



## **Filing Receipt**

**Filing Date - 2023-06-29 12:18:20 PM**

**Control Number - 53934**

**Item Number - 41**

**DOCKET NO. 53934**

<b>APPLICATION OF CSWR-TEXAS</b>	<b>§</b>	
<b>UTILITY OPERATING COMPANY,</b>	<b>§</b>	
<b>LLC AND OAK HILL ESTATES</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER COMPANY, LLC FOR SALE,</b>	<b>§</b>	
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN HARRIS COUNTY</b>	<b>§</b>	

**CSWR-TEXAS UTILITY OPERATING COMPANY LLC’S  
RESPONSE TO ORDER NO. 9**

CSWR-Texas Utility Operating Company, LLC (“CSWR-Texas” or the “Company”) files this Response to Order No. 9. Order No. 9 directed CSWR-Texas to supplement its application and to move to admit additional information into the record no later than June 29, 2023. Therefore, this response is timely filed.

**I. CAPITAL IMPROVEMENT PLAN AND, IF NECESSARY, REQUEST FOR  
GOOD CAUSE EXCEPTION**

CSWR-Texas has provided a line-item budget for anticipated repairs and improvements on the water system it is purchasing. This budget is included at page 6 in Confidential Attachment J to its application. At the time it entered into a purchase agreement, CSWR-Texas was only able to perform a limited preliminary analysis of any potential necessary improvements because it is not the owner of the property and has only limited access to the subject facilities. Subsequent to its execution of the purchase agreement, CSWR-Texas engaged third-party engineers who, as part of the due diligence process, reviewed the visible infrastructure, such as tanks, pumps, buildings, and above ground pipes, but the engineer is typically not able to see the extent of any damage to this equipment until a more thorough review can take place subsequent to closing. Those engineers are also unable to review underground facilities or any damage to those facilities. Subject to those caveats, CSWR-Texas estimates that once it begins operating the facility, it will take 6 months to fully evaluate the repairs and improvements needed. Following the evaluation, CSWR-Texas estimates it will begin construction within 12 months and that construction will be completed within 24 months after commencing.

Confidential Attachment J itemizes each component of the system where the third-party engineer was able to determine repairs were needed and the estimated cost to repair the system. The budget is broken down by the items that the engineer was able to determine need repair, such

as booster pumps and well rehabilitation. However, until it seeks bids for repairs, the Company cannot know with any additional certainty what the final cost for repairs will be. A total estimated cost of repairs and capital investments is included in the Company's Confidential Attachment J, page 6. In addition to the estimated budget, Confidential Attachment J includes a map of the general vicinity, photographs of facilities in need of repair, and engineering schematic that shows the design of the facilities. Taken together, CSWR-Texas has provided ample information that constitutes a capital improvement plan. There are no additional construction locations to include on the map based on the recommended repairs.

To the extent necessary, CSWR-Texas requests a good cause exception to the requirements under 16 Texas Administrative Code ("TAC") § 24.2(b) for the reasons stated before.

## **II. REQUEST FOR GOOD CAUSE EXCEPTION TO REQUIREMENT TO PROVIDE LOAN DOCUMENTATION**

Order No. 9 directs CSWR-Texas either to provide loan documentation for an amount it will need to make capital improvements on the system or to seek a good cause exception to any requirement that it must provide loan documentation in any STM proceeding where it is estimated that capital improvements will exceed \$100,000, pursuant to 16 TAC § 24.11(e)(5)(A).

First, this provision should not apply to CSWR-Texas because providing loan documentation is not reasonable, necessary or even possible. CSWR-Texas is already required to maintain a sufficient cash balance to purchase this system and bring it into compliance. CSWR-Texas does not obtain loans for purchasing or repairing systems because this type of capital is not available to small operators like CSWR-Texas at reasonable rates. Thus, CSWR-Texas cannot provide loan documentation. For this reason, and to the extent necessary, CSWR-Texas seeks a good cause exception to this requirement.

Moreover, a good cause exception should not be necessary because CSWR-Texas does not need to provide additional "financial assurance" in this proceeding because it has already demonstrated "adequate financial capability." 16 TAC § 24.239(f) states that "[i]f the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water or sewer utility service is provided . . . ." Financial assurance is not required under 16 TAC § 24.239, absent a threshold finding that the utility cannot demonstrate "adequate financial capability." Further, 16 TAC § 24.11(b) only applies "to new and existing owners or operators of retail public utilities that are

required to provide financial assurance under this chapter.” It does not speak to financial capability. Likewise, 16 TAC § 24.11(e) explains that an owner or operator may demonstrate financial assurance, and it also does not speak to financial capability. Accordingly, 16 TAC § 24.11 does not apply here because the purchasing utility has already demonstrated “adequate financial capability.” Order No. 9 directs CSWR-Texas to provide “financial assurance” under 16 TAC § 24.11 without making the threshold determination that CSWR-Texas was not already financially capable based on its existing facilities and operations in Texas. Although 16 TAC § 24.239(f) does not include a specific test for determining “adequate financial capability,” requiring “financial assurance” clearly cannot be the primary measure of adequate financial capability. Otherwise, the Commission is effectively requiring every water and wastewater utility—including Class A and Class B utilities, regardless of their demonstrated financial capability—to provide financial assurance in every STM proceeding.

As addressed in Docket No. 53721, Staff has discretion under 16 TAC § 24.239 to recommend whether CSWR-Texas should be required to provide additional financial assurance.<sup>1</sup> Staff has already directed CSWR-Texas to provide evidence of financial capability through (1) its audited financial statements; (2) bank statements showing sufficient funds are available; and (3) affidavit support from its parent company committing those funds to purchase, repair, and operate each system it has requested to acquire. CSWR-Texas should not be required to commit to additional cumbersome (and expensive) financial assurance tests and requirements, like escrowing funds or obtaining loan approval documents or lines or letters of credit, if no party argues for or recommends such treatment. In general, a Class A or Class B utility that demonstrates it already has a significant presence in Texas, owns millions of dollars of facilities in Texas, serves thousands of customers in Texas, has invested millions of dollars in infrastructure in Texas, and regularly acquires distressed systems in Texas should be considered financially capable to operate in Texas absent extenuating or unique circumstance that mandates other treatment.

Even in its STM proceedings that involve more than \$100,000 in potential capital improvements, like the present case, Staff and the Commission have found that utilities may demonstrate adequate financial capability through audited financial statements and available cash,

---

<sup>1</sup> *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, Commission Staff’s Comments in Support of Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed and Request for Expedited Relief (Feb. 27, 2023); Docket No. 53721, SOAH Order No. 12 Approving Sale and Transfer to Proceed (Mar. 2, 2023).

without requiring “loan approval documents” or other support. For example, in Docket No. 52391, the Commission ruled that the applicant had already satisfied the financial capability requirement through provision of audited financial statements and available cash balances without needing to provide loan approval documents or other additional financial assurance. The Commission ruled similarly on these exact issues in Docket No. 53721 based on Staff’s recommendation.<sup>2</sup>

Finally, as a practical matter, it would also make little sense for the Commission to require a utility with sufficient cash on hand to obtain a loan it does not need (and would have to repay with interest) instead of purchasing the system outright. Accordingly, if the ALJ finds that 16 TAC § 24.11 is applicable in this proceeding, it should clarify that CSWR-Texas has already satisfied the requirements of 16 TAC § 24.11 and that the transaction should be approved to proceed. Otherwise, the Company requests a good cause exception to any requirement that it must provide loan documentation related to its capital improvements.

### **III. SUPPLEMENTAL NOTICE**

CSWR-Texas has reviewed the area proposed to be certified in this case along with the Harris County tax appraisal maps and determined that there are no parcels of land at least 25 acres that are wholly or partially included in the proposed area. Therefore, the requirements of Texas Water Code § 13.246(a-1) and 16 TAC § 24.235(b)(2) regarding notice to landowners do not apply to this case, and supplemental notice is not necessary. Per Order No. 9, CSWR-Texas submits the attached affidavit.

### **IV. NEED FOR SERVICE AND MAPPING CLARIFICATION**

CSWR-Texas does not seek to amend its CCN to include customers currently served by Patterson through its public water system but not currently located within the certificated service area of Oak Hill Estates’ CCN number 12861.

### **V. SUPPLEMENTAL MOTION TO ADMIT EVIDENCE**

CSWR-Texas respectfully moves for admission of the following documents and information:

- This pleading, including the estimated timeline for completion of capital improvements; and
- The notice affidavit attached as Exhibit A.

---

<sup>2</sup> Docket No. 53721, SOAH Order No. 12 Approving Sale and Transfer to Proceed.

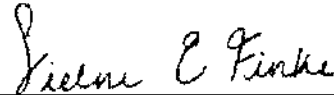
**VI. CONCLUSION**

CSWR-Texas respectfully requests that the ALJ admit additional evidence, grant the requested good cause exceptions if necessary, and issue an order allowing this transaction to proceed. CSWR-Texas also requests all further relief to which it is entitled.

Respectfully submitted,

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

L. Russell Mitten  
General Counsel  
Central States Water Resources, Inc.  
1630 Des Peres Rd., Suite 140  
Des Peres, Missouri 63131  
(314) 380-8595  
(314) 763-4743 (fax)

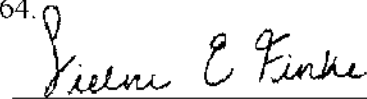


---

Evan D. Johnson  
State Bar No. 24065498  
Sidne E. Finke  
State Bar No. 24131870  
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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of June 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.



---

Sidne E. Finke

**AFFIDAVIT**

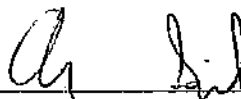
**STATE OF MISSOURI**

§  
§  
§

**COUNTY OF ST. LOUIS**

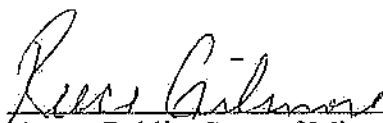
Before me, the undersigned authority, Aaron Silas, being first duly sworn, deposes and states as follows:

1. My name is Aaron Silas. I am over 21 years of age, of sound mind, and capable of making this Affidavit. I have personal knowledge of the facts contained herein, and they are true and correct.
2. I am the Director of Regulatory Operations of CSWR-Texas Utility Operating Company, LLC ("CSWR-Texas"). I am qualified and authorized to file and verify such form and am personally familiar with notices given with this application.
3. I hereby certify that there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area.



\_\_\_\_\_  
Aaron Silas  
Director of Regulatory Operations  
CSWR-Texas Utility Operating Company, LLC

SWORN TO AND SUBSCRIBED before me on this 26<sup>th</sup> day of JUNE, 2023.



\_\_\_\_\_  
Notary Public, State of Missouri

