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DOCKET NO. 54393

APPLICATION OF CSWR-TEXAS	§	
UTILITY OPERATING COMPANY, LLC	§	
AND INTERMEDIARY SOLUTIONS	§	PUBLIC UTILITY COMMISSION
HOLDING LLC FOR THE SALE,	§	
TRANSFER, OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN LUBBOCK COUNTY	§	

**CSWR-TEXAS UTILITY OPERATING COMPANY LLC’S
RESPONSE TO ORDER NO. 6**

CSWR-Texas Utility Operating Company, LLC (“CSWR-Texas” or “Company”) files this Response to Order No. 6. Order No. 6 directed CSWR-Texas to supplement its application and to move to admit additional information into the record no later than May 31, 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 pages 7-8 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, 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. Therefore, CSWR-Texas can only provide a general overview of potential improvement needs and estimated budget for the project. Additionally, because CSWR-Texas cannot know when its STM will be approved, it is difficult to provide a specific timeline for initiation or completion of the project. Further, given the uncertainty of when CSWR-Texas will take over ownership and operation of a system, there is considerable uncertainty regarding the cost and availability of labor and materials and the ability to source necessary equipment.

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.¹ The budget is broken down by the items that the engineer was able to determine need repair, such as storage tanks, water wells, and fencing. As explained before, CSWR-Texas cannot provide exact costs for each item that needs repair. 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 is included in the Company's Highly Sensitive Attachment G to the application, which includes the total amount of capital investment the Company will need to acquire the system and make the necessary capital improvements. The map included in Confidential Attachment J at page 11 shows the location of the existing facilities. There are no additional construction locations to include on the map based on the recommended repairs.

Once CSWR-Texas begins operating the facility, it is estimated it will take 12 months to fully evaluate the repairs and improvements needed. Following the evaluation, CSWR-Texas estimates it will begin construction within 24 months and that construction will be completed within 30 months after commencing.

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

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

Order No. 6 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 Texas Administrative Code ("TAC") § 24.11(e)(5)(A). However, 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.

¹ Application, at Confidential Attachment J at 7-8 (Nov. 30, 2022).

However, 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 cannot demonstrate adequate financial capability. Order No. 6 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 Rule § 24.239 to recommend whether CSWR-Texas should be required to provide additional financial assurance.² 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

² *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).

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, 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.³

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 Rule § 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

Attached as Exhibit A to this pleading is an affidavit showing that notice was provided to owners of tracts of land of 25 acres or more who are wholly or partially included in the area proposed to be certified. Highly Sensitive Exhibit B shows the complete notices sent to the landowners. Additionally, Highly Sensitive Exhibit C shows a detailed location of the tracts of land over 25 acres that are partially included in the CCN area with identifying landowner information.

IV. CUSTOMERS OUTSIDE OF CCN AREA

The customers outside of the CCN area are all currently receiving service from Intermediary Solutions. Attachments J and M to the Application show the precise location of these

³ Docket No. 53721, SOAH Order No. 12 Approving Sale and Transfer to Proceed.

customers. A list of these customers is included as Highly Sensitive Exhibit D to this pleading. The customers' most recent monthly bills are attached as Highly Sensitive Exhibit E to this pleading.⁴

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;
- Supplemental notice affidavit;
- Highly Sensitive notices showing identifying landowner information;
- Highly Sensitive map showing exact location of customers with tracts of 25 acres or more;
- Highly Sensitive list of customers receiving service outside the CCN area; and
- Highly Sensitive most recent monthly bills of the customers receiving service outside the CCN area.

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.

⁴ The redacted portions of Highly Sensitive Exhibit E are bills for customers who reside within the CCN area.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May 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.

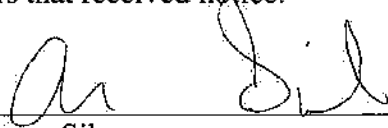

Wendy K. L. Harvel

SUPPLEMENTAL AFFIDAVIT OF NOTICE

STATE OF MISSOURI §
§
COUNTY OF ST. LOUIS §

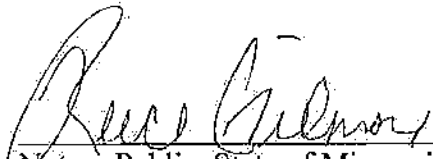
Before me, the undersigned authority, Aaron Silas, being first duly sworn, deposes and states as follows:

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 each owner of a tract of land that is at least 25 acres and is wholly or partly located in the requested area received individual notice of the Application of CSWR-Texas Utility Operating Company, LLC and Intermediary Solutions Holding LLC Utility Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County, Docket No. 54393, filed on November 30, 2022. Attachment 1 to this affidavit is the list of landowners that received notice.

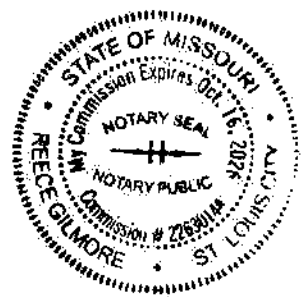


Aaron Silas
Director of Regulatory Operations
CSWR-Texas Utility Operating Company, LLC

SWORN TO AND SUBSCRIBED before me on this 18th day of MAY, 2023.



Notary Public, State of Missouri



Exhibits B through E are Highly Sensitive and will be provided pursuant to the Protective Order