



Control Number: 46150



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**SOAH DOCKET NO. 473-17-0685.WS  
PUC DOCKET NO. 46150**

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**APPLICATION OF PK-RE §  
DEVELOPMENT COMPANY, INC. §  
D/B/A OAK SHORES WATER SYSTEM §  
AND UNDINE DEVELOPMENT LLC §  
FOR SALE, TRANSFER, OR MERGER §  
OF FACILITIES AND CERTIFICATE §  
RIGHTS IN TRAVIS COUNTY §**

**STATE OFFICE OF  
ADMINISTRATIVE HEARINGS**

**COMMISSION STAFF'S MEMORANDUM IN SUPPORT OF  
SETTLEMENT**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Memorandum.

On October 30, 2017, the parties entered into and filed a stipulation resolving all issues in this proceeding. The parties also submitted a proposed order that would allow Undine Development LLC and PK-RE Development Company, Inc., d/b/a Oak Shores Water System to proceed with the proposed transaction.

Staff now files the attached memorandum in support of the parties' settlement. In addition, Staff requests that the presiding officer enter an order, consistent with the parties proposal, that would allow the purchaser to proceed with the proposed transaction.

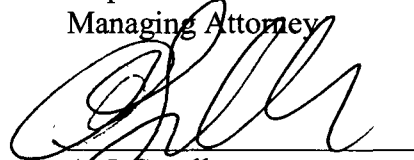
Date: October 30, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Stephen Mack  
Managing Attorney

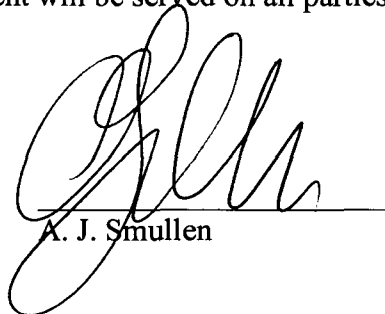


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 30, 2017 in accordance with 16 TAC § 22.74.



A. J. Smullen

## PUC Interoffice Memorandum

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**To:** AJ Smullen, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Water Utilities Division

**From:** Sean Scaff, Engineering Specialist  
Leila Guerrero, Financial Analyst  
Water Utilities Division

**Date:** October 30, 2017

**Subject:** **Docket No. 46150:** *Application of PK-RE Development Company, Inc. DBA Oaks Shores Water System and Undine Development, LLC for a Sale, Transfer, Merger (STM) of facilities and certificate rights in Travis County*

On July 11, 2016, PK-RE Development Company, Inc. d/b/a Oak Shores Water System (Oak Shores) and Undine Development, LLC (Undine) (collectively called "Applicants") filed a STM application with the commission for Undine to purchase the facilities and transfer customers and service area of water and sewer Certificates of Convenience and Necessity (CCN) 12407 (water) and 20948 (sewer) from Oak Shores in Travis County. As a result of the proposed transactions, Undine will obtain Oak Shores' water and sewer CCNs, and Oak Shores' CCNs will be cancelled. The application was filed pursuant to the criteria in the Texas Water Code §§ 13.241, 13.246 and 13.301 (TWC), and 16 Tex. Admin. Code §§ 24.102-107 and 24.109 (TAC).

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), prior to the expiration of the 120-day notification period, the Commission shall either approve the sale administratively or require a public hearing to determine if the transactions will serve the public interest. The 120-day notification period concluded on January 13, 2017. The Commission received multiple protests and requests for a hearing during the 30-day comment period, which ended on October 19, 2017. However, the Applicants and affected customers entered into settlement discussions and reached an agreement to allow the transactions to proceed. Staff does not recommend a referral to hearing to determine if the proposed transactions will serve the public interest. Furthermore, Staff recommends that Undine meets the requirements to purchase the facilities and transfer the CCNs and customers. A detailed review is provided below.

### **TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1)**

In considering whether to amend a certificate, the Commission shall consider the adequacy of service currently provided to the requested area. The requested area is served by two TCEQ approved public water systems (PWS), Oak Shores Water System (ID No. 2270060) and Green Shores Water System (ID No. 2270141). The area also receives sewer service through TCEQ waste water permit WQ0014286001. There are no existing violations with the two drinking water systems and they are in compliance with the TCEQ's drinking water rules. The wastewater system received two moderate violations during an April, 14, 2017 inspection. However, the Undine is aware of the stated violations and has a plan to resolve the issues.

**TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2)**

In considering whether to amend a certificate, the Commission shall consider the need for additional service in the proposed area. This application is for the transfer of existing facilities, customers and service area. No new requests for service have been received and Undine did not request to add additional uncertificated area. Therefore, the need for additional service in the requested area was not evaluated.

**TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3)**

In considering whether to amend a certificate, the Commission shall consider the effect of granting an amendment on the Applicant, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area. The effect of the proposed transactions is that the Oak Shores' water and sewer CCN service areas will transfer to Undine. In turn, Oak Shores' CCN service area will be cancelled. The facilities, and the existing customers of the Oak Shores and Green Shore water and waste water system in the certificated areas will be transferred to the Undine. In addition, water and sewer rates will not change due to the transfer. There are no other retail public utilities of the same kind that would be affected by the proposed transactions. Granting the certificate amendment meets the expectations of Oak Shores, which has entered into an agreement with Undine to transfer their facilities and certificate rights.

**TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4)**

In considering whether to amend a certificate, the Commission shall consider the ability of the Applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area. Undine has the financial ability through customer collections and infusions of capital from lenders to make all necessary repairs and improvements to the public water and sewer systems, as needed, to keep them in full compliance with all TCEQ and Commission regulations. Additionally, for the operation of the purchased systems, Undine intends to contract with Crossroads Utility Services LLC, which employs 16 operators with a cumulative 33 water and waste water operation licenses.<sup>1</sup>

**TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5)**

In considering whether to grant or amend a certificate, the Commission shall consider the feasibility of obtaining service from an adjacent retail public utility. The requested area will be provided water and sewer utility service from the existing infrastructure; therefore, the feasibility of obtaining service from an adjacent retail public utility was not evaluated.

**TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6)**

In considering whether to grant or amend a certificate, the Commission shall consider the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio. Staff's review finds that the Undine demonstrates adequate financial and managerial capability to provide service to the requested area.

**Financial Test**

TWC § 13.246(c)(6) requires Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. 16 TAC § 24.11 establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. 16 TAC § 24.11(e) lists the financial tests. Staff notes that the following discussion shows that

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<sup>1</sup> Application, Attachment J (Jul. 11, 2015); Undine's Response to Commission Staff's First Request for Information (Dec. 21, 2016).

Undine is projected to meet one out of four leverage tests. An applicant is only required to meet one.

- 1) 16 TAC § 24.11(e)(2) refers to the leverage test. 16 TAC § 24.11(e)(2)(B) states that the owner or operator must have a debt service coverage (DSC) ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long-term debt payments. Staff calculated the appropriate DSC ratio by taking the project net operating income for a year, plus the depreciation and non-cash expenses for the same period, and dividing this sum by the projected debt service payments for the year. Based on the information provided with the application,<sup>2</sup> Undine will have a DSC ratio of more than 1.25 for the year 2018 and 2019, which more than meets this requirement.
- 2) 16 TAC § 24.11(e)(3) and § 24.11(e)(4)(B) refer to the operations test. This states that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Based on the projected revenues and operating expenditures included with the application,<sup>3</sup> Undine's net income from continuing operations is projected to be positive for years 2018 through 2022. Based on the projected financial information, there are not any operations and maintenance shortages for the next five years. Because the utility to be purchased is existing and operating, operations and maintenance costs is projected to be derived from the utility's revenues. Thus, there are no shortages to cover and the operations test is met.

**TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7)**

In considering whether to grant or amend a certificate, the Commission shall consider the environmental integrity of the proposed area resulting from the granting of the certificate or amendment. Because the area will be served with existing infrastructure, the transfer should have minimal effect on the environmental integrity of the requested area.

**TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8)**

In considering whether to grant or amend a certificate, the Commission shall consider the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment. The water and sewer rates will not change due to the transfer. Undine has agreed to develop plans to construct and operate a wastewater forced main in lieu of the current "pump-and-haul" which should improve wastewater service to the customers.

**TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9)**

In considering whether to grant or amend a certificate, the Commission shall consider the effect on the land to be included in the certificated area. The requested area is already being served. Therefore, the effect on the land in the requested area was not evaluated.

**Final Recommendation**

Staff has considered the Undine's ability to provide continuous and adequate service pursuant to the CCN criteria outlined in TAC § 24.102(d). Pursuant to 16 TAC § 24.109(f), Staff recommends the following:

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<sup>2</sup> Application, Confidential Attachment G (Jul. 11, 2016).

<sup>3</sup> *Id.*