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DOCKET NO. 53238

APPLICATION OF SIMPLY	§	PUBLIC UTILITY COMMISSION
AQUATICS, INC. AND CSWR-TEXAS	§	
UTILITY OPERATING COMPANY,	§	OF TEXAS
LLC FOR SALE, TRANSFER, OR	§	
MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN	§	
MONTGOMERY, SABINE, AND SAN	§	
AUGUSTINE COUNTIES	§	

COMMISSION STAFF’S RESPONSE TO ORDER NO. 10

On February 17, 2022, CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Simply Aquatics, Inc. (Simply Aquatics) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Montgomery, Sabine, and San Augustine Counties. Specifically, the Applicants seek approval to sell and transfer all of Simply Aquatics's certificated area under CCN No. 13259 to CSWR-Texas under CCN No. 13290. The Applicants filed supplemental information on February 25, 2022, March 28, 2022, March 29, 2022, March 30, 2022, April 19, 2022, May 9, 2022, June 14, 2022, and June 20, 2022.

On February 24, 2023, the administrative law judge (ALJ) filed Order No. 10, establishing a deadline of March 24, 2023, for the Staff (Staff) of the Public Utility Commission of Texas(Commission) to file comments and make a recommendation regarding whether CSWR-Texas’s application satisfies the requirements of 16Texas Administrative Code (TAC) § 24.11(e)(5), and comments and a recommendation on whether CSWR-Texas Utility has satisfied the requirements of Texas Water Code (TWC) § 13.244(d)(3), consistent with the Commission’s discussion at its October 6, 2022 open meeting. Therefore, this pleading is timely filed.

I. FIRM CAPITAL COMMITMENT

Staff has reviewed CSWR-Texas’s clarification regarding whether the service area to be added to its CCN number 13290 service area is a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000 in order to provide continuous and adequate service to existing customers and projected customers in the first two years of projections. As stated in the attached memorandum of Ethan Blanchard, Rate Regulation Division, CSWR satisfies

the requirements of 16 TAC § 24.11(e)(5) The proposed order in the motion states CSWR-Texas demonstrated adequate financial capability for providing adequate and continuous service to the requested area as required by TWC § 13.301(b).2 TWC § 13.301(b) states: "The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial... capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person." This provision gives the Commission discretion to require Central to demonstrate adequate financial capability by applying 16 TAC § 24.11. Staff recommends against application of 16 TAC § 24.11 because CSWR-Texas voluntarily demonstrated adequate financial capability.

II. CAPITAL IMPROVEMENT PLAN

Staff has reviewed CSWR-Texas's clarification regarding its regarding its firm capital commitment plan. As stated in the attached memorandum of Ethan Blanchard, Rate Regulation Division, Staff recommends that the capital improvement plan be found sufficient. Under TWC § 13.244(d)(3), CSWR-Texas must provide a capital improvement plan including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area and must be keyed to a map showing where the facilities will be located to provide service. A pro forma budget was not provided as a substitute for a capital improvement plan. CSWR-Texas provided a sufficient capital improvement plan under TWC and Commission rules.

III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing recommendations.

Dated: March 24, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Interim Division Director

/s/ Phillip Lehmann

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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 March 24, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann

Phillip Lehmann

Public Utility Commission of Texas

Memorandum

TO: Anthony Kanalas
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: March 23, 2023

RE: Docket No. 53238 – *Application of Simply Aquatics, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery, Sabine, and San Augustine Counties*

On February 17, 2022, CSWR-Texas Utility Operating Company (CSWR-TUOC), CCN No. 13290, and Simply Aquatics, Inc., CCN No. 13259, filed an application for the sale and transfer of facilities and certificate rights in Montgomery, Sabine, and San Augustine Counties under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

Background

On January 20, 2023, the Administrative Law Judge issued Order No. 10, requiring Staff to file a recommendation on whether CSWR-TUOC has satisfied the requirements of 16 TAC § 24.11(e)(5) and TWC § 13.244(d)(3), consistent with the Commission’s discussion at its October 6, 2022 open meeting.

At the February 16, 2023 open meeting, the Commission elaborated upon its previous discussion at the October 6, 2022 open meeting. The Commissioners clarified that audited financial statements showing an adequate cash surplus were sufficient proof of financial assurance.¹

Recommendation

CSWR-TUOC has submitted audited financial statements and other documentation demonstrating adequate cash funding of the purchase price and planned system improvements for

¹ Open Meeting at 39:40 (Feb. 16, 2023), Item No. 3 (*available at https://www.adminmonitor.com/tx/puct/open_meeting/20230216/*).

the Simply Aquatics water system along with all of CSWR-TUOC's other purchased systems and planned system improvements.² Therefore, I recommend a finding that CSWR-TUOC satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

² The calculations for which can be found in confidential Attachment EB-2