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Received - 2022-05-06 11:26:29 AM

Control Number - 52803

ItemNumber - 43

DOCKET NO. 52803

APPLICATION OF COPANO COVE	§	PUBLIC UTILITY COMMISSION
WATER COMPANY, INC. AND CSWR-	§	
TEXAS UTILITY OPERATING	§	OF TEXAS
COMPANY, LLC FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN ARANSAS COUNTY	§	

**ORDER NO. 9
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Copano Cove Water Company, Inc. and CSWR-Texas Utility Operating Company, LLC (collectively, applicants) for the sale, transfer, or merger of facilities in Aransas County. The applicants seek the sale and transfer of all facilities and service area held under Company Cove’s water certificate of convenience and necessity (CCN) number 12016 to CSWR-Texas, the cancellation of Copano Cove’s water CCN number 12016, and the amendment of CSWR-Texas’s water CCN number 13290 to include the area previously included in Copano Cove’s water CCN number 12016. The administrative law judge (ALJ) grants that the sale is approved and the transaction between the applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Copano is an investor-owned utility that operates, maintains, and controls facilities for providing water service in Aransas County under water CCN number 12016.
2. Copano Cove owns and operates two public water systems registered with the Texas Commission on Environmental Quality (TCEQ) as Copano Cove Subdivision, public water system number 0040003, and Copano Ridge Subdivision, public water system number 0040029.
3. CSWR-Texas is a Texas limited liability company registered with the Texas secretary of state under file number 803367893.

4. CSWR-Texas is an investor-owned utility that operates, maintains, and controls facilities for providing water service in Angelina, Aransas, Austin, Burleson, Burnet, Camp, Denton, Erath, Guadalupe, Hays, Harris, Hidalgo, Hood, Llano, Lubbock, McCulloch, Montague, Parker, Travis, Victoria, Wilson, and Wood counties under CCN No. 13290.

Application

5. On November 9, 2021, the applicants filed the application at issue in this proceeding.
6. In the application, Copano Cove and CSWR-Texas seek approval of the following transaction: (a) CSWR-Texas will acquire all of Copano Cove's facilities and water service area held under water CCN number 12016; (b) Copano Cove's water CCN number 12016 will be cancelled; and (c) CSWR-Texas's water CCN number 13290 will be amended to include the area previously included in Copano Cove's water CCN number 12016.
7. On November 10, 2021, the applicants filed confidential attachments to the application.
8. On January 12, 13, and 27, 2022, CSWR-Texas filed an amended confidential attachment G to the application.
9. On April 11, 2022, CSWR-Texas supplemented the application with updated confidential attachment A and F and highly sensitive attachment G.
10. The requested area comprises approximately 1,267 acres and 713 water connections.
11. The requested area is located approximately 3 miles northwest of downtown Rockport, Texas, and is generally bounded on the north by Copano Bay; on the east by Farm-to-Market 1781; on the south by Rattlesnake Point Road; and on the west by Copano Bay.
12. The applicants requested approval of the transaction using the fair market value of the assets rather than their original cost as allowed under Texas Water Code (TWC) § 13.305.
13. In Order No. 2 filed on December 10, 2021, the ALJ found the application administratively complete.

Notice

14. On January 4, 2022, the Applicants filed the affidavit of Aaron Silas, regulatory case manager of CSWR-Texas, attesting that notice was provided to all current customers of Copano Cove, neighboring utilities, and affected parties on December 20, 2021.
15. On January 6, 2022, the applicants filed a confidential supplement concerning proof of notice.
16. In Order No. 3 filed on January 25, 2022, the ALJ found the notice sufficient.

Evidentiary Record

17. On April 25, 2022, the parties filed a joint motion to admit evidence.
18. In Order No. 8 filed on May 6, 2022, the ALJ admitted the following evidence into the record of this proceeding: (a) the application, including confidential attachments, filed on November 9 and 10, 2021; (b) CSWR-Texas's supplemental attachment G, filed on January 12 and 13, 2022; (c) Commission Staff's amended recommendation on administrative completeness and notice and proposed procedural schedule, filed on December 15, 2021; (d) CSWR-Texas's affidavit of notice to current customers, neighboring utilities, and affected parties, including confidential exhibit B, filed on January 4 and 6, 2022; (e) Commission Staff's recommendation on sufficiency of notice, filed on January 24, 2022; (f) CSWR-Texas's supplemental attachment G to the application, including confidential attachment, filed on January 27, 2022; (g) CSWR-Texas's third supplement to the application, including confidential attachments A and F and highly sensitive attachment G, filed on April 11, 2022; and (h) Commission Staff's supplemental recommendation on approval of sale, including confidential attachment FB-1, filed on April 22, 2022.

Cumulative Recommendation

19. On April 22, 2022, Commission Staff filed its supplemental recommendation regarding the transaction in this docket recommending that CSWR-Texas has the financial, managerial, and technical capability to provide continuous and adequate service to all areas included in

this docket and in Docket Nos. 50251,¹ 50276,² 50311,³ 50989,⁴ 51026,⁵ 51065,⁶ 51118,⁷ 51031,⁸ 51047,⁹ 51130,¹⁰ 51146,¹¹ 51089,¹² 51003,¹³ 51036,¹⁴

¹ *Application of JRM Water LLC and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Victoria County, Docket No. 50251, Notice of Approval (Mar. 12, 2021).*

² *Application of North Victoria Utilities, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Victoria County, Docket No. 50276, Notice of Approval (Mar. 11, 2021).*

³ *Application of Copano Heights Water Company and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Aransas County, Docket No. 50311, Notice of Approval (Mar. 17, 2021).*

⁴ *Application of Ranch Country of Texas Water Systems, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Austin County, Docket No. 50989, Notice of Approval (Apr. 23, 2021).*

⁵ *Application of Tall Pines Utility, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County, Docket No. 51026, Notice of Approval (Apr. 23, 2021).*

⁶ *Application of Treetop Utilities, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County, Docket No. 51065, Corrected Notice of Approval (Mar. 10, 2021).*

⁷ *Application of Shady Oaks Water Supply Company, LLC and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Wilson County, Docket No. 51118, Notice of Approval (Mar. 18, 2021).*

⁸ *Application of Council Creek Village, Inc. d/b/a Council Creek Village d/b/a South Council Creek 2 CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burnet County, Docket No. 51031, Notice of Approval (Apr. 14, 2021).*

⁹ *Application of Jones-Owen Company d/b/a 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, Docket No. 51047, Notice of Approval (Apr. 19, 2021).*

¹⁰ *Application of Laguna Vista Limited and Laguna Tres, Inc. CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hood County, Docket No. 51130, Notice of Approval (Apr. 20, 2021).*

¹¹ *Application of Abraxas Corporation and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County, Docket No. 51146, Notice of Approval (Apr. 23, 2021).*

¹² *Application of Donald E. Wilson d/b/a Quiet Village II d/b/a QV Utility CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hidalgo County, Docket No. 51089, Notice of Approval (Nov. 18, 2021).*

¹³ *Application of Oak Hill Ranch Estates Water and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Guadalupe and Wilson Counties, Docket No. 51003 Notice of Approval (Aug. 9, 2021).*

¹⁴ *Application of Kathie Lou Daniels d/b/a Woodlands West and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burleson County, Docket No. 51036, Notice of Approval (Aug. 23, 2021).*

System Compliance

20. Copano Cove' public water system number 0040029 is currently in compliance with the rules of the TCEQ.
21. Copano Cove's public water system 0040003 is currently not in compliance with the rules of the TCEQ.
22. CSWT-Texas intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water systems into compliance with TCEQ regulations and to ensure customers receive safe and reliable service within a reasonable time upon consummation of the transaction.
23. CSWR-Texas has agreed to work with the TCEQ to address any outstanding compliance issues upon consummation of the transaction.
24. CSWR-Texas demonstrated a compliance history that is adequate for approval of the sale to proceed.

Adequacy of Existing Service

25. There are currently 713 water connections in the 1,267-acre requested area that are being served by Copano Cove through public water system numbers 0040003 and 0040029.
26. CSWR-Texas stated that it intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water systems into compliance with TCEQ regulations and to ensure customers receive safe and reliable service.

Need for Additional Service

27. There is a continuing need for service because the Copano Cove is currently serving 713 connections in the requested area.
28. This is an application to transfer only existing facilities, customers, and service area. There have been no specific requests for additional service within the 1,267-acre requested area.

Effect of Approving the Transaction and Granting the Amendment

29. Approving the sale and transfer to proceed and granting the CCN amendment will obligate CSWR-Texas to provide continuous and adequate water service to current and future customers in the 1,267-acre requested area.

30. Because this application is to transfer only existing facilities, customers, and service area, there will be no effect on any other retail public utility servicing the proximate area.
31. There will be no effect on landowners in the requested area because the area is currently certificated.
32. CSWR-Texas will adopt Copano Cove's current rates upon the consummation of the transaction.

Ability to Serve: Managerial and Technical

33. CSWR-Texas owns and operates 31 public water systems registered with the TCEQ and does not have any active violations listed in the TCEQ database.
34. CSWR-Texas employs or contracts with TCEQ-licensed operators who will operate the public water systems.
35. No additional construction is necessary for CSWR-Texas to provide service to the requested areas.
36. CSWR-Texas intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water systems into compliance with TCEQ regulations and to ensure customers receive safe and reliable service within a reasonable time upon consummation of the transaction.
37. CSWR-Texas has the technical and managerial capability to provide adequate and continuous service to the requested area.

Ability to Serve: Financial Ability and Stability

38. CSWR, LLC, the immediate parent company of CSWR-Texas, is capable, available, and willing to cover temporary cash shortages, and has a debt-to-equity ratio of less than one, satisfying the leverage test.
39. CSWR, LLC provided a written guarantee to cover temporary cash shortages, demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first year five years of operations after completion of the transaction, and possesses the cash and leverage ability to pay for capital improvements and necessary equity investments, satisfying the operations test.

40. CSWR-Texas demonstrated the financial and managerial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

41. There is no need to require CSWR-Texas to provide a bond or other financial assurance to ensure continuous and adequate service.

Voluntary Valuation of Acquired Utility or Facilities

42. Prior to filing the application, CSWR-Texas and Copano Cove filed a notice to the Commission in Project No. 49859 of their intent to use the Commission's fair market value (FMV) process to determine the ratemaking rate base of Copano Cove's water system assets to be acquired by CSWR-Texas.
43. CSWR-Texas included copies of the three appraisal reports required by the FMV process with the application and evidence of the purchase price agreed upon between CSWR-Texas and Copano Cove.
44. The agreed upon purchase price for the transaction is identified in confidential attachment FB-1 to Commission Staff's recommendation.
45. The average of the three appraisals yields a purchase price of less than the FMV of Copano Cove's water system; therefore, the ratemaking rate base for Copano Cove's water system is the agreed upon purchase price for the transaction identified in attachment FB-1 to Commission Staff's recommendation.
46. The application included CSWR-Texas's known and estimated transaction and closing costs.
47. No additional conditions for the acquisition based on the FMV process are needed.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

48. The requested area is currently being served by Copano Cove, and there will be no changes to land uses or existing CCN boundaries.
49. Obtaining service from an adjacent retail public 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 a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

50. CSWR-Texas intends to invest the capital required to ensure the system has sufficient capacity and that service provided to the requested area is adequate.

Environmental Integrity and Effect on the Land

51. The requested area will continue to be served with existing infrastructure.
52. There will be minimal effects on environmental integrity of the land as a result of CSWR-Texas's planned upgrades, renovations, and repairs to the public water system.

Improvement of Service or Lowering Cost to Consumers

53. Water service to the requested area will improve because CSWR-Texas intends to address and resolve regulatory compliance issues and improve the safety and reliability of service.
54. The rates charged to customers in the requested area will not change as a result of the proposed transaction because CSWR-Texas will adopt the currently in effect tariff for Copano Cove's water systems upon consummation of the transaction.

Regionalization or Consolidation

55. CSWR-Texas will not need to construct a physically separate water or sewer system to continue serving the requested area; therefore, concerns of regionalization or consolidation do not apply.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The applicants provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239.
2. After consideration of the factors in TWC § 13.246(c), CSWR-Texas demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC § 13.301(b).
3. The applicants demonstrated that the sale of Copano Cove's facilities to CSWR-Texas will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).
4. CSWR-Texas and Copano Cove filed its notice of intent to use the fair market valuation as required by TWC § 13.305(c)(1) and 16 TAC § 24.238(d).

5. The Commission's executive director selected three utility valuation experts to perform appraisal of Copano Cove's in compliance with TWC § 13.305(c)(2) and 16 TAC § 24.238(e).
6. The application included copies of the three appraisal reports completed by the utility valuation experts as required by TWC § 13.305(h) and 16 TAC § 24.239(d)(1)(A).
7. The application included the purchase price agreed to by CSWR-Texas and Copano Cove as required by TWC § 13.305(h)(2) and 16 TAC § 24.239(d)(1)(B).
8. The calculation of the fair market valuation for Copano Cove complies with TWC § 13.305(f) and 16 TAC § 24.238(f)–(j).
9. The calculation of the ratemaking rate base for Copano Cove complies with TWC § 13.305(g) and 16 TAC § 24.238(b)(3) and (4).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between Copano Cove and CSWR-Texas may proceed and be consummated.
2. The ratemaking rate base for Copano Cove water system is determined to be the agreed upon purchase price for the transaction is identified in the highly sensitive attachment FB-1 to Commission Staff's recommendation.
3. CSWR-Texas may seek to include in its rate base its transaction and closing costs for the acquisition of Copano Cove water system in a future rate case.
4. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
5. The applicants have 180 days to complete the transaction.
6. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.

7. The applicants are advised that the requested areas and associated facilities will remain under water CCN number 12016 and held by Copano Cove until the sale and transfer transaction is complete, in accordance with Commission rules.
8. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
9. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 6th day of May 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



**GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE**