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| APPLICATION OF CSWR-TEXAS | § | |
| UTILITY OPERATING COMPANY, LLC | § | |
| AND WATER WORKS I AND II FOR | § | PUBLIC UTILITY COMMISSION |
| SALE, TRANSFER, OR MERGER OF | § | |
| FACILITIES AND CERTIFICATE | § | OF TEXAS |
| RIGHTS IN LLANO COUNTY | § | |

CSWR-TEXAS UTILITY OPERATING COMPANY, LLC’S
RESPONSE TO MOTION TO INTERVENE

CSWR-Texas Utility Operating Company, LLC (“CSWR Texas”) files this response to Mark Blankenship’s Motion to Intervene. On June 17, 2022, Mr. Blankenship filed a request to intervene in this docket. Mr. Blankenship is a customer of Water Works I and II and as such has a right to intervene in this proceeding as an individual who would be impacted by the sale, transfer, or merger of Water Works I and II to CSWR Texas. However, upon information and belief, the purpose of Mr. Blankenship’s intervention is not limited to participating in the proceeding as a customer, and is instead to have the Commission render a decision on the validity of a competing sales contract for the purchase of real property from Water Works I and II. As such, his intervention should be limited to the issues relevant to this case over which the Public Utility Commission of Texas (“Commission”) has jurisdiction.

I. BACKGROUND

In his motion to intervene, Mr. Blankenship notes that he has a pending sales contract for real property with Cody Lewis, the owner and operator of Water Works I and II. It is the Company’s understanding that the property does not have any existing operating utility infrastructure because the wells on the property have been capped and are no longer in use. Accordingly, any contractual dispute between Mr. Blankenship and the current owners of the property will have no bearing on future operation of the utility assets that are the subject of this proceeding. Furthermore, Mr. Blankenship does not indicate in his motion to intervene that he has

any concerns that CSWR Texas lacks the financial, managerial, and technical capability to own and operate the water system.

II. THE SCOPE OF AN STM REVIEW IS LIMITED TO MATTERS WITHIN THIS COMMISSION'S JURISDICTION

The scope of an STM case at the Commission is limited to specific issues. The STM process is governed by Texas Water Code §§ 13.251 and 13.301. Texas Water Code § 13.251 states:

Except as provided by section 13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the utility commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

Similarly, TWC § 13.301 speaks to Commission review of the public interest in STM applications. That section allows a hearing if the Commission has concerns about the “financial, managerial, and technical capability” of the acquiring person or “after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.” Thus, the applicable statutes direct the Commission to evaluate the capability of the prospective purchaser and the impact of the transaction on the service area, and nothing else.

The Commission’s rules implementing the applicable sections of the Water Code specify the parameters of the evaluation to be performed in an STM proceeding:

A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee’s certificated service area as required by § 24.227(a) of this title, relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity.¹

¹ 16 Tex. Admin. Code § 24.239(e).

16 Tex. Admin. Code § 24.293(h) implements Water Code § 13.301(e) similarly.² As with the statute, nothing in the Commission’s rules provides for the Commission to exercise jurisdiction to evaluate potential third-party legal disputes as part of its evaluation of an STM application. Therefore, any request to participate in the proceeding outside the scope of this limited evaluation should be denied.

III. RESPONSE TO MOTION TO INTERVENE

CSWR Texas does not oppose Mr. Blankenship’s request to intervene in this case on the basis that he is a customer. A customer has a right to intervene in an STM application under 16 Tex. Admin. Code § 22.103. However, that intervention right is limited by the Commission’s jurisdiction in this case, which is only to determine whether CSWR Texas has the financial, managerial and technical capacity to provide continuous and adequate service. While Mr. Blankenship’s request suggest he may have a private cause of action against Mr. Lewis, the resolution of that dispute must occur in a court with competent jurisdiction, which would be a state district court, not the Commission, and any consequence of that dispute should have no bearing on the outcome of this proceeding or future operations of the utility. Therefore, Mr. Blankenship’s intervention should be limited to the applicable issues contained in the Texas Water Code and Commission rules and not involve issues related to his apparent contractual dispute with Mr. Lewis.

IV. CONCLUSION

For these reasons, CSWR Texas respectfully requests that Mr. Blankenship’s intervention be limited to the applicable issues contained in the Texas Water Code and Commission rules and for such other relief to which it has shown itself justly entitled.

² 16 Tex. Admin. Code § 24.239(h).

Respectfully submitted,

**ATTORNEYS FOR CSWR-TEXAS
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June 2022, a true and correct copy of the foregoing document was served on all parties of record via electronic mail in accordance with the Order Suspending Rules issued in Project No. 50664.



Wendy K. Harvel