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PUC DOCKET NO. 51089



APPLICATION OF DONALD E. WILSON §
D/B/A QUIET VILLAGE II D/B/A QV §
UTILITY AND CSWR-TEXAS UTILITY §
OPERATING COMPANY, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN HIDALGO COUNTY §

BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

CSWR-TEXAS UTILITY OPERATING COMPANY, LLC'S
REPLY TO COMMISSION STAFF'S REQUEST FOR ABATEMENT

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REPLY TO COMMISSION STAFF'S REQUESTS FOR ABATEMENT**

Pursuant to Rule 22.78(a), CSWR-Texas Utility Operating Company, LLC (“CSWR Texas” or the “Company”) timely submits this reply in opposition to the request for abatement filed by the Staff (“Staff”) of the Public Utility Commission of Texas (“Commission”) in Docket No. 51089, which was received on August 19, 2020.¹ The Company’s response is substantially the same as its concurrently filed responses to the requests for abatement submitted by Commission Staff in Docket Nos. 51118, 51130, and 51126. Notwithstanding its opposition to abatement, the Company has been in discussions with Commission Staff to address the issues identified by the presiding officer in the Processing Order issued on August 20, 2020 in this and all other pending sale-transfer-merger (“STM”) dockets, and if the parties can agree on an approach forward, it will present it to the Administrative Law Judge for her consideration as soon as possible. In support of its opposition to abatement, CSWR Texas shows the following:

I. RESPONSE TO REQUEST FOR ABATEMENT

A. Background

On August 19, 2020, Commission Staff requested to abate this proceeding to facilitate its review of the Company’s STM application. Staff also requested abatement, and CSWR Texas has

¹ Commission Staff’s Request for Abatement (August 19, 2020) (Staff’s Request).

responded in opposition to its requests, in Docket Nos. 50989, 51003, 51026, 51031, 51036, 51047, and 51065.² The cumulative effect of Staff’s requests in each of the proceedings, if approved, would be to group the Company’s pending applications as follows:

Group	Dockets
1	50251, 50276, 50311
2	50989, 51003, 51026, 51031
3	51036, 51047, 51065
4	51089, 51118, 51126, 51130, 51146

Staff requests that each group of dockets be abated until all of the dockets in the preceding group have been deemed administratively complete. Under the proposal, Staff would not be required to make a recommendation on the administrative sufficiency of the application in any of the dockets in a particular group until 14 days after all of the dockets in the preceding group have been deemed administratively complete.

The Company currently has fifteen pending STMs, one of which has already received approval for the transaction to proceed³ and two others that have already received Staff’s recommendation for approval.⁴ Reviewing the remaining twelve applications in groups of three or four will indefinitely suspend the applicable regulatory and statutory deadlines and undermine the streamlined process required by the Water Code and the Commission’s rules. Indeed, the actual timeline under Staff’s proposal is not precisely known because a delay in any proceeding

² Staff has issued its recommendation on the sufficiency of the Company’s application in Docket Nos. 50989, 51003, 51026, 51031, 51065, and 51118.

³ Docket No. 50251, Order No. 11 (Jul. 29, 2020).

⁴ Docket No. 50276, Staff’s Recommendation on the Transaction (Jul. 8, 2020); Docket No. 50311 Staff’s Recommendation on the Transaction (Jul. 8, 2020).

would cascade to each of the proceedings in a subsequent group. Staff has not established that good cause exists for indefinite abatement of these proceedings.

Abatement or delay is particularly concerning because almost every pending STM application the Company has filed involves the acquisition of a small, distressed water or wastewater system with significant compliance issues or a history of violations and enforcement actions. Some have been under temporary management for several years.⁵ The systems typically require significant capital improvements and upgrades to current operations and would benefit from prompt transition to long-term management in order to timely resolve these issues at a reasonable cost to customers. This Commission has in fact promoted the need to find new owners for some of these systems as soon as possible,⁶ and recent state legislation encourages this exact type of investment in small, failing water and wastewater utilities.⁷ CSWR Texas appreciates the work required of Staff on each of its pending applications and will continue to work with Staff to facilitate its review. However, abiding by the streamlined and efficient procedural processes provided for in these cases is necessary to allow the Company to acquire and rehabilitate these systems promptly. Accordingly, Staff's requests should be denied.

B. Staff has not established good cause to indefinitely suspend the deadlines prescribed by 16 Texas Admin. Code § 24.8(a) and Tex. Water Code § 13.301(a) for processing STM applications

Commission Substantive Rule 24.8 and Texas Water Code § 13.301 establish an expeditious process for regulatory review of STM applications for water and wastewater utilities.

⁵ See, e.g., Docket No. 49811, Order Appointing Temporary Manager (Jan. 31, 2020).

⁶ See, e.g., Commissioners' Discussion at the August 29, 2019 Open Meeting, http://texasadmin.com/tx/puct/open_meeting/20190829/, starting at 54:59 (Discussion of Docket No. 49811).

⁷ See, e.g., Tex. Water Code 13.305, Texas Bill Analysis, 2019 Regular Session, House Bill 3452 ("For some smaller water and wastewater utilities whose system infrastructure is urgently in need of repair or replacement, sale to a larger utility is a welcome opportunity to enable system improvements and ensure continued safe and reliable service for customers.").

Rule 24.8(a) requires that Staff make its recommendation as to the completeness of an application within 30 days of the filing of the application. Staff's recommendation then triggers the issuance of notice and the beginning of the 120-day statutory deadline by which uncontested STM transactions must be approved under Texas Water Code § 13.301(a).⁸ Based on this statutory and regulatory schedule, an uncontested STM transaction should be approved in 150 to 180 days.⁹

Staff's recommendation in this proceeding was due on August 21, 2020.¹⁰ Based on Staff's proposed schedule, and assuming no other delays, these four proceedings would be abated until an order on administrative completeness is issued in all three of Docket Nos. 51036, 51047, and 51065. Once an order in all three of those dockets is issued, assuming no deemed deficiencies, Staff would issue its recommendation on sufficiency in this proceeding 14 days thereafter and then the Company will issue notice, likely in December, which would delay approval until late spring or early summer at the earliest. And, again, any unforeseen delay in any proceeding would then trigger additional delays in all others. The Company understands that Staff believes this schedule will help facilitate review, but it also removes any regulatory certainty as to the timing of the Company's pending STM applications. There is simply no reason to tie the procedural timeline for this proceeding to that of other pending STM proceedings, and good cause does not exist for an indefinite abatement.

⁸ Tex. Water Code § 13.301(a); 16. TAC § 24.8.

⁹ See, e.g., *Application of Texas Water Systems, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Gregg, Henderson, Smith, Upshur, and Van Zandt Counties, to Amend Their Water Certificates of Convenience and Necessity, and for Dual Certification with Crystal Systems Texas, Inc. and Pritchett Water Supply Corporation*, Docket No. 49260, Order Approving Sale and Transfer to Proceed (Jul. 1, 2020) (order allowing sale to proceed issued approximately 16 months after initial filing of the application).

¹⁰ Order No. 1 at 1.

C. Timely processing of STM applications is necessary for CSWR Texas to acquire and rehabilitate multiple distressed water and wastewater systems in a timely and cost-effective manner

As explained by Staff,¹¹ CSWR Texas is a new entrant in the Texas water utility market and is seeking to acquire numerous distressed water or wastewater systems in Texas. However, contrary to Staff's request, CSWR Texas' status as a new entrant should not delay the processing of its applications. CSWR Texas' parent company, CSWR, LLC, is an established nationally recognized water and wastewater utility that operates approximately 180 water and wastewater systems serving over 110,000 customers through approximately 40,000 connections in four states. Furthermore, the Company has already received Staff's recommendation for approval in two other STM proceedings (Docket Nos. 50276 and 50311) and has been approved to complete its acquisition in one other STM proceeding (Docket No. 50251).

Moreover, the expeditious processing of its pending STM applications is critical to facilitating this and other pending acquisitions. First and foremost, most the systems subject to pending STM proceedings require significant capital investments and operational improvements to meet Texas Commission on Environmental Quality ("TCEQ") standards.¹² CSWR Texas has already paid engineers to evaluate the systems and to recommend capital improvements to meet regulatory standards,¹³ and it has corresponded with the TCEQ about the required permits and approvals for construction necessary to achieve compliance.¹⁴ CSWR Texas cannot make these

¹¹ Staff's Request at 1-2.

¹² See, e.g., Docket No. 51089, Application at Question 12 and Attachments H, I, and J.

¹³ See, e.g., Docket No. 51089, Application at Attachment J.

¹⁴ See, e.g., Docket No. 51089, Application at Attachment I-1.

improvements until it acquires the systems, which leaves it, the sellers and customers in a state of uncertainty as to how to address the immediate system needs.¹⁵

Second, when negotiating the sale of water and wastewater systems, both CSWR Texas and the sellers reasonably relied on the applicable provisions of the Water Code and Commission rules to anticipate consummation of the acquisitions. As explained below, the Company has already delayed these filings while it worked with Staff to determine an effective process to review these STMs. The parties cannot continue to suspend the execution of these agreements indefinitely. If these proceedings are unreasonably delayed, the original transactions could expire, requiring the Company to either abandon the acquisition altogether or pay to extend the contracted deadline to complete the acquisition, leading to higher acquisition and regulatory costs.

Third, like many of the systems the Company seeks to acquire, these systems are very small, with few customers or assets and operations that cover a small geographical area. It should take *less* time to process, not more, because there is considerably less information to review. In addition, as noted before and below, the Company has spent the last year working with Staff to determine the exact information it requires to process this and its other applications. This should result in a more streamlined and simple review, particularly from the standpoint of the sufficiency of the application.

To that end, because the systems are so small, the Company intends to consolidate its operations and overhead costs for these and other systems in order to improve, operate and manage them in an efficient and cost-effective manner for customers. To the extent this and other STM proceedings are delayed as Staff requests, the economies of scale and ability to spread the costs

¹⁵ Typically, a temporary manager, receiver or owner of a distressed system with a pending acquisition will implement short-term solutions to repair a system in anticipation of the new owner eventually taking over the system. CSWR Texas seeks to make the necessary investments to effect long-term solutions to rehabilitate these systems.

over a larger customer base cannot readily be achieved, and the Company would need to significantly increase rates in individual systems to make necessary improvements.

Finally, Staff argues abatement is necessary for it to “ensure that the approval of these dockets is sequenced in a manner that matches the proposed maps and tariffs proposed by Staff and consented to by the applicants in each docket.”¹⁶ But the proposed maps and tariffs will be developed and consented to *after* consummation of the transactions, at least three to four months from now, which should not interfere with Staff’s recommendation on sufficiency of the applications at this early stage of the proceedings. Moreover, Staff’s requests would make the sequence of dockets inflexible, and a delay would affect all other pending proceedings. In contrast, if the dockets are processed on their own timelines, they do not need to be approved in a strict sequence. Dockets that are administratively complete may be processed while any docket with issues or deficiencies is addressed and supplemented on its own.

D. CSWR Texas has made significant efforts to streamline and standardize its filings to facilitate Staff’s review.

CSWR Texas has been working with Staff for over a year to develop a streamlined application that will allow Staff to process this and other proceedings as efficiently as possible. In fact, the Company delayed twelve of its STM filings for almost nine months so that it could further hone this process through the processing of its first three pending filings, Docket Nos. 50251, 50276, and 50311. Upon determining what additional information Staff would require in each of those proceedings, CSWR Texas included all of this additional information in each subsequently filed application to match the content and form Staff requested.

The Company will continue to work with Staff on this process but, importantly, the core consideration in each case—the financial, managerial, and technical capability of CSWR Texas—

¹⁶ Staff’s Request at 1.

all rely on essentially the exact same information, which CSWR Texas has already been provided in each of the fifteen pending applications in order to facilitate Staff's review. In that regard, Staff has already reviewed the Company's managerial and technical capability and, based on Staff's recommendation, the Commission has found CSWR Texas "are experienced operators that are knowledgeable about operations as well as the requirements for continuous and adequate service."¹⁷ With regard to its financial capability, CSWR Texas agreed to provide in each STM application the individual financial projections for the subject utility as well as a comprehensive financial projection for all seventeen utilities it initially plans to acquire so that Staff has the benefit of seeing the entire scope, cost and impact of all the Company's planned acquisitions and can review the exact same projected financial information in each proceeding. Staff reviewed this comprehensive projected financial in Docket Nos. 50251, 50276 and 50311 and found the information sufficient and the Company to be financially capable.¹⁸ The Commission adopted this recommendation in Docket No. 50251.

While the Company anticipates that in any one STM proceeding, Staff may identify additional information it requires, the streamlined nature of each application and Staff's familiarity with the core components of each application should facilitate review and allow for a timely recommendation on administrative completeness. And, as noted before, it is unnecessary to delay multiple proceedings just because Staff requires additional information in any one proceeding.

¹⁷ Docket No. 50251, Staff's Amended Recommendation on the Transaction at 5 (Jul. 10, 2020).

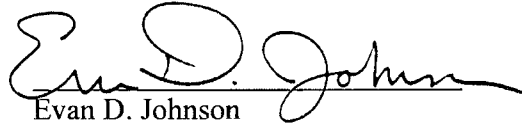
¹⁸ See, e.g., *id.* at 5-6; see also, Docket No. 50276, Staff's Recommendation on the Transaction at 1 (Jul. 8, 2020); Docket No. 50311 Staff's Recommendation on the Transaction at 2 (Jul. 8, 2020).

II. CONCLUSION

For the reasons stated above, the Company requests that the presiding officer deny Commission Staff's requests for abatement in Docket Nos. 51089, 51118, 51130, and 51126. The Company also requests such other relief to which it has shown itself entitled.

Respectfully submitted,

L. Russell Mitten
General Counsel
Central States Water Resources, Inc.
1650 Des Peres Rd., Suite 303
St. Louis, MO 63131
(314) 380-8595
(314) 763-4743 (Fax)

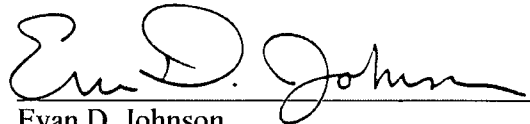


Evan D. Johnson
State Bar No. 24065498
Kate Norman
State Bar No. 24051121
C. Glenn Adkins
State Bar No. 24103097
Coffin Renner LLP
1011 W. 31st Street
Austin, Texas 78705
(512) 879-0900
(512) 879-0912 (fax)
evan.johnson@crtxlaw.com
kate.norman@crtxlaw.com
glenn.adkins@crtxlaw.com

ATTORNEYS FOR CSWR, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2020, a true and correct copy of the foregoing document was served on all parties of record via electronic mail in accordance with the Order Suspending Rules issued in Project No. 50664.


Evan D. Johnson