



Filing Receipt

Filing Date - 2023-07-19 02:47:25 PM

Control Number - 53920

Item Number - 77

DOCKET NO. 53920

APPLICATION OF TEXAS WATER UTILITIES, LP AND CREEK WATER UTILITY LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS MARION COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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CSWR-TEXAS UTILITY OPERATING COMPANY, LLC’S AMICUS BRIEF

COMES NOW CSWR-Texas Utility Operating Company, LLC (“CSWR-Texas”) and submits this amicus brief in support of the Appeal of Order No. 21 denying the motion for reconsideration of Order No. 20, which was filed by Texas Water Utility, L.P. (“TWU”) on June 15, 2023. Order No. 20 requires additional opt-out notice requirements applicable to owners of 25-acres of land located within a selling utility’s service territory. CSWR-Texas is concerned that the new requirement will impose additional costs and delays on the sale-transfer-merger proceeding process. Therefore, CSWR-Texas supports the positions taken by TWU and the Texas Association of Water Companies, Inc. (“TAWC”) and respectfully requests that the Commissioners’ consider the potential impacts this decision could have on other pending STM dockets proceedings, including the 21 pending proceedings of which CSWR-Texas is the applicant, particularly in light of other filing requirements that have been required in STM proceedings recently.

CSWR-Texas entered the Texas water and wastewater utility market as a new entrant with zero customers in 2020. Since then, it has filed 59 separate STM applications at the Public Utility Commission of Texas (“Commission”) to acquire approximately 85 water and wastewater systems serving approximately 13,200 connections in Texas. The overwhelming majority of these systems were distressed, abandoned or otherwise non-functioning at the time CSWR-Texas acquired them and required significant up-front capital investment to bring them into compliance with applicable regulations immediately after the acquisition was approved and completed. The Commission has

approved 38 of these dockets with 21 still pending. CSWR-Texas anticipates filing additional STMs in the future as it continues to fulfill its mission to provide quality water and wastewater service to residents in Texas who currently lack adequate service. Thus, decisions made by the Commission regarding the proper procedures for STM proceedings in this proceeding will likely affect CSWR-Texas and other utilities' pending STM proceedings as well.

The notice issues before the Commission are not unique to this docket. The Commission in other CSWR-Texas STM dockets has required supplemental notice to landowners after the transaction had already been completed.¹ CSWR-Texas defers to the briefing of TWU and the TAWC regarding these arguments and supports them fully. CSWR-Texas's concern is that these requirements follow a trend of the Commission requiring, with little notice, more complicated filings to gain approval of an STM transaction, often without clear direction in the statutes or rules. For instance, the Commission or Staff now often requires: (1) a more detailed capital improvement plan even though any capital improvement plan produced prior to acquisition will be only preliminary and represent very high-level estimates;² (2) loan documentation that supports the funding of future capital projects even if the utility has not and will not fund those projects with loans;³ (3) affidavits from upstream corporate treasuries committing to fund acquisitions⁴ even though CSWR-Texas is currently the 11th largest water and wastewater utility in the country,

¹ See, e.g., *Application of CSWR-Texas Utility Operating Company, LLC and Patterson Water Supply, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Dallas, Denton, Parker, Tarrant, and Wise Counties*, Docket No. 53721, Order No. 14 at 3 (Jun. 7, 2023).

² *Eg., Id.* at 1-2; *Application of CSWR-Texas Utility Operating Company, LLC and Ville D'Alsace Water Supply, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Medina County*, Docket No. 54019, Order No. 8 at 1-2 (May 31, 2023).

³ *Eg., Docket No. 54019, Order No. 8 at 2-3; Application of CSWR-Texas Utility Operating Company, LLC and Intermediary Solutions Holding LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County*, Docket No. 54393, Order No. 6 at 2-3 (May 17, 2023).

⁴ See, e.g., *Application of CSWR-Texas Utility Operating Company, LLC and Jack and Rhonda Vanover dba Casey Homes Estates for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County*, Docket No. 55056, Highly Sensitive Attachment G to Application at 6 (May 26, 2023).

providing service to hundreds of thousands of customers nationally;⁵ and (4) more sophisticated and detailed mapping requirements, including the requirement to produce “facility” maps, “needs” maps, “plot” maps, and/or “appraisal district” maps with overlays and detailed labeling requirements for each that can be unique to each case.⁶

CSWR-Texas understands and appreciates the need for a robust record to support acquisitions. It has worked with Staff for over three years now through 59 STM proceedings (not including numerous temporary manager proceedings and compliance dockets necessary to get to the point to file an STM) to promptly and efficiently finalize the acquisition of distressed or non-functioning systems as quickly as possible. Further, CSWR-Texas applauds Staff’s efforts to navigate novel circumstances not contemplated in the rules, like the sudden death, incarceration or disappearance of a selling utility’s owner during a proceeding. However, continually adding new filing requirements to the STM process to accommodate circumstances without clear direction in the statute or rules inevitably results in additional expense—including increased outside and in-house legal expenses, engineering costs, third-party GIS mapping costs, postage costs, and the production costs necessary to produce supplemental filings at the Commission. The additional requirements can also result in significant delays in the adjudication of these proceedings: CSWR-Texas often requires an extension to produce the additional information and Staff often requires an extension to review it. The result is that an STM proceeding that should only cost a few thousand dollars to achieve administratively approval can now cost five or ten times that amount.

For a typical distressed system with few customers, these acquisition costs will significantly impact utility bills once they are absorbed into customers’ rates. Staff’s letter in

⁵ In Texas alone, the Company has market capitalization of over \$40 million.

⁶ *Application of TFF Utilities, LLC and the Falls Municipal Utility District for Sale, Transfer, or Merger of Facilities and to Obtain Water and Sewer Certificates of Convenience and Necessity in Colorado County*, Docket No. 54205, Order No. 7 (Jun. 5, 2023).

Docket No. 54205 demonstrates this concern. It recommends that in an STM docket a utility should be required to provide an affidavit, a copy of applicable “appraisal district maps” overlaid with the requested area, a list of all landowners with properties wholly or partially in the requested area, and acreage amounts for each landowner, in order to identify landowners who own at least 25 acres and should receive notice. However, it recognizes the additional burden of these requirements and the need for discretion in how they are imposed:⁷

... given the extra cost, time, and varying complexities associated with developing a map with appraisal district maps overlaid with the requested area, as well as the likelihood that smaller utilities may be disadvantaged in adequately responding to this issue when compared to larger utilities, Staff would not be opposed to the affidavit being the sole piece of evidence necessary to prove that either notice was provided to such landowners or that no such landowners exist. Importantly, if an affidavit attesting to the latter is sufficient, Staff does not understand why an affidavit attesting to the former would be insufficient without the supplemental map and list of landowners and acreage amounts, if the intent is to prove compliance with TWC § 13.246(a-1). (internal citation omitted)

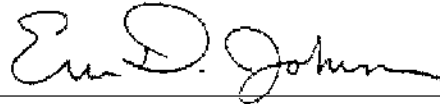
CSWR-Texas encourages the Commission to interpret the Water Code and Commission rules to promote cost-effective and efficient adjudication of STM proceedings in order to mitigate acquisition and transaction costs borne by customers of these acquired systems. Alternatively, if necessary, CSWR-Texas urges the Commission to consider initiating a comprehensive rulemaking to address issues in the STM rules that are now causing increased confusion, delays, and costs, not to mention a significant tax on Commission resources. CSWR-Texas is willing and prepared to contribute its time and experience to any endeavor to improve the STM process.

⁷ Docket No. 54205, Commission Staff’s Request for Clarification or Alternatively for Expedited Certification of Issues at 4 (Jul. 12, 2023).

Respectfully submitted,

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UTILITY OPERATING COMPANY, LLC**

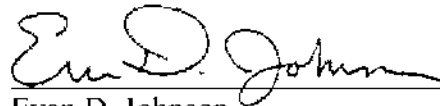
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July 2023, a true and correct copy of the foregoing document was served on all parties of record via electronic mail in accordance with the Second Order Suspending Rules filed in Project No. 50664.



Evan D. Johnson