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DOCKET NO. 51940

APPLICATION OF WALNUT BEND	§	PUBLIC UTILITY COMMISSION
WATER SUPPLY AND CSWR-TEXAS	§	
UTILITY OPERATING COMPANY,	§	OF TEXAS
LLC FOR SALE, TRANSFER OR	§	
MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN ANGELINA	§	
COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE TRANSACTION

On March 25, 2021, Walnut Bend Water Supply aka Walnut Bend Water System (Walnut Bend) and CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) (collectively, Applicants) filed an application for approval of the sale and transfer of certificate of convenience and necessity (CCN) rights in Angelina County. CSWR seeks approval to transfer all of the water service area from Walnut Bend under water CCN No. 12115.

On July 13, 2021, the administrative law judge (ALJ) filed Order No. 5 requiring the Staff of the Public Utility Commission of Texas (Staff) to file a recommendation on approval of the sale and on the CCN amendment or request a hearing on or before July 22, 2021. Therefore, this pleading is timely filed.

I. STAFF’S RECOMMENDATION

As described in the attached memoranda of Jolie Mathis of the Commission’s Infrastructure Division, and Fred Bednarski, Rate Regulation Division, Staff recommends that the transaction be approved to proceed, and that the procedural schedule in Order No. 5 be maintained for continued processing of this matter. 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 16 Texas Administrative Code (TAC) Chapter 24. Staff further recommends that CSWR-Texas has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

II. CONCLUSION

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

Dated: July 22, 2021

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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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 July 22, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz
Kevin R. Bartz

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: July 22, 2021

RE: Docket No. 51940 – *Application of Walnut Bend Water Supply and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Angelina County*

1. Application

CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and the Walnut Bend Water Supply (Walnut Bend) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Angelina County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

CSWR-Texas, certificate of convenience and necessity (CCN) No. 13290, seeks approval to acquire facilities and to transfer all of the water service area from Walnut Bend under water CCN No. 12115. The requested area includes 19 current customers and approximately 48 acres. The application proposes the addition of approximately 48 acres to CCN No. 13290.

The application indicates that the total acreage being requested is approximately 47.5 acres. Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined the requested area is approximately 48 acres

2. Notice

CSWR-Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was June 7, 2021, and 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.

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)(D)).*

Walnut Bend has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Walnut Bend Water System, PWS ID No. 0030037. The last TCEQ compliance investigation of the Walnut Bend system was on August 11, 2020. No violations or concerns were noted as a result of that investigation. In addition, the Commission's complaint records, which cover the last 5 years, show no complaints against Walnut Bend.

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)).*

There are currently 19 existing customers 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 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 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)).*

Walnut Bend has a TCEQ approved public PWS registered as Walnut Bend Water System, PWS ID No. 0030037. The last TCEQ compliance investigation of the Walnut Bend system was on August 11, 2020. No violations or concerns were noted as a result of that investigation. In addition, the Commission's complaint records, which cover the last 5 years, show no complaints against Walnut Bend.

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. 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.

Based on orders filed in previous CSWR-Texas dockets, the administrative law judge requested that 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:

- Docket No. 50251 was finalized by the Commission on March 12, 2021. In this application, CSWR-Texas acquired the public water system Coleta Water, PWS No. 2350036, and associated facilities, approximately 438 acres of service area, and 211 connections in Victoria County from JRM Water, LLC.
- Docket No. 50276 was finalized by the Commission on March 11, 2021. In this application, CSWR-Texas acquired the public water system North Victoria Utilities, PWS No. 2350049, and associated facilities, approximately 307 acres of service area, and 77 connections in Victoria County from North Victoria Utilities, Inc.
- Docket No. 50311 was finalized by the Commission on March 17, 2021. In this application, CSWR-Texas acquired the public water system Copano Heights Water, PWS No. 0040017, and associated facilities, approximately 61 acres of service area, and 110 connections in Aransas County from Copano Heights Water Company.
- Docket No. 51065 was finalized by the Commission on March 9, 2021. In this application, CSWR-Texas acquired the public water system Treetop Estates, PWS No. 1840134, and associated facilities, approximately 93 acres of service area, and 35 connections in Parker County from Treetop Utilities, LLC.
- Docket No. 51118 was finalized by the Commission on March 18, 2021. In this application, CSWR-Texas acquired the public water systems Shady Oaks Water, PWS No. 2470017; Hickory Hill Water, PWS No. 2470018; Arrowhead Water, PWS No. 2470025; and C Willow Water, PWS No. 2470019, and associated facilities, approximately 1,828 acres of service area, and 560 connections in Wilson County from Shady Oaks Water Supply Company, LLC.
- Docket No. 51026 was finalized by the Commission on April 23, 2021. In this application, CSWR-Texas acquired the public water system Tall Pines, PWS No. 1010220, and associated facilities, approximately 42 acres of service area, and 73 connections in Harris County from Tall Pines Utility, Inc.
- Docket No. 51031 was finalized by the Commission on April 14, 2021. In this application, CSWR-Texas acquired the public water systems Council Creek Village, PWS No. 0270014; South Council Creek 1, PWS No. 0270079; and South Council Creek 2, PWS No. 0270080, and associated facilities, approximately 275 acres of service area, and 176 connections in Burnet County from Council Creek Village, Inc. dba Council Creek Village dba South Council Creek 2.
- Docket No. 51047 was finalized by the Commission on April 19, 2021. In this application, CSWR-Texas acquired the public water system South Silver Creek I II & III, PWS No. 0270041, and associated facilities, approximately 169 acres of service area, and 103 connections in Burnet County from Jones-Owen dba South Silver Creek I II & III.
- Docket No. 50989 was finalized by the Commission on April 23, 2021. In this application, CSWR-Texas acquired the public water systems Hillside Estates Water System, PWS No. 0080049; Meadowview Estates, PWS No. 0080051; Settlers Meadows Water System, PWS No. 0080055; Settlers Estates Sec II, PWS No. 0080056; Settlers Crossing Water System, PWS No. 0080058; Meadowview Estates II, PWS No. 0080059; and Settlers Crossing Water System 2, PWS No. 0080060, and

associated facilities, approximately 638 acres of service area, and 316 connections in Austin County from Ranch Country of Texas Water Systems, Inc.

- Docket No. 51130 was finalized by the Commission on April 20, 2021. In this application, CSWR-Texas acquired the public water system Laguna Tres Subdivision, PWS No. 1110019, and associated facilities from Laguna Tres, CSWR Also acquired the public water system Laguna Vista Subdivision, PWS No. 1110095 and associated facilities and unpermitted wastewater facilities from Laguna Vista. The total certificated area amended to CSWR-Texas' CCN was 362 acres of water service area, with 446 water connections and 6 acres of sewer service area with 5 connections in Hood County.
- Docket No. 51146 was finalized by the Commission on April 23, 2021. In this application, CSWR-Texas acquired the public water system Abraxas Utilities, PWS No. 1840034, Wastewater Discharge Permit No. WQ 00150-10001, and associated facilities, approximately 721 acres of service area, and 437 connections in Parker County from Abraxas Corporation.
- In Docket No. 51036, Woodlands West has a non-public water system registered with the TCEQ as Woodlands West, PWS No. 0260043. Woodlands West has one monitoring violation listed in the TCEQ database. CSWR-Texas indicated that it will address this deficiency 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 61 acres and 18 connections in Burleson County.
- In Docket No. 51003, the CCN for Oak Hills Ranch Estates Water Company (Oak Hills) is being transferred to CSWR-Texas. The water CCN has a TCEQ approved public water system registered as Oak Hills Ranch Water, PWS No. 0940085. Oak Hills has several violations and additional issues that need to be addressed that include reworking water wells, replacing the ground storage tank, and installing additional pumps. CSWR-Texas stated 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 systems are officially transferred to CSWR-Texas. Once the water systems are compliant with TCEQ regulations, the service provided to the requested area will be adequate. For this docket, the area to be added to CSWR-Texas' CCN, including uncertificated area, is approximately 1,857 acres and 196 connections in Guadalupe and Wilson counties.
- In Docket No. 51089, there are two CCNs being transferred from Donald E. Wilson dba Quiet Village II dba QV Utility (QV Utility) 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. QV Utility purchases wastewater treatment from the City of Donna. There are several violations listed in the TCEQ database for the water system. 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 Docket No. 51222, Estate of Patetreen Petty McCoy dba Big Wood Springs Water Company (Big Wood Springs) has a public water system registered with the TCEQ as Big Wood Springs Water System, PWS No. 2500019. Big Wood Springs does not

have any open violations in the TCEQ databases. For this docket, CSWR-Texas is seeking to transfer approximately 643 acres and 76 connections in Wood County.

- In Docket No. 51642, James L. Nelson dba Waterco (Waterco) has a public water system registered with the TCEQ as Waterco, PWS No. 1690028. The application states that there are several violations for this water system 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 will address the deficiencies to ensure that, after closing the sale, the full operation of this public water system can continue in accordance with Commission and TCEQ rules. For this docket, CSWR-Texas is seeking to transfer approximately 25 acres and 13 connections in Montague County.
- In Docket No. 51126, Aero Valley Water Service (Aero Valley) has a public water system registered with the TCEQ as Aero Valley Water Service, PWS No. 0610243. There are several violations listed in the TCEQ database. CSWR-Texas will address the violations and deficiencies to ensure that, after closing the sale, the full operation of this public water system can continue in accordance with Commission and TCEQ rules. For this docket, CSWR-Texas is seeking to transfer approximately 46.5 acres, which consists of 32.5 acres of single certification and 14 acres of dual certification with Town of Northlake's CCN No. 12915, with 42 connections in Denton County.
- In Docket No. 51928, Betty J. Drago (Dragoo) has a public water system registered with the TCEQ as Thousand Oaks Subdivision, PWS No. 0720054. The last TCEQ compliance investigation of this public water system was on April 10, 2018. The investigation identified one violation for failure to install flush valves on dead end mains. This violation remains unresolved. Staff notes that a violation related to flush valves may not affect the adequacy of water service provided by Drago. For this docket, CSWR-Texas is seeking to transfer approximately 96 acres of uncertificated area with 15 connections in Erath County.
- In Docket No. 51544, Franklin Water Service Co. LLC (Franklin) has two public water systems registered with the TCEQ as Franklin Water Systems 1, PWS No. 1520224 and Franklin Water Systems 3, PWS No. 1520080. The last TCEQ compliance investigation of Franklin Water Systems 1 was conducted from February 13, 2019 through February 18, 2019. There were two alleged violations noted for Franklin Water System 1, which were resolved in March 22, 2019. The last TCEQ compliance investigation of Franklin Water Systems 3 was conducted on December 17, 2019. No violations were noted as a result of the investigation at the Franklin Water Systems 3 water plant. For this docket, CSWR-Texas is seeking to transfer approximately 186 acres and 219 connections in Lubbock County.

In each of the following applications, 50251, 50276, 50311, 51065, 51118, 51026, 51031, 51047, 50989, 51130, 51146, 51036, 51003, 51089, 51222, 51642, 51126, 51928, and 51544 CSWR-Texas has stated that it intends to contract with an operations company.

- 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)).*

Walnut Bend is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will 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) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

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)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

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 it is in compliance with all environmental regulations. CSWR-Texas is not aware of any negative impacts or disruptions to the environment or land that would result from the transaction.

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. CSWR-Texas plans to make the necessary investments to improve the 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 water facilities in the requested area and all of the water service area held under CCN No. 12115 to CSWR-Texas and amending water CCN No. 13290 of CWSR-Texas 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. There are no deposits held by Walnut Bend for the customers being served by Walnut Bend. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: July 22, 2021

RE: Docket No. 51940 - Application of Walnut Bend Water Supply and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Angelina County

On March 25, 2021, Walnut Bend Water Supply (Walnut Bend) and CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) filed an application for approval of sale and transfer of facilities and certificate rights in Angelina County.

I recommend that CSWR-Texas demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by CSWR-Texas before the date of this memorandum and may not reflect any changes in CSWR-Texas' status after this review.

Ability to serve: financial ability and stability (Texas Water Code (TWC) §§ 13.241(a) and 13.246(c)(6))

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 Texas Administrative Code (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 under 16 TAC § 24.11(e)(3).

Leverage test

My analysis is based on CSWR-Texas' affiliate, CSWR, LLC and Subsidiaries' (CSWR), financial statements ending December 31, 2020. 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 as of December 31, 2020 and 2019.

CSWR's financial statement reports a debt-to-equity ratio of 0.16 as provided in confidential Attachment FB-1. Because the ratio is less than 1.0, CSWR meets the test specified in 16 TAC § 24.11(e)(2)(A). CSWR 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's financial statements and recent cash balance provided in confidential Attachment FB-1 indicate that CSWR possesses sufficient cash and financial ability to pay for capital improvements and necessary equity investments for this application as well as in other recently approved or pending applications. Additionally, CSWR-Texas provided an affidavit indicating CWSR's commitment to providing funds necessary for cash required to purchase Walnut Bend's system as well as the other water and wastewater systems included in CSWR-Texas' other recently approved and 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).

Financial assurance (TWC § 13.246(d))

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