



## Filing Receipt

**Received - 2022-02-02 02:38:57 PM**

**Control Number - 52700**

**ItemNumber - 25**

**DOCKET NO. 52700**

<b>APPLICATION OF RJR WATER</b>	<b>§</b>	
<b>COMPANY, INC. AND CSWR-TEXAS</b>	<b>§</b>	
<b>UTILITY OPERATING COMPANY, LLC</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RIGHTS IN PARKER AND PALO PINTO</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	

**CSWR-TEXAS UTILITY OPERATING COMPANY, LLC’S RESPONSE TO QUALITY HILL PARTNERS, LLC’S MOTION TO INTERVENE, NOTICE OF APPEARANCE, AND REQUEST FOR CONTESTED CASE HEARING**

CSWR-Texas Utility Operating Company, LLC (“CSWR Texas”) timely files this response to the Motion to Intervene, Notice of Appearance, and Request for Contested Case Hearing (“Motion to Intervene”) filed on January 26, 2022, by Quality Hill Partners, LLC (“Quality Hill”).<sup>1</sup> For the following reasons, Quality Hill’s motion should be denied.

**I. BACKGROUND**

CSWR Texas filed its application to acquire RJR Water Company, Inc. (“RJR” or “Seller”) in this proceeding on October 12, 2021. RJR currently provides potable water to a total of 129 residential water connections using three wells, two ground storage tanks, five booster pumps and two hydropneumatic tanks as well as associated distribution facilities.<sup>2</sup> The proposed acquisition will include all facilities owned by the Seller that are necessary to serve the system as well as RJR’s entire service territory, which covers approximately 350 acres including the subject property owned by Quality Hill. It is CSWR Texas’ understanding that one of the three wells (“Well #1”)

---

<sup>1</sup> 16 Tex. Admin. Code (“TAC”) § 22.78(a).

<sup>2</sup> Affidavit of Jake Freeman, attached as Exhibit A to this pleading. Please note that due to severe weather in the Midwest this week, Mr. Freeman was delayed in obtaining the notarization of this affidavit prior to filing. CSWR Texas will supplement with a notarized version of his affidavit as soon as possible. In addition, see Confidential Attachment J to the Company’s application in this proceeding, which is an engineering memo that describes the system and its current compliance status.

and some distribution facilities that serve this system are located on the property owned by Quality Hill within the service area.

It is CSWR Texas' understanding that either Quality Hill or a predecessor-owner of the Quality Hill property granted Seller an easement to access Well #1 several years ago and that Quality Hill has permitted Seller to continue to use its property to access Well #1 and other facilities to serve its customers. CSWR Texas is not aware that Quality Hill ever revoked its permission to Seller to access the property, and Seller is currently utilizing Well #1 to provide water to customers of this system. It is also likely that Seller's open and notorious use of the property to access the well established a prescriptive easement that Seller can transfer to CSWR Texas as part of the acquisition transaction, though that is not an issue that needs to be addressed within the context of this proceeding. For these reasons, CSWR Texas disagrees with Quality Hill's characterization that no easement or other rights exists to allow Seller to access its facilities on the property.

Shortly after CSWR Texas filed the application, on October 15, 2021, counsel for Quality Hill contacted CSWR Texas to discuss the proposed transaction.<sup>3</sup> Counsel for CSWR Texas indicated to counsel for Quality Hill that the Company had an agreement for the purchase of the system but that no closing date would be set until regulatory approval was granted by the applicable regulatory agency.<sup>4</sup> CSWR Texas understands from its conversation with counsel for Quality Hill that, although Quality Hill has permitted Seller to access Well #1 and the associated distribution facilities for several years, it prefers to have those facilities moved to a different location on its property so that it can utilize the property for other purposes while still allowing Seller to access the water supply. CSWR Texas agreed to work with Quality Hill to address its concerns. On

---

<sup>3</sup> Affidavit of Joshua E. Richardson, attached as Exhibit B to this pleading.

<sup>4</sup> *Id.*

November 22, 2021, counsel for CSWR Texas provided Quality Hill with an update on CSWR Texas's surveyors' review of the well and appurtenances purported to be located on Quality Hill's property.<sup>5</sup> On November 30, 2021, counsel for Quality Hill emailed a proposed Water Well Easement and Access Agreement to CSWR Texas and Seller.<sup>6</sup> To date, no final decision has been made on where or whether to move the existing facilities.

CSWR Texas completed formal notice of this application on November 30, 2021. The notice was in the exact form prescribed by Commission Staff in its recommendation issued on November 12, 2021, and included all customers of the system as well as neighboring cities, counties, and utilities, as directed by Staff. Direct mail notice was not sent to Quality Hill because it is not a customer and its concerns appeared to be grounded in a land rights issue that is not within the Commission's jurisdiction; however, by virtue of the conversations with Quality Hill's counsel during October and November of 2021, Quality Hill was aware an acquisition application was pending before the Commission. On December 2, 2021, CSWR Texas filed affidavits attesting to the completion of notice. On December 22, 2021, Commission Staff issued its recommendation that notice was sufficient, and on December 29, 2021, the presiding officer issued Order No. 3 finding notice sufficient and setting December 20, 2021 as the deadline for intervention.

On January 26, 2022, 47 days after the intervention deadline and one day prior to the deadline by which Staff was to issue its final recommendation on whether the transaction should proceed, Quality Hill submitted its motion requesting late intervention because, it claims, it was not aware of this proceeding despite the multiple conversations between counsel for both parties. Quality Hill also asserts that the public interest requires its intervention because, it alleges, the

---

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

system lacks sufficient capacity to serve existing customers while its dispute over access to its property is pending. For the following reasons, Quality Hill's motion to intervene should be denied.

## II. RESPONSE TO MOTION TO INTERVENE

16 Tex. Admin. Code § 22.103(b) provides that a person has standing to intervene if it "(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding." A justiciable interest is an interest over which the Commission has authority to adjudicate and grant relief. As explained below, Quality Hill's sole interest in the application relates to a potential contract dispute over an existing easement and access to their property, and interests in contract disputes are not contemplated or implicated by a proceeding involving the sale, transfer, or merger ("STM") of facilities and certificate rights.<sup>7</sup> Further, there are no existing capacity issues affecting the system, even if Well #1 were removed entirely from service. Also, regardless, Quality Hill is not a customer of this system, so service quality issues do not impact it in any way. Accordingly, Seller has not alleged any justiciable interest in this proceeding that could be adversely impacted by the outcome.

Granting late intervention is also not merited. Late intervention is only merited after taking into consideration whether the movant had good cause for failing to file the motion within the time prescribed; whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention; whether any disruption of the proceeding might result from

---

<sup>7</sup> *Application of Terra Southwest, Inc. and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*, Docket No. 52852, Order No. 2 at 1 (Dec. 7, 2021) (denying motion to intervene on basis that disputes over whether movant with a competing contract had a superior right to acquire a water system that was the subject of an STM application are not within the Commission's purview to adjudicate).

permitting late intervention; and whether the public interest is likely to be served by allowing the intervention.<sup>8</sup> However, the facts do not support granting late intervention. For one, Quality Hill has no justiciable interest in the outcome of this proceeding that merits intervention, so granting late intervention would not serve any public interest but instead only delay prompt adjudication, thus prejudicing the applicants. Also, Quality Hill had effective notice of this proceeding through its multiple discussions with CSWR Texas in October and November 2021, so late intervention is not merited even if the movant did have a justiciable interest.

**A. Quality Hill failed to demonstrate a justiciable interest that could be adversely affected by the outcome of this proceeding.**

Quality Hill only raises one specific issue that it claims represents a justiciable interest in the outcome of this proceeding: an alleged contract dispute over an existing easement on Quality Hill's property, which it claims will restrict CSWR Texas from accessing the property after the transaction is closed and limit well capacity below levels necessary to serve existing connections. However, this is a mischaracterization of the facts and does not represent a justiciable interest that merits granting intervention to Quality Hill.

Quality Hill's singular issue is essentially a contract dispute over the interpretation of an existing easement. This Commission has pointedly rejected requests to adjudicate contract disputes through its regulatory jurisdiction.<sup>9</sup> It has in fact specifically ruled that contract disputes cannot be adjudicated in the context of an STM proceeding.<sup>10</sup> The Commission's review in this proceeding is limited to evaluating whether CSWR Texas has shown it has the financial, managerial and technical capability to operate the system pursuant to existing service PUCT

---

<sup>8</sup> 16 Tex. Admin. Code § 22.104(d).

<sup>9</sup> See, e.g., Chairman Lake's comments at the January 27, 2022 Public Utility Commission of Texas ("PUCT") Open Meeting, [https://texasadmin.com/tx/puct/open\\_meeting/20220127/](https://texasadmin.com/tx/puct/open_meeting/20220127/) at time stamp 1:14:40 – 1:15:18.

<sup>10</sup> Docket No. 52852, Order No. 2 at 1 (Dec. 7, 2021).

requirements.<sup>11</sup> It does not descend into contractual disputes over land rights or the interpretation of state law on prescriptive and other types of easements, and it does not recognize a justiciable interest for parties to those disputes.<sup>12</sup>

Regardless, and importantly, even without access to the facilities purportedly located on Quality Hill's property, CSWR Texas would still be able to operate this system within the Texas Commission on Environmental Quality's operational capacity limits, so the alleged capacity concerns would not trigger a justiciable interest in the movant or a public interest concern in general. The RJR water system currently provides potable water to 129 residential water connections using three wells, two ground storage tanks, five booster pumps and two hydropneumatic tanks.<sup>13</sup> Well #1 has a capacity of 58 potential connections.<sup>14</sup> Well #2 has a capacity of 58 potential connections. Well #3 has a capacity of 100 potential connections. Total well capacity is 216 connections. Even if Well #1, aboveground-water tanks, water distribution lines and any other facilities and infrastructure alleged to be on Quality Hill's property became entirely inaccessible, other existing capacity on the system would still allow for up to 158 total connections, which exceeds the minimum capacity necessary to serve the total number of existing connections on the system—129—required by 16 Tex. Admin. Code § 290.45.<sup>15</sup> It is also below the 85% capacity threshold prescribed by Tex. Water Code § 13.139(d) and 16 Tex. Admin. Code § 291.93.<sup>16</sup> Accordingly, contrary to the motion to intervene, Well #1 and the connected

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Exhibit A. In addition, see Confidential Attachment J to the Company's application in this proceeding, which is an engineering memo that describes the system and its current compliance status.

<sup>14</sup> Exhibit A; Application at Confidential Attachment J (Oct. 12, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

distribution facilities are *not* the “primary” source or only source of water supply.<sup>17</sup> Quality Hill’s service quality concerns are, therefore, unfounded.

Further, Quality Hill is not a customer of RJR water system, so any potential impacts to service quality would not adversely affect Quality Hill regardless and its participation in this proceeding is not necessary to evaluate these concerns. In fact, disputes over land or water rights and other contractual concerns are commonly resolved outside the STM process and do not require participation of the contracting parties in the STM.<sup>18</sup> Granting intervention status to Quality Hill at this late stage of the proceeding for the sole purpose of allowing it to delay resolution while it negotiates a land rights agreement with CSWR Texas would also set a problematic precedent for future STM proceedings. If a non-customer can be granted intervention on this basis, any person or entity who is not a customer of a system could elect to intervene in an STM by alleging potential or future quality of service issues even if the system’s service does not impact its interests. For these reasons, Quality Hill’s intervention request should be denied.

**B. Quality Hill’s motion was not timely filed, and granting late intervention is not merited.**

Quality Hill’s motion was filed 47 days after the deadline to intervene and only one day before Staff was to issue its final recommendation on whether the transaction should proceed. While Quality Hill claims to be entitled to late intervention because it did not receive direct notice, Quality Hill still lacks a justiciable interest in the outcome of this proceeding, so intervention is not merited regardless of whether the request was timely filed. Moreover, counsel for CSWR Texas had multiple conversations with counsel for Quality Hill during which the pending transaction and necessary regulatory proceeding were discussed; this is, in fact, why CSWR Texas

---

<sup>17</sup> Motion to Intervene at 2.

<sup>18</sup> Docket No. 52852, Order No. 2 at 1.



and Quality Hill were discussing a new easement agreement in the first place. Therefore, Quality Hill had effective notice of the transaction and this proceeding but elected not to intervene until well after the intervention deadline. It should not be allowed to intervene at this point.

Also, neither Quality Hill nor any other customer is prejudiced by denial of Quality Hill's late intervention because issues regarding service quality are already being evaluated by Commission Staff. Even if Quality Hill's concerns were valid (which they are not), the public interest is already served by Staff's review. In fact, granting intervention status to Quality Hill at this late stage of the proceeding would more likely result in significant prejudice and additional burdens to the applicants and indefinite disruption of the proceeding. For these reasons, Quality Hill's motion for late intervention should be denied.

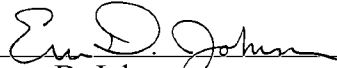
However, notwithstanding whether Quality Hill's motion is granted, CSWR Texas will commit to continue working with Quality Hill to address issues related to the existing easement, albeit outside the scope of this proceeding.

### **III. CONCLUSION**

For the following reasons, CSWR Texas respectfully requests that Quality Hill's motion be denied and that the Company be granted such other relief to which it is justly 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)

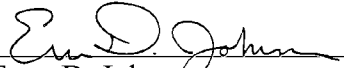


\_\_\_\_\_  
Evan D. Johnson  
State Bar No. 24065498  
C. Glenn Adkins  
State Bar No. 24103097  
Coffin Renner LLP  
1011 W. 31<sup>st</sup> Street  
Austin, Texas 78705  
(512) 879-0900  
(512) 879-0912 (fax)  
evan.johnson@crtxlaw.com  
glenn.adkins@crtxlaw.com

**ATTORNEYS FOR CSWR-TEXAS  
UTILITY OPERATING COMPANY, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of February 2022, notice of the filing of this document was provided to all parties of record via electronic mail in accordance with the Order Suspending Rules, issued in Project No. 50664.



\_\_\_\_\_  
Evan D. Johnson


**AFFIDAVIT OF JAKE FREEMAN**

STATE OF TEXAS                    )  
  )  
COUNTY OF \_\_\_\_\_            )

Before me, the undersigned notary, on this date personally appeared Jake Freeman, known to me to be the person whose name is subscribed below, and being by me first duly sworn, stated upon oath as follows:

1. I am over 18 years of age, of sound mind and otherwise competent to make this Affidavit. The evidence set out in the foregoing Affidavit is based on my personal knowledge.
2. I am the Director of Engineering for Central States Water Resources, Inc. (“Central States”) a subsidiary of CSWR, LLC (“CSWR”), the parent company of CSWR-Texas Utility Operating Company LLC (“CSWR Texas”).
3. As the Director of Engineering with Central States, I am responsible for engineering and construction, including monitoring and addressing compliance issues associated with CSWR Texas’s proposed acquisition of the Mountain River Company water system from RJR Water Company, Inc. (“RJR”), public water system number TX1840077. I have specific knowledge of the system and the facilities addressed in this Affidavit. I am also familiar with Public Utility Commission of Texas and Texas Commission on Environmental Quality compliance requirements, including well capacity requirements.
4. RJR water system currently provides potable water for a total of 129 residential water connections with a population size of approximately 387. RJR is considered a community system that has an average daily consumption of 17,000 gallons per day.
5. The water system is served by three wells, two ground storage tanks, five booster pumps and two hydropneumatic tanks. Well #1, which is the well purportedly located on Quality Hill Partners, LLC’s property, has a capacity of 58 potential connections. Well #2 has a capacity of 58 potential connections. Well #3 has a capacity of 100 potential connections. Total well capacity is 216 connections.
6. If Well #1 were removed from the system, well capacity would still allow for up to 158 total connections, which exceeds the 129 total number of existing connections on the system required by 16 Tex. Admin. Code § 290.45 and is below the 85% capacity threshold identified in 16 Tex. Admin. Code § 291.93 and Tex. Water Code § 13.139(d).

Further affiant sayeth not.

  
\_\_\_\_\_  
Jake Freeman

**SWORN AND SUBSCRIBED** before me on this \_\_\_\_ day of February 2021.

\_\_\_\_\_  
Notary Public in and for the State of Texas


**AFFIDAVIT OF JOSHUA E. RICHARDSON**

STATE OF MISSOURI                    )  
  )  
COUNTY OF ST. LOUIS                )

Before me, the undersigned notary, on this date personally appeared Joshua E. Richardson, known to me to be the person whose name is subscribed below, and being by me first duly sworn, stated upon oath as follows:

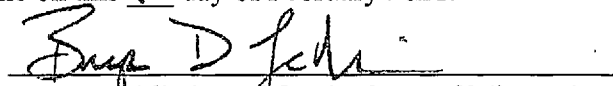
1. I am over 18 years of age, of sound mind and otherwise competent to make this Affidavit. The evidence set out in the foregoing Affidavit is based on my personal knowledge.
2. I am an attorney with Beckemeier LeMoine Law and have held this position since January 2021.
3. As an attorney with Beckemeier LeMoine Law, I represent CSWR, LLC (“CSWR”), the parent company of CSWR-Texas Utility Operating Company LLC (“CSWR Texas”), with regard to CSWR Texas’ acquisition of the Mountain River Company water system from RJR Water Company, Inc. (“RJR”) , public water system number TX1840077.
4. On October 15, 2021, I spoke with Mary Sahs, counsel for Quality Hill Partners, LLC, via telephone and discussed the well and storage tank purported to be located on her client’s property. I indicated that CSWR had an agreement for the purchase of the system but that no closing date had been set and would not be until regulatory approval was granted. Ms. Sahs confirmed this conversation via email on October 15, 2021.
5. Ms. Sahs emailed me on November 3, 2021, requesting updates on CSWR’s review of the well and appurtenances purported to be located on her client’s property. On November 22, 2021, I emailed Ms. Sahs with an update of the review by CSWR’s surveyors.
6. On November 30, 2021, Ms. Sahs emailed a proposed Water Well Easement and Access Agreement to me and Robbie Evans, who I understand to be an officer of RJR.
7. Throughout our conversations and communications, I discussed several times with Ms. Sahs the proposed sale of the Mountain River Water system to CSWR Texas, and it was clear to me that she was aware of the proposed sale.

Further affiant sayeth not.

  
\_\_\_\_\_  
Joshua E. Richardson



AND SUBSCRIBED before me on this 1<sup>st</sup> day of February 2021.

  
\_\_\_\_\_  
Notary Public in and for the State of Missouri