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DOCKET NO. 53934

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

COMMISSION STAFF’S RESPONSE TO ORDER NO. 9

I. INTRODUCTION

On August 5, 2022, CSWR-Texas Utility Operating Company (CSWR-Texas) and Oak Hill Estates Water Company, LLC (Oak Hill Estates) (jointly, Applicants) filed an application for the sale and transfer of facilities and certificate rights in Harris County.

On June 8, 2023, the administrative law judge (ALJ) filed Order No. 9, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file recommendations on whether Applicants’ capital improvement plan satisfies Commission requirements, on the loan documentation or request for the good cause exception, on Applicants’ supplemental notice, and on Applicants’ supplemental materials by July 20, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON CAPITAL IMPROVEMENT PLAN

Staff has reviewed the application and supplemental materials filed by Applicant and, as supported by the attached memorandum from Patricia Garcia of the Infrastructure Division, recommends that the Applicants be granted a good cause exception under 16 Texas Administrative Code (TAC) § 22.5(b). Specifically, Ms. Garcia points out that CSWR-Texas is proposing to make improvements to Oak Hill Estates’ water system that are expected to exceed \$100,000. CSWR-Texas will not be able to determine the full extent of the improvements needed until after the sale has been approved and the system is in their possession. Accordingly, Staff recommends that a good cause exception under 16 TAC § 22.5(b) be granted for the Commission’s capital improvement plan requirements.

III. RECOMMENDATION ON LOAN DOCUMENTATION

Staff has reviewed the application and supplemental materials filed by Applicants and as supported by the attached memorandum from Fred Bednarski of the Rate Regulation Division,

recommends that Applicants provided sufficient firm capital commitments to meet the requirements of 16 TAC § 22.11(e)(5)(B). Specifically, CSWR-Texas filed documentation demonstrating access to adequate cash funding for this transaction. Additionally, CSWR-Texas's parent company has committed capital to pay for the capital improvements in this application, as well as CSWR-Texas's other pending STM proceedings, and is capable, available, and willing to cover any temporary cash shortages and operating expenses in this and other pending STM proceedings. Alternatively, if the ALJ were to find that Applicants' firm capital commitments do not meet the requirements of 16 TAC § 24.11(e)(5)(B), Staff recommends granting a good cause exception under 16 TAC § 22.5(b).

IV. RECOMMENDATION ON SUPPLEMENTAL NOTICE

Staff has reviewed the supplemental notice documentation filed by Applicants and as supported by the attached memorandum from Ms. Garcia, recommends that Applicants' supplemental notice be deemed sufficient. Specifically, Applicants provided an affidavit attesting that there are no individual landowners with tracts of land of at least 25 acres that are wholly or partially included in the area proposed to be certificated. Accordingly, Staff recommends that Applicants' supplemental notice is sufficient.

V. RECOMMENDATION ON SUPPLEMENTAL MATERIALS

Staff has reviewed the supplemental materials filed by Applicants to address the issues identified in Order No. 9 and as supported by the attached memorandum from Ms. Garcia, recommends that Applicants have sufficiently addressed those issues. As Ms. Garcia notes in her memorandum, CSWR-Texas is acquiring all of Oak Hill Estates' existing certificate of convenience and necessity, and its acquisition does not include any uncertificated areas, nor any customers currently served by Oak Hill Estates but not currently located within Oak Hill Estates' certificated area. Accordingly, Staff recommends that Applicants have adequately addressed the issues regarding supplemental materials that the ALJ identified in Order No. 9.

VI. CONCLUSION

For the reasons detailed above, Staff respectfully requests that an order be issued finding that Applicants have addressed the issues raised in Order No. 9 and allowing Applicants to proceed with the transaction.

Dated: July 20, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 July 20, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: July 20, 2023

RE: Docket No. 53934 – *Application of CSWR-Texas Utility Operating Company, LLC and Oak Hill Estates Water Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

1. Application

On August 5, 2022, CSWR-Texas Utility Operating Company, LLC (CSWR-Texas) and Oak Hill Estates Water Company (Oak Hill) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Harris County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, CSWR-Texas, water Certificate of Convenience and Necessity (CCN) No. 13290, seeks approval to acquire facilities and to transfer all of the water service area from Oak Hill under water CCN No. 12861.

Based on the mapping review by Dave Babicki, Infrastructure Division:

- The requested area includes 135 customer connections and approximately 84 acres, comprised of transferred area from Oak Hill (CCN No. 12861) to CSWR-Texas (CCN No. 13290).
- The application proposes the subtraction of approximately 84 acres from CCN No. 12861 and the addition of approximately 84 acres to CCN No. 13290.

2. Notice

CSWR-Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was October 17, 2022; there were no motions to intervene, protests, or opt-out requests received.

On June 29, 2023, CSWR-Texas submitted an affidavit attesting that there were no landowners with 25 acres or more in the requested area. I recommend CSWR-Texas' notice be found sufficient.

3. Need for Service

Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).

The purpose of the transaction is to transfer all of the water service area, facilities, and customers from Oak Hill to CSWR-Texas. The customers are currently receiving water service from Oak Hill's water system. There are no uncertificated areas being added to CSWR-Texas' CCN in this application. The only area to be transferred is currently certificated to Oak Hill. There is no need for additional service as CSWR-Texas will continue to provide service to the customers in the area through the water facilities currently owned by Oak Hill when the sale and transfer is complete. I recommend need for service is necessary for the customers in the requested area and that need for service has been satisfied.

4. Capital Improvements Plan

An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).

CSWR-Texas is proposing to make improvements to Oak Hill's water and sewer systems. The proposed capital improvements are expected to exceed \$100,000. CSWR-Texas states that the itemized Attachment J provided in their original application is an estimate of the costs of repairs to the system. They will not be able to know the full extent of the improvements necessary until after the sale has been approved and the systems are in their possession. I recommend a good cause exception should be granted for the capital improvement plan.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

5. Recommendation

I recommend CSWR-Texas' notice be found sufficient, need for service is satisfied, approval of a good cause exception for the capital improvement plan, and that a public hearing is not necessary.

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Oak Hill for some of the customers being served by the Oak Hill Estates Water System.

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: July 20, 2023

RE: Docket No. 53934 *Application of CSWR-Texas Utility Operating Company, LLC and Oak Hill Estates Water Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

On August 5, 2022, CSWR-Texas Utility Operating Company (CSWR-TUOC), CCN No. 13290, and Oak Hill Estates Water Company, LLC (Oak Hill) filed an application for the sale and transfer of facilities and certificate rights in Harris County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

On June 8, 2023, the administrative law judge issued Order No. 9, requiring staff to file a recommendation on the loan documentation or good cause exception provided by CSWR- Texas.

Staff notes that 16 TAC § 24.11(e)(5)(B) allows the owner to meet the test by providing loan approval documents or firm capital commitments. At the February 16, 2023, open meeting, the Commission elaborated upon its previous discussion regarding these requirements 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

CSWR-Texas filed documentation demonstrating access to adequate cash funding for this application, as well as CSWR-Texas' pending applications, as indicated in confidential attachment FB-1.1. CSWR-Texas' parent has committed capital to pay for the capital improvements regarding this application and pending STM proceedings, and is capable, available, and willing to cover

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

any temporary cash shortages and operating expense shortfalls in this and other STM proceedings.² CSWR-Texas submitted audited financial statements containing a cash and cash equivalents balance sufficient to pay for the purchase price of Oak Hill, the remaining systems' purchase prices, Oak Hill's improvement cost, and the remaining systems' improvements costs. Therefore, I recommend a finding that CSWR-Texas provided adequate cash funding, a firm capital commitment, and that, if necessary, a good cause exception should be granted for 16 TAC § 24.11(e)(5)(A).

² Confidential 54393 highly sensitive attachment G at pdf 7 (Aug. 31, 2022).