



## Filing Receipt

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**DOCKET NO. 54171**

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

**COMMISSION STAFF’S RECOMMENATION ON APPROVAL OF THE SALE AND ON THE CNN AMENDMENT**

**I. INTRODUCTION**

On September 30, 2022, Texas Water Utilities, LP (Texas Water) and CS Water Corporation (CS Water) (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Bosque County, under Texas Water Code (TWC) § 13.301 and 17 Texas Administrative Code (TAC) § 24.239. Texas Water filed supplemental information on October 4, October 25, and October 26, 2022, November 1, November 21, and November 23, 2022, and December 12, 2022.

On January 3, 2023, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale and on the CCN amendment by January 31, 2023. Therefore, this pleading is timely filed.

**II. RECOMMENDATION**

Staff has reviewed the application, as supplemented, and, as supported by the attached memoranda of James Harville, Infrastructure Division, and of Fred Bednarski, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 TAC § 24.239(i) and TWC §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(1).

Staff notes that the approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for the approval of the sale, as required by 16 TAC § 24.239(m).

**III. CONCLUSION**

Staff respectfully requests entry of an order permitting the proposed transaction to proceed.

Date: January 31, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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Division Director

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**DOCKET NO. 54171**

**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 January 31, 2023 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Margaux Fox  
Margaux Fox

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Margaux Fox, Attorney  
Legal Division

**FROM:** James Harville, Infrastructure Analyst  
Infrastructure Division

**DATE:** January 31, 2023

**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*

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### **1. Application**

Texas Water Utilities, LP (Texas Water) and the CS Water Corporation (CS Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Bosque County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Texas Water, water Certificate of Convenience and Necessity (CCN) No. 12983 seeks approval to acquire facilities and to transfer all of the water service area from CS Water under water CCN No. 11441.

Based on the mapping review by Tracy Montes, Infrastructure Division:

- The requested area includes 178 customer connections and approximately 726 acres, comprised of transferred area from CCN No. 11441.
- The application proposes the subtraction of approximately 726 acres from CCN No. 11441 and the addition of approximately 726 acres to CCN No. 12983.

In addition, the Applicants requested approval of the transaction using the fair market value of the assets rather than their original cost as allowed under TWC § 13.305.

## **2. Notice**

Texas Water provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was December 19, 2022; there were no motions to intervene, protests, or opt-out requests received.

## **3. Factors Considered**

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

### **3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(D)).***

CS Water has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as CS Water, PWS ID No. 0180033. The last TCEQ compliance investigation of the CS Water system was on June 30, 2020. CS Water does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show 2 complaints against CS Water.

### **3.2. *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 CS Water to Texas Water. The customers are currently receiving water service from CS Water's water system.

### **3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

Texas Water will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

### **3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Texas

Water will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Texas Water will have licensed operators to run the system operations. A Class B, C, and D operator will be the responsible operator for the system.

Texas Water has the ability to provide adequate service in the requested area. Texas Water has several TCEQ approved public water system. In addition, the Commission's complaint records, which date back to 2017, show 400 complaints against Texas Water which have been addressed by the Commission's Customer Protection Division. Texas Water provides service to approximately 30,345 connections.

- 3.5. ***The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for Texas Water to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6. ***Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

CS Water is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. ***Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.8. ***Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. ***Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

The customers' rates will be higher than the current rates for CS Water as the rates will be changing to the current approved rates for Texas Water. Reliability and quality of water service is expected to improve under Texas Water's management.

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

**4. Recommendation**

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 no deposits held by CS Water for the customers being served by CS Water. I further recommend that a public hearing is not necessary.



# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Margaux Fox  
Legal Division

**FROM:** Fred Bednarski III  
Rate Regulation Division

**DATE:** January 31, 2023

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

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On September 30, 2022, Texas Water Utilities, L.P. (Texas Water) and CS Water Corporation (CS Water) filed an application for the sale and transfer of facilities and certificate rights in Bosque County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Texas Water must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

### ***Leverage Test***

Texas Water filed an affidavit stating that SouthWest Water Company (SouthWest Water) is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.<sup>1</sup>

My analysis is based on financial statements ending December 31, 2021. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers LLP stating that

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<sup>1</sup> Texas Water Utilities, L.P.'s Response to Commission Staff's Second Request for information at pdf 9 and 10 (Jan. 4, 2023).

the financial statements present fairly, in all material respects, the financial position of SouthWest Water as of December 31, 2021.<sup>2</sup>

Texas Water provided the financial statements of SouthWest Water, which demonstrate a debt service coverage ratio of 7.56 as provided in confidential attachment FB-1. Because the ratio is more than 1.25, I recommend a finding that Southwest Water meets the leverage test specified in 16 TAC § 24.11(e)(2)(B). Therefore, I recommend a finding that—through its affiliate—Texas Water meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

### ***Operations Test***

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by Texas Water demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. Texas Water projects no operating shortages as provided in confidential attachment FB-1. Therefore, I recommend a finding that Texas Water meets the operations test specified in 16 TAC § 24.11(e)(3).

### ***Planned Capital Improvements and Purchase Price***

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

Texas Water has filed documentation demonstrating adequate sources of funding, in the form of a line of credit, for the purchase price and planned system improvements for the CS water system alongside all of Texas Water's other purchased systems and planned system improvements provided in confidential attachment FB-1. Therefore, I recommend a finding that Texas Water satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

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<sup>2</sup> Confidential Supplemental Attachments 2-5(1) and 2-5(2) at pdf 4 and 5 (Jan. 20, 2023).

***Fair market value and ratemaking rate base (TWC 13.305(i))***

Because Texas Water has filed notice with the Commission of its intent to use a fair market value (FMV) process to determine the ratemaking rate base of CS Water, the following provisions of TWC § 13.305 apply to this proceeding:

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

(1) the ratemaking rate base of the selling utility as determined under Subsection (g); and

(2) any additional conditions for the acquisition the utility commission requires.

Consistent with the above statutory provisions, the table in confidential Attachment FB-1 shows the FMV appraisal amount reported by each of the utility valuation experts and the resulting average amount.

Because the average of the three appraisals yields a FMV which is more than the sales price, the ratemaking rate base for CS Water is the sales price amount, provided in confidential attachment FB-1, as prescribed by the provisions of TWC § 13.305(g).

***Recommendation***

Because Texas Water meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Texas Water demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this

application. My conclusions are based on information provided by Texas Water before the date of this memorandum and may not reflect any changes in Texas Water's status after this review.