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Thomas J. Gleeson
Chairman

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Commissioner

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Commissioner

Kathleen Jackson
Commissioner



Greg Abbott
Governor

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: January 24, 2024

On January 5, 2024, I filed a Proposed Interim Order in the above-referenced case. On January 19, 2024, Texas Water Utilities, LP filed a proposed correction to the Proposed Interim Order.

The correction is appropriate, and the Proposed Interim Order is revised as follows:

Findings of Fact

58. 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.³

^[3] *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).*

On January 19, 2024, the Office of Public Utility Counsel (OPUC) filed exceptions to the Proposed Interim Order. On the same day, Texas Water filed a reply to OPUC's exceptions.



Having considered the arguments presented in OPUC's exceptions and Texas Water's reply, I agree with Texas Water's arguments and conclude that the modifications proposed by OPUC are unnecessary. Accordingly, I decline to make the modifications proposed by OPUC.

The Proposed Interim Order is ready for the Commission's consideration.

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2. Texas Water holds CCN number 12983 which obligates it to provide retail water service in its certificated service area in Bandera, Bexar, Brazoria, Chambers, Comal, Cooke, Denton, Freestone, Gillespie, Grayson, Guadalupe, Hays, Henderson, Hood, Johnson, Kendall, Kerr, Liberty, Marion, Matagorda, Medina, Montgomery, Parker, Polk, San Jacinto, Smith, Tarrant, Travis, Trinity, Tyler, Van Zandt, Wise, and Wood counties.
3. CS Water is a Texas corporation registered with the Texas secretary of state under filing number 114397600.
4. CS Water holds CCN number 11441 which obligates it to provide retail water service in its certificated service area in Bosque County.
5. CS Water owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0180033.

Application

6. 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.
7. On September 30, 2022, the applicants filed the application at issue in this proceeding.
8. On October 4, 25, and 26, 2022, and February 10, April 7, and June 21, 2023, the applicants supplemented the application.
9. In the application, as supplemented, the applicants seek approval for the following:
 - a. the sale and transfer to Texas Water of all facilities held by CS Water located within the service area of CS Water's CCN number 11441;
 - b. the sale and transfer of all service area within CS Water's CCN number 11441 to Texas Water;

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).

- c. 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
 - d. the cancellation of CS Water's CCN number 11441.
10. 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 (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.
 11. The requested area includes approximately 726 acres and 178 current customers.
 12. 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.
 13. In Order No. 3 filed on November 1, 2022, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

14. 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.
15. In Order No. 5 filed on December 14, 2022, the ALJ found the notice sufficient.
16. 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.
17. In Order No. 12 filed on May 8, 2023, the ALJ found the reissued notice sufficient.
18. 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.

19. 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.
20. In Order No. 17 filed on August 31, 2023, the ALJ found the supplemental proof of notice to landowners sufficient.

Evidentiary Record

21. 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.

Intervenors

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

Purchaser's Compliance History

- 24. 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.
- 25. The complaints have been evaluated by the Commission's Consumer Protection Division.
- 26. 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.
- 27. 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.
- 28. Texas Water does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 29. Texas Water demonstrated a compliance history that is adequate for approval of the proposed transaction.

Adequacy of Existing Service

- 30. 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.
- 31. The last TCEQ compliance investigation of CS Water's public water system was on June 17, 2020.
- 32. CS Water does not have any unresolved violations listed in the TCEQ database.

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

Need for Additional Service

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

Effect of Approving the Transaction and Granting the Amendment

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

Ability to Serve: Managerial and Technical

43. Texas Water owns and operates numerous TCEQ-registered public water systems in Texas and serves approximately 30,000 connections.
44. Texas Water employs or contracts with TCEQ-licensed operators who will be responsible for the operation of the public water system being transferred.
45. 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

46. CS Water is currently serving customers throughout the requested area, and such service has been continuous and adequate.
47. 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.
48. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

49. It will not be necessary for Texas Water to construct a physically separate water system to serve the requested area.
50. 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

51. Texas Water's affiliate, SouthWest Water Company, has a debt-service ratio that is greater than 1.25, satisfying the leverage test.
52. Through SouthWest Water Company, Texas Water 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, satisfying the operations test.
53. Texas Water demonstrated the financial capability and stability to provide continuous and adequate water service.

Financial Assurance

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

Environmental Integrity and Effect on the Land

55. 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

56. Texas Water will continue to provide water service to CS Water's existing customers in the requested area.
57. Reliability and quality of water service is expected to improve under Texas Water's management.
58. 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.³
59. If authorization is granted, rates for customers in the requested area will be higher than the rates currently charged by CS Water because Texas Water will charge its tariff's rates.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).
2. 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.
3. Texas Water demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. The applicants demonstrated that the sale and the transfer CS Water's facilities and service area to Texas Water will serve the public interest and is necessary for the continued service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 13.301(d) and (e).

³ *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).*

III. Ordering Paragraphs

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

1. The transaction between Texas Water and CS Water in this proceeding is approved and may be completed.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants will have to reapply for approval.
5. CCN number 11441, and associated facilities and service area, will continue to be held by CS Water until the final order or notice of approval is issued in this matter, in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was completed.
7. Within 15 days following the filing of the applicants' proof that the transaction has been completed and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

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