



Control Number: 51089



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DOCKET NO. 51089

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

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE SALE

On July 20, 2020, CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Donald E. Wilson dba Quiet Village II dba QV Utility (QV Utility) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Hidalgo County. The Applicants filed supplemental information on July 27, 2020 and November 3 and 4, 2020.

On December 17, 2020, the administrative law judge filed Order No. 8, establishing a deadline of February 3, 2021, for the Staff (Staff) Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale and on the certificate of convenience and necessity amendment. Therefore, this pleading is timely filed.

I. RECOMMENDATION

As supported by the attached memorandum of Patricia Garcia of the Commission’s Infrastructure Division, Staff recommends that the proposed transaction be allowed to proceed.

Staff recommends that the proposed transaction be found to satisfy the relevant criteria identified in Texas Water Code (TWC) Chapter 13 and under 16 Texas Administrative Code (TAC) Chapter 24. If the transaction is permitted to proceed, Staff further recommends that the Applicants be required to file evidence, within 30 days of the effective date of the transaction, demonstrating that all assets have been transferred to CSWR-Texas, and that the disposition of any customer deposits has been addressed as required by 16 TAC § 24.239(k) and (l).

Staff notes that the approval of the sale expires 180 days from the date of the Commission’s written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, the water and sewer certificates

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of convenience and necessity will remain in the name of QV Utility until the transfer is completed and approved.

II. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Dated: February 3, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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Division Director

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/s/ John Harrison
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**DOCKET NO. 51089
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 February 3, 2021, in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ John Harrison
John Harrison

Public Utility Commission of Texas

Memorandum

TO: John Harrison, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: February 3, 2021

RE: Docket No. 51089 – *Application of Donald E. Wilson dba Quiet Village II dba QV Utility and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hidalgo County*

1. Application

CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Donald E. Wilson dba Quiet Village II dba QV Utility (QV Utility)¹ filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Hidalgo County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

CSWR-Texas, water certificate of convenience and necessity (CCN) No. 13290 and sewer CCN No. 21120,² seeks approval to acquire facilities and to transfer all water and sewer service area from QV Utility under water CCN No. 12730 and sewer CCN No. 20780. The requested area includes approximately 18.5 acres and 165 current connections.

2. Notice

CSWR-Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was January 4, 2021; there were no motions to intervene, protests, or opt-out requests received.

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.

¹ The Commission's Water Utility Database shows that Donald E. Wilson dba Q V Utility holds water certificate of convenience and necessity (CCN) No. 12730 and sewer CCN No. 20780.

² Final approval for CSWR-Texas to obtain water CCN No. 13290 is pending in Docket Nos. 50251, 50276, and 50311, and final approval for CSWR-Texas to obtain sewer CCN No. 21120 is pending in Docket Nos. 51130 and 51146.

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)).

QV Utility has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Quiet Village II, PWS ID No. 1080221. QV Utility purchases wastewater treatment from the City of Donna. QV Utility has several violations listed in the TCEQ database, which means the service currently provided to the requested area is inadequate. 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 QV Utility to CSWR-Texas. The customers are currently receiving water service from QV Utility's water system and sewer service from the City of Donna through an agreement with QV Utility. 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 be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently certificated.

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 taking place 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)).

In this docket, there are two CCNs being transferred to CSWR-Texas, one water CCN and one sewer CCN. The water CCN has a TCEQ approved PWS registered as Quiet Village II, PWS ID No. 1080221. QV Utility purchases wastewater treatment from the City of Donna. There are several violations for the water system 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.

TCEQ rule, 30 TAC § 290.46, 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)(4)(A), groundwater systems serving no more than 250 connections must use an operator who holds a Class “D” or higher groundwater license for each public water system being transferred in this docket. CSWR-Texas 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 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. 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. 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 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 the public water system 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., 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 Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) 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 for Shady Oaks 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 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 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. 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. 51047, South Silver Creek has a PWS 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, Texas.
- In Docket No. 51146, Abraxas has a TCEQ approved PWS registered as Abraxas Utilities, PWS ID 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 each of the following applications, 50251, 50276, 50311, 50989, 51026, 51118, 51031, 51047, 51130, 51146, and 51089 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 QV Utility public water system and wastewater 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 or sewer 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)).*

QV Utility is currently serving customers and has sufficient capacity. QV Utility purchases water from North Alamo Water Supply Corporation and wastewater treatment from the City of Donna. Therefore, the feasibility of obtaining service from an adjacent retail public utility was not considered as the utility already purchases water and wastewater treatment from adjacent retail public utilities.

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, III, 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

My analysis is based on the financial statements of CSWR-Texas's affiliate, 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 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's 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 pending STM applications. Additionally, CSWR-Texas provided an affidavit indicating CWSR, LLC's commitment to providing funds necessary to purchase QV Utility's system as well as the other water and wastewater systems included in CSWR-Texas's other recent or pending transactions. 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)).***

Mr. Bednarski provided the following.

Because CSWR-Texas meets the financial tests, no additional financial assurance is recommended.

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)).*

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 and sewer service to the existing customers in the area. There will be an improvement in the quality of water service provided to customers once the necessary improvements are made to QV Utility's water system. There will be no change in the cost of service to customers.

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 water facilities in the requested area and the service area under water CCN No. 12730; to transfer sewer facilities in the requested area and the service area under sewer CCN No. 20780; and to amend CSWR-Texas' water CCN No. 13290 and sewer CCN No. 21120 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 QV Utility for the customers being served by the utility. I further recommend that a public hearing is not necessary.