



Control Number: 51047



Item Number: 31

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APPLICATION OF JONES-OWEN	§	PUBLIC UTILITY COMMISSION
COMPANY DBA SOUTH SILVER	§	FILING CLERK
CREEK I, II, AND III AND CSWR-	§	OF TEXAS
TEXAS UTILITY OPERATING	§	
COMPANY, LLC FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN BURNET COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 6, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On July 14, 2020, Jones-Owen Company dba South Silver Creek I, II, and III (South Silver Creek) 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 Burnet County. CSWR-Texas seeks approval to acquire facilities and to transfer all of South Silver Creek’s water service area under Certificate of Convenience and Necessity (CCN) No. 11116. The requested area includes approximately 169 acres and 103 connections.

On October 5, 2020, the administrative law judge filed Order No. 6, which required Staff to file a recommendation on the approval of the sale by November 13, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the proposed transaction, and as detailed in the attached memorandum of Alicia Maloy of the Commission’s Infrastructure Division and Fred Bednarski of the Commission’s Rate Regulation Division, Staff recommends 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 that

it possesses the financial, technical, and managerial capabilities 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 and that customer deposits have been addressed as required by 16 TAC § 24.239(k) through (l).

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that an order be issued allowing the proposed transaction to proceed.

Dated: November 13, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Daniel Moore

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DOCKET NO. 51047

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 November 13, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Daniel Moore
Daniel Moore

Public Utility Commission of Texas

Memorandum

TO: Daniel Moore, Attorney
Legal Division

FROM: Alicia Maloy, Senior Infrastructure Analyst
Infrastructure Division

DATE: November 13, 2020

RE: Docket No. 51047 – *Application of Jones-Owen Company dba South Silver Creek I, II, and III and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burnet County*

1. Application

CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Jones-Owen Company dba South Silver Creek I, II, and III (South Silver Creek) (collectively, Applicants) filed an application for a sale, transfer, or merger (STM) of facilities and certificate rights in Burnet County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

CSWR-Texas seeks approval to acquire facilities and to transfer water service area from South Silver Creek under water certificate of convenience and necessity (CCN) No. 11116. The requested area includes approximately 169 acres and 103 connections.

2. Notice

CSWR-Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was October 30, 2020; there were no protests or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 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), (e)(1), 24.239(h)(3)(A), (h)(5)(A), (h)(5)(D).

South Silver Creek has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered under public water system (PWS) 0270041. The most recent TCEQ compliance evaluation identified past alleged violations including

failure to inspect the interior of the pressure tank for many years. CSWR-Texas states that this issue has been resolved. CSWR-Texas also states 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. 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), 24.239(h)(5)(B)).*

There are currently 103 connections in the requested area; therefore, there is a need for service. 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 retail public utility for the requested area and will be required to provide adequate and continuous service to the requested area. There will be no effect on any retail public utility servicing the proximate area. There will be no effect on landowners as the area is currently certificated.

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

South Silver Creek has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered under public water system (PWS) 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 systems 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.

TCEQ rule, 30 TAC § 290.46(e)(3)(A), Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires 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. In addition, according to 30 TAC § 290.46(e)(3)(A), a purchased water system serving no more than 250 connections must use an operator who holds a Class D or higher license. CSWR-Texas states it plans to use a contract operator for plant operations, which would include one or more appropriately qualified and licensed operator(s). The contract operator(s) would be responsible for day-to-day inspections, checks, sampling, reporting, meter reading, and any necessary system repairs.

Order No. 2 requires Staff to 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. 2:

- 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 this 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 PWSes 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, Inc. (Tall Pines) 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 Water Supply Company, LLC (Shady Oaks) has several TCEQ approved PWSes 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 provide service to Shady Oaks' existing customers. 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 PWSes 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. 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 275 acres and 176 connections in Burnet County, Texas.
- 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 PWS registered as Laguna Tres Subdivision, PWS ID No. 1110019. The water CCN for Laguna Vista has a TCEQ approved PWS registered as Laguna Vista Subdivision, PWS ID 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 these 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. CSWR-Texas indicated they 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 for water service and 446 current water service customers and approximately 6 for sewer service acres and 5 current sewer service customers in Hood County.
- In Docket No. 51146, Abraxas has a TCEQ approved PWS registered as Abraxas Utilities, PWS ID No. 1840034 and an approved Abraxas Corporation 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.

CSWR-Texas indicates that it has a contract with Professional General Management Services, Inc. to operate the South Silver Creek public water system and a Class A and Class C operator will be the responsible operators. In addition, CSWR-Texas has stated

that it intends to contract with an operations company for the other pending applications, Docket Nos. 50251, 50276, 50311, 50989, 51026, 51065, 51118, 51031, 51130, and 51146.

3.5. *The applicant's 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), 24.239(h)(5)(E)).*

South Silver Creek is currently serving customers and has sufficient capacity. Silver Creek Village Water Supply Corporation (Silver Creek Village) is adjacent on the western side of a section of South Silver Creek's CCN, and Corix Utilities Texas, Inc. (Corrix) is located approximately one mile southeast of a section of South Silver Creek's CCN. Obtaining service from either utility would likely increase costs to customers because new facilities would need to be constructed. At a minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. 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), 13.301(b); 16 TAC §§ 24.227(a), (e)(6), 24.11(e), 24.239(f), (h)(5)(F)).*

Fred Bednarski, Rate Regulation Division, prepared the analysis and recommendation for this section.

Fred Bednarski's review addresses the financial ability and stability requirements in TWC § 13.246(c)(6) and the related financial assurance provisions in 16 TAC §2 4.11 pertaining to CSWR-Texas and CSWR-Texas's parent company, CSWR, LLC. Fred Bednarski reviewed and considered the information provided in Docket Nos. 50251, 50276, 50311, 50989, 51003, 51026, 51031, 51036, 51065, 51089, 51118, 51126, 51130, and 51146 (other CSWR-Texas dockets).¹ Based on the opinion of Mr. Bednarski, CSWR-Texas and CSWR, LLC demonstrate adequate financial and managerial capability to provide continuous and adequate service to all areas and facilities included in this docket and the other CSWR-Texas dockets. Mr. Bednarski based his conclusions on information provided prior to this date that may not reflect any changes in CSWR-Texas's status subsequent to this review.

The provisions of 16 TAC § 24.11 establish 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

¹ Order No. 3 – Order Directing Administrative Process at 6 and 7 (Aug. 20, 2020).

Commission rules identify five leverage tests.² CSWR-Texas must demonstrate that it meets one of the five leverage tests.³

CSWR-Texas meets the final leverage test under 16 TAC § 24.11(e)(2)(E), which requires the owner or operator to demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must satisfy one of the leverage tests. CSWR, LLC meets the first leverage test under 16 TAC § 24.11(e)(2)(A) because it has a debt to equity ratio of less than one, using long term debt and equity. Attachment FB-1 (confidential) includes the calculation of CSWR, LLC's debt to equity ratio of 0.15. A debt to equity ratio of less than one indicates financial stability and financial and managerial capability.

The provisions of 16 TAC § 24.11(e)(3) refer to the operations test that requires the owner or operator to demonstrate sufficient available cash to cover any projected operations and maintenance shortages in the first five years of operations. The results also show that CSWR, LLC possesses the cash and leverage ability to pay for capital improvements and necessary equity investments. These calculations are provided in Attachment FB-1. CSWR, LLC additionally provided a confidential letter from its bank indicating that CSWR, LLC has sufficient levels of cash to fund the purchase price of this system and the needed improvements as well as the purchase prices and any required improvements in the other CSWR-Texas dockets. Therefore, CSWR-Texas meets the operations test.

CSWR, LLC's consolidated audited financial statements for the periods ending December 31, 2019 and December 31, 2018 were confidentially filed and contained 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. The audit and related opinion provide evidence of appropriate transparency and sound management capabilities of CSWR, LLC. CSWR-Texas provided an affidavit⁴ indicating CSWR, LLC's commitment to providing funds necessary for the cash required to purchase South Silver Creek's system as well as the other water and wastewater systems included in the other CSWR-Texas dockets.

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)).

Based on the financial and managerial review of the application and the recommendation of Fred Bednarski, CSWR-Texas and CSWR, LLC meet the financial tests. Therefore, no additional financial assurance is needed.

² 16 TAC § 24.11(e)(2).

³ *Id.*

⁴ Application, Attachment G, confidential, at 7 and 9 (Jul. 17, 2020).

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) 16 TAC §§ 24.227(e)(7) and (9), 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected because 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, and the rates charged to customers will not charge as a result of approving the transaction.

The Applicants meet all statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities held under CCN No. 11116, cancel CCN No. 11116, issue CCN No. 13290⁵ 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.

4. **Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. I further recommend that a public hearing is not necessary.

⁵ Staff anticipates that by the time this docket is ready for final approval, CSWR-Texas will have already been granted CCN No. 13290 in Docket No 50251, 50276, or 50311.