, CSWR-Texas is seeking to transfer approximately 61 acres and 110 connections in Aransas County, Texas.
- In Docket No. 50989, Ranch Country of Texas Water Systems, Inc. has several TCEQ approved public water systems registered as Hillside Estates Water System, PWS ID No. 0080049; Settlers Meadows Water System, PWS ID No. 0080055; Settlers Estates Sec II, PWS ID No. 0080056; Meadowview Estates, PWS ID No. 0080051; Settlers

Crossing Water System, PWS ID No. 0080058; Meadowview Estates II, PWS ID No. 0080059; and Settlers Crossing Water System 2, PWS ID No. 0080060. The application states that there are several violations for these water systems that will require immediate capital investment to remedy. CSWR-Texas indicates that it has worked with an engineer to identify the shortcomings in the systems and will address these deficiencies to ensure that, after closing the sale, the full operation of these public water systems can continue in accordance with Commission and TCEQ rules. For this docket, CSWR-Texas is seeking to transfer approximately 638 acres and 316 connections in Austin County, Texas.

- In Docket No. 51026, Tall Pines Utility (Tall Pines), Inc. has its own public water system, Tall Pines, which adequately supplies potable water to its customers. Tall Pines is registered with TCEQ under PWS No. 1010220, has no outstanding violations, and no additional construction is required to provide service to its customers. For this docket, CSWR-Texas is seeking to transfer approximately 42 acres and 73 connections in Harris County, Texas
- In Docket No. 51065, Treetop Utilities, LLC has its own public water system, Treetop Estates, which adequately supplies potable water to its customers. Treetop Estates is registered with TCEQ under PWS No. 1840134, has no outstanding violations, and no additional construction is required to provide service to its customers. For this docket, CSWR-Texas is seeking to transfer approximately 93 acres and 35 connections in Parker County, Texas.
- In Docket No. 51118, Shady Oaks has several TCEQ approved public water systems registered as Shady Oaks Water, PWS ID No. 2470017; Hickory Hill Water, PWS ID No. 2470018; Arrowhead Water, PWS ID No. 2470025; and C Willow Water, PWS ID No. 2470019. Shady Oaks does not have any violations listed in the TCEQ database. No additional construction is necessary to serve the requested area. For this docket, CSWR-Texas is seeking to transfer approximately 1,828 acres and 560 connections in Wilson County, Texas.
- In Docket No. 51031, Council Creek Village, Inc. dba Council Creek Village dba South Council Creek 2 has several TCEQ approved public water systems registered as Council Creek Village, PWS ID No. 0270014; South Council Creek 1, PWS ID No. 0270079' and South Council Creek 2, PWS ID No. 0270080. There are several violations for these water systems listed in the TCEQ database. CSWR-Texas indicated that it will address these deficiencies to ensure that, after closing the sale, the full operation of these public water systems can continue in accordance with Commission and TCEQ rules. For this docket, CSWR-Texas is seeking to transfer approximately 275 acres and 176 connections in Burnet County, Texas.
- In Docket No. 51047, South Silver Creek has a public water system registered with the TCEQ under PWS No. 0270041. The application states that TCEQ identified past alleged violations that need to be addressed. CSWR-Texas indicates that it has worked with an engineer to identify the shortcomings in the system and will 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. For this docket,

CSWR-Texas is seeking to transfer approximately 169 acres and 103 connections in Travis County.

- In Docket No. 51130, there are three CCNs being transferred to CSWR-Texas, two water CCNs and one sewer CCN. The water CCN for Laguna Tres has a TCEQ approved public water system registered as Laguna Tres Subdivision, PWS No. 1110019. The water CCN for Laguna Vista has a TCEQ approved public water system registered as Laguna Vista Subdivision, PWS No. 1110095. There are several violations for the two water systems. CSWR-Texas indicated that it will address these deficiencies to ensure that, after closing the sale, the full operation of the public water systems can continue in accordance with Commission and TCEQ rules. The sewer CCN for Laguna Vista has a small lift station that pumps sewage to a septic spray field and does not have a water quality discharge permit with the TCEQ as it was put in before the current permitting requirements were implemented by the TCEQ. CSWR-Texas indicated that it will seek approval of all necessary permits for the lift station and associated spray field when the transfer is complete. For this docket, CSWR-Texas is seeking to transfer approximately 362 acres of water service area and 446 current water service customers and approximately 6 acres of sewer service area and 5 current sewer service customers in Hood County.
- In Docket No. 51146, Abraxas has a TCEQ approved public water system registered as Abraxas Utilities, PWS No. 1840034 and an approved Water Treatment Facility, Wastewater Discharge Permit No. WQ 00150-10001. There are several violations listed in the TCEQ database. A preliminary engineering report commissioned by CSWR-Texas identified many issues with the water and wastewater systems. More specifically, the report recommends relining and replacing manholes, rehabilitation of lift stations, replacement of equipment, and various other tasks. If authorized to acquire the system, CSWR-Texas intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water system into compliance with TCEQ regulations and ensure customers receive safe and reliable service.
- In Docket No. 51089, there are two CCNs being transferred to CSWR-Texas, one water CCN and one sewer CCN. The water CCN has a TCEQ approved public water system registered as Quiet Village II, PWS No. 1080221. The utility purchases wastewater treatment from the City of Donna. There are several violations for the water system listed in the TCEQ database. CSWR-Texas indicated that it will 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. For this docket, CSWR-Texas is seeking to transfer approximately 18.5 acres and 165 connections in Hidalgo County.

In each of the following applications, 50251, 50276, 50311, 50989, 51026, 51065, 51118, 51031, 51047, 51130, 51146, 51089, and 51003 CSWR-Texas has stated that it intends to contract with an operations company. CSWR-Texas indicates that it has a contract with Professional General Management Services, Inc. to operate the Oak Hill Ranch Estate public water system. A Class A and Class C operator will be the responsible operators.

3.5. *The applicants' demonstration 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. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate water system is not necessary for CSWR-Texas to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

Oak Hills is currently serving customers in the requested area and has sufficient capacity. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

Fred Bednarski, Financial Analyst in the Rate Regulation Division, provided me the following:

CSWR-Texas demonstrates adequate financial and managerial capability to provide continuous and adequate service to the areas subject to this application

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC § 24.11. CSWR-Texas must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test.

Leverage tests

This analysis is based on the financial statements of the CSWR-Texas' affiliate, CSWR, LLC and Subsidiaries (CSWR, LLC) ending December 31, 2019. These financial statements contain an unqualified auditor's opinion from RSM US LLP stating that the financial statements present fairly, in all material respects, the financial position of CSWR, LLC as of December 31, 2019 and December 31, 2018.

CSWR, LLC's financial statement shows a debt-to-equity ratio of 0.15 as calculated in confidential attachment FB-1. Because the ratio is less than 1.0, CSWR, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). CSWR, LLC is also capable, available, and willing to cover temporary cash shortages. Therefore, CSWR-Texas meets the test specified in 16 TAC § 24.11(e)(2)(E).

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

CSWR-Texas' financial projections show that there are projected shortages to cover as provided in confidential attachment FB-1. However, CSWR, LLC's financial statements

and recent cash balance provided in confidential attachment FB-1, indicate CSWR, LLC possesses sufficient cash and financial ability to pay for capital improvements and necessary equity investments for this application as well as in other recent or pending applications. Additionally, CSWR-Texas provided an affidavit indicating CWSR, LLC's commitment to providing funds necessary to purchase Oak Hill's system as well as the other water and wastewater systems included in CSWR-Texas' other pending applications. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, CSWR-Texas meets the operations test specified in 16 TAC § 24.11(e)(3).

3.8. ***Requirement of the 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 (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

Fred Bednarski provided the following.

Because CSWR-Texas and CSWR, LLC meet the financial tests, I do not recommend that the Commission require additional financial assurance.

3.9. ***Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

CSWR-Texas will operate the system to ensure compliance with all environmental regulations. No negative impacts or disruptions to the environment or land will result from the transaction. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. ***Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).***

CSWR-Texas will continue to provide water service to the existing customers in the area. There will be no change in the cost of service to customers and the quality of service should improve once the necessary investment is made to address the issues with the Oak Hills public water system.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer the water facilities in the requested area and a portion of the water service area of the water CCN No. 12051 to CSWR-Texas, to decertify a portion of the water service area under CCN No. 12051, and to add uncertificated area to water CCN No. 13290 is necessary for the service, accommodation, convenience and safety of the public.

4. Recommendation

Based on the above information, I recommend that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by Oak Hills for the customers being served by the utility. I further recommend that a public hearing is not necessary.