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Filing Date - 2024-06-03 03:27:55 PM

Control Number - 54171

Item Number - 100

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Commissioner



Greg Abbott
Governor

Connie Corona
Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*
Administrative Law Judge

RE: **Docket No. 54171** – *Application of Texas Water Utilities, LP and CS Water Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bosque County*

DATE: June 3, 2024

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by June 17, 2024.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 54171

APPLICATION OF TEXAS WATER UTILITIES, LP AND CS WATER CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BOSQUE COUNTY	§	PUBLIC UTILITY COMMISSION
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PROPOSED ORDER

This Order addresses the application of Texas Water Utilities LP¹ and CS Water Corporation for approval of the sale, transfer, or merger of facilities and certificate rights in Bosque County. The Commission approves the following: (1) the sale and transfer to Texas Water of all facilities and service area held by CS Water under certificate of convenience and necessity (CCN) number 11441; (2) the amendment of Texas Water’s CCN number 12983 to include all facilities previously held by CS Water and the service area previously included in CS Water’s CCN number 11441; and (3) the cancellation of CS Water’s CCN number 11441. Additionally, the Commission determines the ratemaking rate base for the CS Water public water system to be the sales price amount stated in Commission Staff’s confidential attachment FB-1 filed on January 31, 2023.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. CS Water is a Texas corporation registered with the Texas secretary of state under filing number 114397600.
2. CS Water operates, maintains, and controls facilities for providing retail water service to customers in Bosque County under CCN number 11441.

¹ On November 15, 2022, the Commission approved the name change of Monarch Utilities I L.P. to Texas Water Utilities LP in Docket No. 53636. For clarity, this Order will refer to Texas Water throughout, although many of the filings referenced were filed under the Monarch name. *See Application of Monarch Utilities I L.P. for a Certificate of Convenience and Necessity Name Change*, Docket No. 53636, Notice of Approval (Nov. 15, 2022).

3. CS Water owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0180033.
4. Texas Water is Texas limited partnership registered with the Texas secretary of state under file number 800034797.
5. Texas Water operates, maintains, and controls facilities for providing retail water service to customers in multiple counties under CCN number 12983.
6. Texas Water owns and operates multiple public water systems registered with the TCEQ.

Application

7. On May 23, 2022, prior to filing the application, Texas Water and CS Water filed their notice of intent to determine fair market value of a water system in Project No. 49859,² to initiate the Commission's fair market value process for the proposed sale of CS Water's public water system to Texas Water.
8. On September 30, 2022, the applicants filed the application at issue in this proceeding.
9. On October 4, 25, and 26, 2022, and February 10, April 7, and June 21, 2023, the applicants supplemented the application.
10. In the application, as supplemented, the applicants seek approval for the following:
 - a. the sale and transfer to Texas Water of all facilities and service area held by CS Water under CCN number 11441;
 - b. the amendment of Texas Water's CCN number 12983 to include all facilities previously held by CS Water and the service area previously included in CS Water's CCN number 11441; and
 - c. the cancellation of CS Water's CCN number 11441.
11. Additionally, in the application, as supplemented, the applicants seek the following:
 - a. an order confirming the ratemaking rate base for the public water system at issue in this proceeding; and

² *Notice of Intent to Determine Fair Market Value*, Project No. 49859, Monarch Utilities I L.P.'s and CS Water Corporation's Notice of Intent to Determine Fair Market Value of Water System in Bosque County (May 23, 2022).

- b. authorization for Texas Water to charge the customers served by the public water system being acquired the rates that are in force for the majority of Texas Water's customers.
12. The requested area includes approximately 726 acres and 178 current customers.
13. The requested area is located approximately 6.5 miles west of downtown Whitney, Texas, and is generally bounded on the north by County Road 1500 and Cedron Creek; on the east by the Brazos River and Lake Whitney; on the south by King Creek; and on the west by Farm-to-Market Road 56.
14. In Order No. 3 filed on November 1, 2022, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

15. On November 21, 2022, the applicants filed the affidavit of George Freitag, Texas regulatory manager for Texas Water, attesting that notice was provided to current customers, neighboring utilities, and affected parties on November 18, 2022.
16. In Order No. 5 filed on December 14, 2022, the ALJ found the notice sufficient.
17. On April 26, 2023, the applicants filed the affidavit of Brian Bahr, director of rates and regulatory affairs for Texas Water, attesting the new notice was provided to current customers, neighboring utilities, and affected parties on April 19, 2023.
18. In Order No. 12 filed on May 8, 2023, the ALJ found the reissued notice sufficient.
19. On June 21, 2023, Texas Water filed the affidavit of Mr. Bahr attesting that notice was provided on June 16, 2023, to all owners of tracts of land of 25 acres or more that are wholly or partially located in the requested area.
20. On July 14 and 27, 2023, Texas Water filed supplemental mapping showing the tracts of land of 25 acres or more wholly or partially located within the requested area.
21. In Order No. 17 filed on August 31, 2023, the ALJ found the supplemental proof of notice to landowners sufficient.

Evidentiary Record

22. In Corrected Order No. 18 filed on October 4, 2023, the ALJ admitted the following evidence into the record:
- a. the application and all attachments filed on September 30, 2022;
 - b. the supplements to the application filed on October 4, 25, and 26, 2022, and February 10, 2023;
 - c. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on October 31, 2022;
 - d. Texas Water's proof of notice and attachment filed on November 21, 2022;
 - e. Commission Staff's recommendation on the sufficiency of notice filed on December 12, 2022;
 - f. Commission Staff's recommendation on approval of the sale and on the CCN amendment filed on January 31, 2023;
 - g. Texas Water's proof of re-notice in compliance with Order No. 10 filed on April 26, 2023;
 - h. Texas Water's confidential list of notice recipients filed on April 27, 2023;
 - i. Commission Staff's recommendation on the sufficiency of new notice filed on May 4, 2023;
 - j. copies of agreed orders resolving TCEQ enforcement actions opened against Texas Water in the past five years, attached to Texas Water's supplemental motion to admit evidence filed on May 31, 2023;
 - k. Texas Water's response to Order No. 14 filed on June 21, 2023;
 - l. Texas Water's supplemental landowner map filed on July 14, 2023;
 - m. Commission Staff's response to Order No. 15 filed on July 18, 2023; and
 - n. Texas Water's supplemental landowner map in response to Order No. 16 filed on July 27, 2023.

23. In Order No. 24 filed on June 3, 2024, the ALJ admitted the following additional evidence into the record of this proceeding:
- a. Texas Water's notice of intent to close filed on December 15, 2023;
 - b. Texas Water and CS Water's notice of completed transaction filed on February 12, 2024;
 - c. Commission Staff's recommendation on the sufficiency of the closing documents filed on March 6, 2024;
 - d. Texas Water and CS Water's consent forms filed on April 19, 2024; and
 - e. The final map, certificate, and tariff pages attached to the third supplemental joint motion to admit evidence filed on May 3, 2024.

Intervenors

24. In Order No. 2 filed on November 1, 2022, the ALJ granted the motion to intervene of the Office of Public Utility Counsel (OPUC).
25. In Order No. 13 filed on May 24, 2023, the ALJ granted the motion to intervene of Juan Li and Joseph Riley.

Sale

26. The 120-day deadline for the Commission to notify all known parties to the transaction and OPUC whether the Commission would hold a public hearing to determine if the transaction would serve the public interest was October 16, 2023.
27. No order making a determination to hold a hearing was filed by that deadline.
28. On December 15, 2023, Texas Water filed its notice of intent to close.
29. On January 5, 2024, the ALJ filed a proposed interim order for the Commission's consideration.
30. On January 24, 2024, the ALJ filed a revised proposed interim order for the Commission's consideration.

31. On February 12, 2024, the applicants filed proof that the sale had closed on December 13, 2023, and customer deposits had been refunded to customers as part of their final bill from CS Water.
32. In Order No. 21 filed on February 23, 2024, the ALJ withdrew the revised proposed interim order.
33. In Order No. 22 filed on March 7, 2024, the ALJ found the closing documentation sufficient.

Purchaser's Compliance History

34. The Commission's complaint records, which date back to 2017, show 400 complaints against Texas Water. However, Texas Water is a large utility that operates multiple public water systems and sewer systems and serves approximately 30,000 connections.
35. The complaints have been evaluated by the Commission's Consumer Protection Division.
36. Texas Water has been subject to an enforcement action by the TCEQ in the past five years for non-compliance with rules, orders, or state statutes.
37. Texas Water has resolved, or is in the process of resolving, the compliance issues related to the open TCEQ enforcement actions listed in the application.
38. Texas Water does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
39. Texas Water demonstrated a compliance history that is adequate for approval of the proposed transaction.

Adequacy of Existing Service

40. There are currently 178 connections in the requested area that are being served by CS Water through public water system number 0180033 and such service has been continuous and adequate.
41. The last TCEQ compliance investigation of CS Water's public water system was on June 17, 2020.
42. CS Water does not have any unresolved violations listed in the TCEQ database.

43. The Commission's complaint records, which dates back to 2017, show two complaints against CS Water.
44. No capital improvements are necessary for Texas Water to continue providing continuous and adequate service to the requested area.
45. There is no evidence in the record that CS Water has failed to comply with any Commission or TCEQ order.

Need for Additional Service

46. There are 178 existing customer connections in the requested area that are receiving service from CS Water and have an ongoing need for service.
47. This is an application to transfer only existing facilities, customers, and service area.
48. There is no evidence in the record indicating a need for additional service.

Effect of Approving the Transaction and Granting the Amendment

49. Texas Water will be required to provide continuous and adequate water service to current and future customers in the requested area.
50. CS Water and Texas Water are the only utilities affected by this sale and transfer.
51. All retail public utilities in the proximate area were provided notice of the application and no protests or adverse comments were filed.
52. There will be no effect on landowners in the requested area because the requested area is currently certificated.

Initial Rates

53. Texas Water requested approval to charge acquired customers initial rates and service charges that are shown in the water tariff issued to Texas Water at the time the application was filed.
54. This application was considered filed on November 1, 2022, when it was deemed administratively complete.

55. On the date the application was filed, Texas Water's tariff in force for its other public water systems was the tariff approved in Docket No. 53215.³
56. The rates requested by Texas Water, which were approved in Docket No. 53215, are as follows:

Meter Size (includes 0 gallons)	Monthly Base Rate
5/8"	\$48.37

Gallage Tier	Charge Per 1,000 gallons
0 – 2,000 gallons	\$6.48
2,001 – 10,000 gallons	\$7.98
10,001 – 20,000 gallons	\$9.05
20,000+ gallons	\$9.64

57. Texas Water's water tariff rates approved in Docket No. 53215 are just and reasonable initial rates for Texas Water to charge to customers served by CS Water's public water system, identification number 0180033.

Ability to Serve: Managerial and Technical

58. Texas Water owns and operates numerous TCEQ-registered public water systems in Texas and serves approximately 30,000 connections.
59. Texas Water employs or contracts with TCEQ-licensed operators who will be responsible for the operation of the public water system being transferred.
60. Texas Water has the technical and managerial capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

61. CS Water is currently serving customers throughout the requested area, and such service has been continuous and adequate.

³ Application of Monarch Utilities I L.P. to Amend Its Certificates of Convenience and Necessity in Harris, Liberty, and Montgomery Counties, Docket No. 53215, Notice of Approval (Oct. 24, 2022).

62. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.
63. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

64. It will not be necessary for Texas Water to construct a physically separate water system to serve the requested area.
65. Because the requested area will not require construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Financial Ability and Stability

66. Texas Water's affiliate, SouthWest Water Company, is capable, available, and willing to cover temporary cash shortages, and has a debt-service-coverage ratio that is greater than 1.25. Therefore, Texas Water satisfies the leverage test.
67. SouthWest Water Company provided a written guarantee of coverage of temporary cash shortages and demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages during the first five years after the completion of the proposed sale and transfer. Therefore, Texas Water satisfies the operations test.
68. Texas Water demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate water service.

Financial Assurance

69. There is no need to require Texas Water to provide a bond or other financial assurance to ensure continuous and adequate service.

Voluntary Valuation of Acquired Utility or Facilities

70. On May 23, 2022, which was before the application at issue in the present docket was filed, Texas Water and CS Water filed a notice to the Commission in Project No. 49859 of their intent to use the Commission's fair market value process to determine the ratemaking rate base of CS Water's public water system assets to be acquired by Texas Water.

71. Texas Water included in the application copies of the three appraisal reports required by the fair market value process and evidence of the purchase price agreed upon between Texas Water and CS Water.
72. The purchase price and three appraisal reports submitted with the application were filed under confidential seal.
73. The average of the three appraisals that yields the fair market value for CS Water's public water system facilities is listed in confidential attachment FB-1 filed by Commission Staff on January 31, 2023.
74. The negotiated purchase price is less than the average fair market value for CS Water's public water system facilities; therefore, the ratemaking rate base for CS Water's public water system facilities is the negotiated purchase price.
75. The application included the amount of fees paid to the three utility valuation experts and known transaction and closing costs that will be reviewed for inclusion in Texas Water's rate base and recovery in a future Texas Water rate case.
76. No additional conditions for the acquisition based on the fair-market-value process are needed.

Environmental Integrity and Effect on the Land

77. There will be no effect on environmental integrity or the land as the requested area will continue to be served with existing facilities.

Improvement in Service or Lowering Cost to Consumers

78. Texas Water will continue to provide water service to CS Water's existing customers in the requested area.
79. Reliability and quality of water service is expected to improve under Texas Water's management.
80. Texas Water requested authorization to charge the customers served by the public water system being acquired the rates that are in force for Texas Water's customers, as shown on

page nine of the version of its water tariff approved in Docket No. 52494, which was the version of its tariff in effect at the time the application was filed.⁴

81. Rates for customers in the requested area will be higher than the rates currently charged by CS Water because Texas Water will charge its water tariff's rates.

Map, Certificate, and Tariff Pages

82. On April 5, 2024, Commission Staff emailed Texas Water and CS Water the final proposed map, certificate, and tariff pages related to this docket.
83. On April 19, 2024, Texas Water filed a consent form concurring with the proposed final map and certificate and the proposed tariff with modifications agreed to by Texas Water and Commission Staff.
84. On April 19, 2024, CS Water filed a consent form concurring with the proposed final map.
85. On May 3, 2024, the final map, certificate, and applicable tariff pages were provided as attachment B to the third supplemental joint motion to admit evidence filed by the parties.

Informal Disposition

86. More than 15 days have passed since the completion of notice provided in this docket.
87. No person filed a protest.
88. Texas Water, CS Water, OPUC, Juan Li, Joseph Riley, and Commission Staff are the only parties to this proceeding.
89. Commission Staff recommended approval of the application.
90. No party requested a hearing, and no hearing is needed.
91. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.

⁴ *Application of R & N Enterprises and Monarch Utilities I L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Cooke County*, Order at Ordering Paragraph No. 3 (Sept. 1, 2022).

2. Texas Water and CS Water are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239(c).⁵
4. The application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
5. The Commission processed this application in accordance with the requirements of the TWC, the Administrative Procedure Act,⁶ and Commission rules.
6. Texas Water and CS Water completed the sale and transfer under TWC § 13.301(f) and 16 TAC § 24.239(i).
7. Texas Water and CS Water complied with the requirements of 16 TAC § 24.239(k) and (l) with respect to customer deposits.
8. After consideration of the factors in TWC § 13.246(c), Texas Water demonstrated that it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.
9. Texas Water demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
10. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
11. It is not necessary for Texas Water to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
12. Texas Water and CS Water filed their notice of intent to use the Commission's fair market valuation process in compliance with TWC § 13.305(c)(1) and 16 TAC § 24.238(d).

⁵ After this application was filed, 16 TAC § 24.239 was amended, effective March 29, 2023. Accordingly, all references and citations to 16 TAC § 24.239 in this Order are made to the version in effect at the time the application was filed.

⁶ Tex. Gov't Code §§ 2001.001–.903.

13. The Commission's executive director selected three utility valuation experts to perform appraisals of the CS Water public water system in compliance with TWC § 13.305(c)(2) and 16 TAC § 24.238(e).
14. The application included copies of the three appraisal reports completed by the utility valuation experts as required by TWC § 13.305(h)(1) and 16 TAC § 24.239(d)(1)(A).
15. The application included the purchase price agreed to by Texas Water and CS Water as required by TWC § 13.305(h)(2) and 16 TAC § 24.239(d)(1)(B).
16. The application included the ratemaking rate base determined under TWC § 13.305(g) and 16 TAC § 24.238 as required by TWC § 13.305(h)(3).
17. The application included the known transaction and closing costs incurred by Texas Water to be requested for review for inclusion in Texas Water's rate base and recovery in a future rate case as permitted by TWC § 13.305(e) and 16 TAC §§ 24.238(k), 24.239(d)(1)(C), and 24.239(d)(2).
18. The calculation of the fair market valuation for CS Water's water system complies with TWC § 13.305(f) and 16 TAC § 24.238(f) through (j).
19. The calculation of the ratemaking rate base for the CS Water public water system complies with TWC § 13.305(g) and 16 TAC § 24.238(b)(3) and (4).
20. The extension of Texas Water's water utility rates and tariff to customers served by CS Water's public water system, identification number 0180033, complies with TWC §§ 13.182 and 13.3011.
21. Texas Water and CS Water demonstrated that the sale and transfer of CS Water's facilities and service area to Texas Water will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public under TWC §§ 13.246(b) and 13.301(d) and (e).
22. Under TWC § 13.257(r) and (s), Texas Water must record a certified copy of the certificate and the map approved by this Order, along with a boundary description of the service area, in the real property records of Bosque County within 31 days of receiving this Order and submit to the Commission evidence of the recording.

23. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the sale and transfer of all facilities and service area held by CS Water under CCN number 11441 to Texas Water.
2. The Commission amends Texas Water's CCN number 12983 to include all facilities and service area previously held by CS Water under CCN number 11441.
3. The Commission cancels CS Water's CCN number 11441.
4. The Commission approves the map and tariff pages attached to this Order.
5. The Commission issues the certificate attached to this Order.
6. The Commission determines the ratemaking rates base for CS Water's public water system to be the sales price amount stated in Commission Staff's confidential attachment FB-1 filed on January 31, 2023.
7. Texas Water may seek to include its transaction and closing costs for its acquisition of the CS Water public water system in Texas Water's rate base for recovery in a future rate case.
8. Texas Water must provide service to every customer or qualified applicant for service within the approved area under CCN number 12983 that requests water service and meets the terms of Texas Water's water service policies, and such service must be continuous and adequate.
9. Within ten days of the date this Order is filed, Texas Water and Commission Staff must provide to the Commission a clean copy of Texas Water's most current, comprehensive water tariff, including the tariff pages approved by this Order, to be stamped *Approved* and retained by Central Records.
10. The Commission denies all other motions and any other requests for general or specific relief that have not be expressly granted.

Signed at Austin, Texas the ___ day of _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER