



## **Filing Receipt**

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| <b>APPLICATION OF TEXAS WATER UTILITIES, LP AND WOODLAND OAKS UTILITY LP FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS AND FOR A NAME CHANGE TO CERTIFICATES OF CONVENIENCE AND NECESSITY IN MONTGOMERY COUNTY</b> | <b>§<br/>§<br/>§<br/>§<br/>§<br/>§<br/>§</b> | <b>PUBLIC UTILITY COMMISSION<br/><br/>OF TEXAS</b> |
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**CSWR-TEXAS UTILITY OPERATING COMPANY, LLC'S AMICUS BRIEF IN SUPPORT OF TEXAS WATER UTILITIES, L.P. AND WOODLAND OAKS UTILITY LP'S REQUEST FOR CLARIFICATION OF ORDER NO. 12**

COMES NOW CSWR-Texas Utility Operating Company, LLC ("CSWR-Texas") and submits this amicus brief in support of the Request for Clarification of Order No. 12 filed by Texas Water Utility, L.P. ("TWU") and Woodland Oaks Utility LP ("Woodland Oaks") in this proceeding on September 28, 2023. CSWR-Texas shares the concerns and supports the positions taken by TWU and Woodland Oaks and respectfully requests that the presiding officer consider the impacts its decision could have on other pending or future sale, transfer, or merger ("STM") dockets, including the over 30 pending STM proceedings of which CSWR-Texas is the applicant.

CSWR-Texas entered the Texas water and wastewater utility market as a new entrant with zero customers in 2020. Since then, it has filed over 60 separate STM applications at the Public Utility Commission of Texas ("Commission" or "PUCT") to acquire over 100 water and wastewater systems serving over 13,000 connections in Texas. The overwhelming majority of these systems were distressed, abandoned or otherwise non-functioning at the time CSWR-Texas acquired them and required significant immediate up-front capital investment to bring them into compliance with applicable regulations once the acquisition was approved and completed. CSWR-Texas anticipates filing additional STMs in the future as it continues to fulfill its mission to provide quality water and wastewater service to residents in Texas who currently lack adequate service. Thus, decisions made by the Commission regarding the proper procedures for STM proceedings

including the order here prohibiting an acquiring utility from operating facilities it acquires until a certificate is formally transferred—will affect CSWR-Texas and other utilities’ pending or future STM proceedings.

CSWR-Texas agrees with TWU and Woodland Oaks that the order issued in this proceeding allowing the sale to proceed but prohibiting transfer of the certificated service area (“CCN”) or operation of the system by TWU will create significant operational challenges and financial risks for an acquiring utility seeking to transition operations of a newly acquired system. Previously under 16 TAC § 24.239, CSWR-Texas would begin to transition the operations of a system as soon as it had executed its agreement and taken ownership of facilities while it awaited issuance of a notice of approval transferring the certificate. Legally, this approach is necessary because once CSWR-Texas owns the facilities, it is *required under the Texas Water Code (“TWC”) § 13.250 to continue providing services with those facilities, regardless of its certification status or the willingness of the former owners to continue operations themselves.*<sup>1</sup> In essence, the language in the current order under consideration would force utilities to either violate the Water Code or the Commission order allowing the sale to proceed but prohibiting the utility from operating the facilities until the certificate is transferred.

From a practical standpoint, the immediate transition of operations is necessary because almost all the systems CSWR-Texas has acquired had either already been abandoned by their former owners or required immediate repairs that the former owners did not intend to make.

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<sup>1</sup> TWC § 13.250(a) (“ . . . any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.”); *id.* § 13.250(b) (“ . . . the holder of a certificate or a person who possesses facilities used to provide utility service *shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area . . .*”) (emphasis added).

Accordingly, if CSWR-Texas cannot take over operations of an acquired system that leaves an indefinite period of time<sup>2</sup> during which it owns the system and facilities but cannot:

- begin transition of operations;
- operate the facilities in the manner it believes is necessary;
- fix service quality issues that require immediate remediation;
- make investments in system improvements the Texas Commission on Environmental Quality (“TCEQ”) or PUCT required the Company to commit to make as a prerequisite to approving the sale to proceed;
- recover costs it spends on repairs or improvements.
- collect charges from customers for provision of service;
- address existing violations with the TCEQ; or

Importantly, because this new application of Commission rules severs facility ownership (by the new owners) from the obligation to provide service (by the former owners), CSWR-Texas must rely on the former owners, who have often previously struggled to operate the system, to continue operations and make repairs and improvements. In fact, in CSWR-Texas’ experience, once a former owner receives the proceeds from the sale of their assets, there is little incentive for them to continue to operate the systems in a manner that ensures customers receive safe and reliable service.

For these reasons, the Commission’s recent application of 16 TAC § 24.239 is unworkable and puts unnecessary pressure on utilities like CSWR-Texas that acquire distressed systems in need of immediate remediation. CSWR-Texas encourages the ALJ and Commission to reconsider this interpretation of the Water Code and Commission rules and revert to its former application of

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<sup>2</sup> Notably, it used to only take approximately two to three months for the Commission to issue a notice of approval after an acquisition was executed. It now takes much longer, which creates a significant delay in the transition of operations of a distress systems. *See, e.g., 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, Order Approving Sale and Transfer to Proceed (Mar. 2, 2023).

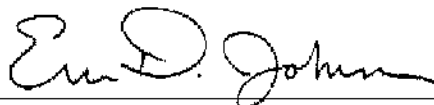
16 TAC § 24.239, which allowed acquiring utilities to begin transitioning operations upon taking ownership of utility assets without potentially violating the Water Code or the Commission's orders. This approach also promotes a more cost-effective and efficient means to adjudicate STM proceedings to expedite rehabilitation and transition of these systems to more stable, long-term operators.

Additionally, CSWR-Texas urges the Commission to consider initiating a comprehensive rulemaking to address issues in the STM rules that are causing increased confusion, delays, and costs associated with STM filings, which are a significant tax on Commission resources.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of September 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.

  
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Evan D. Johnson