



Control Number: 46150



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

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APPLICATION OF PK-RE DEVELOPMENT COMPANY, INC. dba OAK SHORES WATER SYSTEM AND UNDINE DEVELOPMENT, LLC FOR SALE, TRANSFER OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN TRAVIS COUNTY	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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ORDER

This Order addresses the application of PK-RE Development Company, Inc. and Undine Development, LLC (collectively, the applicants) for the sale and transfer of PK-RE's water and sewer facilities and certificates of convenience and necessity (CCNs) for areas in Travis County. The Commission approves Undine's purchase of PK-RE's water and sewer systems and transfers PK-RE's water CCN number 12407 and sewer CCN number 20948 to Undine.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicants

1. PK-RE is a domestic for-profit corporation registered with the Texas secretary of state under file number 0157248500.
2. PK-RE operates, maintains, and controls facilities for providing water service under CCN number 12407.
3. PK-RE operates, maintains, and controls facilities for providing sewer service under CCN number 20948.
4. PK-RE purports to operate under the assumed name of Oak Shores Water System.
5. There is no certificate of assumed name on file with the Texas secretary of state by PK-RE for the assumed name of Oak Shores Water System.

6. PK-RE owns two public water systems approved by the Texas Commission on Environmental Quality (TCEQ): PWS ID No. 227060 (Oak Shores water system) and PWS ID No. 2270141 (Green Shores water system).
7. PK-RE has one TCEQ-approved wastewater permit: WQ0014286001.
8. Undine is a foreign limited liability company registered with the Texas secretary of state under file number 802427793.

Application

9. On July 11, 2016, PK-RE and Undine filed an application requesting approval of the sale of PK-RE's water and sewer systems and the transfer of PK-RE's water CCN number 12407 and sewer CCN number 20948 to Undine.
10. The proposed sale and transfer affects water facilities in nine subdivisions in Travis County and transfers a service area with 220 existing customers.
11. The proposed sale and transfer affects sewer facilities in three subdivisions in Travis County and transfers a service area with 157 existing customers.
12. In the application, the applicants stated that the facilities to be sold and transferred were not subject to customer contributions in aid of construction.
13. In Order No. 2 issued on August 11, 2016, the Commission administrative law judge (ALJ) deemed the application administratively complete, required notice to be given, and established a procedural schedule.
14. On November 21, 2016, Undine filed an errata to the application.

Notice of the Application

15. Notice of the application appeared in the July 22, 2016 issue of the *Texas Register*.
16. On September 5 and 11, 2016, notice of the application was published in the *Austin American Statesman* in Travis County.
17. On September 23, 2016, the applicants filed a publisher's affidavit by April Emberton attesting that notice had been published as described in finding of fact 16.

18. On September 19, 2016, Undine provided individual notice to neighboring systems, landowners, cities, and affected parties.
19. On September 23, 2016, Undine filed the affidavit of Carey Thomas, vice president of Undine, attesting to the completion of notice as described in finding of fact 18.
20. In Order No. 3 issued on October 5, 2016, the Commission ALJ found notice of the application sufficient.

Intervenors

21. On November 9, 2016, Greenshores on Lake Austin Property Owners Association, Inc. filed a motion to intervene.
22. On November 15, 2016, the residents of Woods of Greenshores and Woods of Greenshores Property Owners Association, Inc. filed motions to intervene.
23. On November 22, 2016, Cynthia Smiley made a motion to intervene at the prehearing conference.
24. As memorialized in State Office of Administrative Hearings (SOAH) Order No. 2 issued on December 14, 2016, at the prehearing conference held on November 22, 2016, the SOAH ALJ granted the motions to intervene described above in findings of fact 21 through 23.

Referral to SOAH

25. On October 13, 2016, the Commission referred this docket to SOAH.
26. On November 14, 2016, the Commission issued a preliminary order.
27. In SOAH Order No. 5 issued on March 29, 2017, the SOAH ALJ abated the procedural schedule for settlement discussions until April 28, 2017.
28. In SOAH Order No. 6 issued on May 4, 2017, the SOAH ALJ extended the abatement of the procedural schedule for settlement discussions until June 2, 2017.
29. In SOAH Order No. 8 issued on June 21, 2017, the SOAH ALJ set a procedural schedule with a hearing on the merits set for December 12, 2017.

30. On October 5, 2017, the SOAH ALJ cancelled the procedural schedule because the parties had reached a settlement.
31. On October 30, 2017, Undine filed a unanimous settlement agreement for approval of the sale and transfer.
32. In SOAH Order No. 11 issued on November 16, 2017, the SOAH ALJ remanded the docket to the Commission and dismissed the SOAH docket.

Testimony and Statements of Position

33. On October 30, 2017, Commission Staff filed a memorandum in support of the settlement agreement.
34. On October 30, 2017, Undine filed the direct testimony of Michael J. Ashfield, senior vice president of transactions for Undine Operating, LLC, in support of the settlement agreement.
35. On November 6 and 7, 2017, the intervening parties filed statements of non-opposition to the settlement agreement.

Sale

36. In Order No. 4 issued on November 20, 2017, the Commission approved the sale and transfer to proceed and required completion of the sale and transfer within 180 days.
37. In Order No. 5 issued on May 18, 2018, the Commission ALJ found good cause to extend the deadline for finalizing the sale and transfer to September 16, 2018.
38. In Order No. 6 issued on September 13, 2018, the Commission ALJ found good cause to extend the deadline for finalizing the sale and transfer to October 16, 2018.
39. In Order No. 7 issued on October 18, 2018, the Commission ALJ found good cause to extend the deadline for finalizing the sale and transfer to November 15, 2018.
40. On November 9, 2018, Undine filed documents of sale and the affidavit of Carey Thomas, vice president and secretary of Undine, who attested that the sale and transfer had occurred on November 6, 2018 and that PK-RE's customer deposits had been transferred to Undine on the same day.

41. In Order No. 8 issued on December 17, 2018, the Commission ALJ found the closing documents sufficient.

Evidentiary Record

42. In SOAH Order No. 11 issued on November 16, 2017, the SOAH ALJ admitted the following evidence into the record: (a) PK-RE and Undine's application, filed on July 11, 2016; (b) PK-RE's proof of notice of the application, filed on September 23, 2016; (c) Undine's first errata to the application, filed on November 21, 2016; (d) the direct testimony of Michael J. Ashfield, filed on October 30, 2017; (e) the settlement agreement, filed on October 30, 2017; and (f) Commission Staff's memorandum recommending entry of an order to proceed with the proposed sale and transfer, filed on October 30, 2017.
43. In Order No. 9 issued on February 15, 2019, the following evidence was admitted into the record: (a) the applicants' notice of proof that the sale and transfer had been completed and customer deposits had been properly addressed, filed on November 9, 2018; (b) Commission Staff's recommendation on the sufficiency of the closing documents, filed on November 26, 2018; (c) the applicants' consent forms, filed on January 11, 2019; and (d) final maps and certificates, filed on January 23, 2019.

Compliance – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(A)

44. There are no existing violations with the two public water systems, and those systems are in compliance with TCEQ's drinking water rules.
45. The wastewater system received two moderate violations during an April 14, 2017 inspection, but Undine is aware of the stated violations and has a plan to resolve the issues.
46. Undine has not been subject to any enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.

**Adequacy of Existing Service – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(B);
TWC § 13.246(c)(1), 16 TAC § 24.227(d)(1)**

47. PK-RE provides service to the requested areas through its existing public water systems and wastewater system.

**Need for Additional Service – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(C);
TWC § 13.246(c)(2), 16 TAC § 24.227(d)(2)**

48. The application is to transfer only existing facilities, customers, and service areas.
49. Undine has not received any new requests for service, and Undine is not requesting to add additional uncertificated area.
50. PK-RE's existing customers in the requested areas have a need for service.

**Effect of Approving the Transaction – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(D);
TWC § 13.246(c)(3), 16 TAC § 24.227(d)(3)**

51. There are 12 utilities, cities, or political subdivisions providing water or sewer service within two miles of the requested areas.
52. PK-RE and Undine are the only utilities affected by this sale and transfer.
53. Water and sewer rates will not change because of the sale and transfer.

**Ability to Serve: Managerial and Technical – TWC § 13.301(b), 16 TAC § 24.239(g), (j)(5)(E);
TWC §§ 13.241(a) and 13.246(c)(4), 16 TAC § 24.227(a), (d)(4)**

54. Undine's management team is comprised of seven people, each having 20 or more years of experience in the water and wastewater industry.
55. Undine has a long-standing relationship with Utility Group of Texas, LLC, which is a third-party contractor that will assist in supervising the operations of the purchased systems.
56. Undine has demonstrated adequate managerial and technical expertise to provide adequate water and sewer service.

**Ability to Serve: Financial Ability and Stability – TWC § 13.301(b), 16 TAC § 24.239(g),
(j)(5)(G); TWC § 13.241(a) and 13.246(c)(6), 16 TAC § 24.227(a), (d)(6)**

57. Undine's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
58. Undine's projected net operating income for a year, plus the depreciation and non-cash expenses for the year, divided by the projected debt service payments for the year, results in a debt-service-coverage ratio of more than 1.25 for the years 2018 and 2019.

59. Undine has over \$4.7 million of equity and no debt.
60. Undine has demonstrated the financial capability to provide adequate water and sewer service.

Financial Assurance – TWC § 13.246(d), 16 TAC § 24.227(e)

61. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Service from Adjacent Retail Public Utility – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(F); TWC § 13.246(c)(5), 16 TAC § 24.227(d)(5)

62. PK-RE is serving the customers in the requested areas, and following the transfer, Undine will provide service using existing infrastructure; therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

Regionalization or Consolidation – TWC § 13.241(d), 16 TAC § 24.227(b)

63. Undine does not anticipate building any new facilities to continue serving the area, except that Undine agreed to develop plans to construct and operate a wastewater forced main to improve wastewater service to customers.

Environmental Integrity – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(H); TWC § 13.246(c)(7), 16 TAC § 24.227(d)(7)

64. The area will be served with existing infrastructure, and the transfer should have a minimal effect on the environmental integrity of the requested areas.

Effect on the Land – TWC § 13.246(c)(9), 16 TAC § 24.227(d)(9)

65. The area will be served with existing infrastructure, and the transfer should have a minimal effect on the land.

Improvement of Service – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(I); TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)

66. Undine intends to improve customer service and communications with customers.
67. Undine intends to improve regulatory compliance issues.
68. Undine agreed to develop plans to construct and operate a wastewater forced main, which should improve wastewater service to customers.

Lowering of Costs – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(I); TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)

69. Customers in the requested areas will be charged the same rates they were charged before the sale of PK-RE's water and sewer systems.

Tariff and Maps

70. On January 7, 2019, Commission Staff emailed to Undine and PK-RE proposed maps, certificates, and tariffs related to this docket.
71. On January 11, 2019, Undine and PK-RE filed consent forms concurring with the maps and certificates as prepared by Commission Staff.
72. On January 23, 2019, the proposed tariffs, certificates, and maps were filed as an attachment to the joint motion to admit evidence.
73. On March 6, 2019, Commission Staff filed a revised proposed tariff for sewer utility service.

Informal Disposition

74. More than 15 days have passed since the completion of the notice provided in this docket.
75. No issues of fact or law are disputed by the parties.
76. The sale and transfer approved in this Order is not adverse to any party.
77. No hearing is needed in this proceeding.

II. Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Undine is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(59).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a), (b), (c), and (e).
4. The Commission processed the application in accordance with the requirements of TWC §§ 13.251 and 13.301 and 16 TAC § 24.239.

5. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability under TWC § 13.251 and 16 TAC § 24.239(g) to provide adequate and continuous service to the requested areas.
6. PK-RE and Undine complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.
7. PK-RE and Undine completed the sale within the time authorized by the Commission, as extended for good cause, in accordance with 16 TAC § 24.239(o).
8. PK-RE and Undine have demonstrated that it is necessary for the service, accommodation, convenience, and safety of the public to transfer the public water systems and water service area under CCN number 12407 from PK-RE to Undine and to issue a water CCN to Undine.
9. PK-RE and Undine have demonstrated that it is necessary for the service, accommodation, convenience, and safety of the public to transfer the wastewater system and wastewater service area under CCN number 20948 from PK-RE to Undine and to issue a sewer CCN to Undine.
10. Undine must record a certified copy of the certificates transferred and maps approved by this Order, along with a boundary description of the service areas, in the real property records of Travis County within 31 days of receiving this Order and submit to the Commission evidence of the recording. TWC § 13.257(r), (s).

III. Ordering Paragraphs

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

1. The Commission approves Undine's purchase of PK-RE's water systems and the transfer of PK-RE's water CCN number 12407 to Undine, to the extent provided in this Order.
2. The Commission approves Undine's purchase of PK-RE's sewer system and the transfer of PK-RE's sewer CCN number 20948 to Undine, to the extent provided in this Order.
3. The Commission transfers water CCN number 12407 to Undine.

4. The Commission transfers sewer CCN number 20948 to Undine.
5. The Commission approves the water-service tariff attached to the joint motion to admit evidence filed on January 23, 2019 and the revised sewer-service tariff filed on March 6, 2019.
6. Within ten days of the date of this Order, Commission Staff must provide a clean copy of the tariffs approved by this Order to central records to be marked *Approved* and filed in the Commission's tariff books.
7. Undine must provide continuous and adequate water service to every customer and applicant for service within the service area for water CCN number 12407 in accordance with Undine's water tariff.
8. Undine must provide continuous and adequate sewer service to every customer and applicant for service within the service area for sewer CCN number 20948 in accordance with Undine's sewer tariff.
9. Undine must require the Woods of Greenshores, Ltd., or its successors-in-interest, to contribute funds as developer contributions to the utility plant when lots in Section 2 of the Woods of Greenshores are sold or before a lot receives a water or wastewater tap. Undine will record these payments as a contribution in aid of construction, in a manner consistent with the National Association of Regulatory Utility Commissioners accounting standards.
10. PK-RE and Undine must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Travis County affected by the application.
11. PK-RE and Undine must submit to the Commission evidence of the recording no later than 45 days after receipt of this Order.
12. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 13th day of March 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER

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Public Utility Commission of Texas

By These Presents Be It Known To All That

Undine Development, LLC

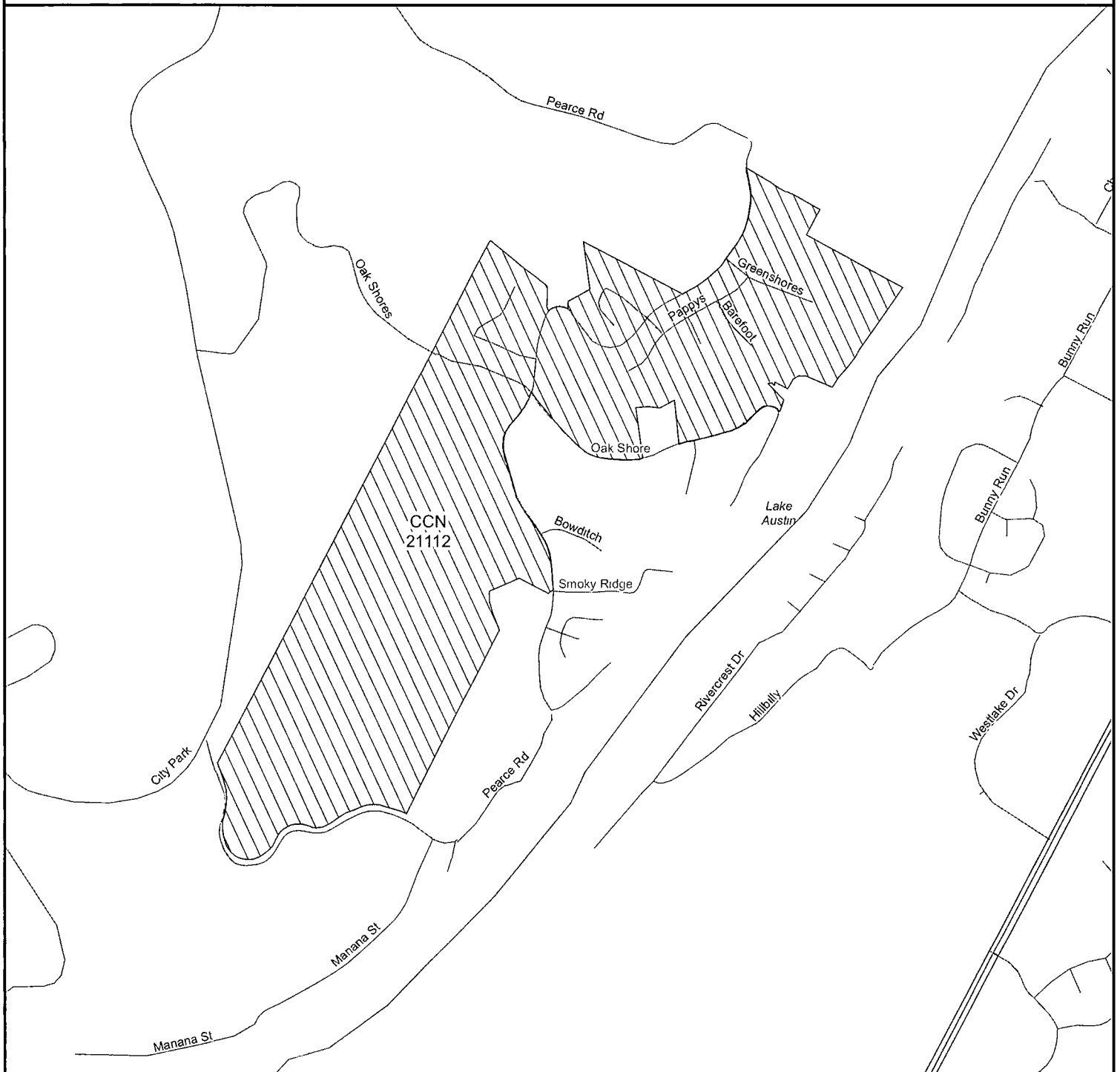
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Undine Development, LLC, is entitled to this

Certificate of Convenience and Necessity No. 20948

to provide continuous and adequate sewer utility service to that service area or those service areas in Travis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 46150 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Undine Development, LLC, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 13th day of March 2019.

Undine Development, LLC
 Sewer CCN No. 20948
 PUC Docket No. 46150
 Transferred all of PK-RE Development Company, Inc., CCN No. 20948 in Travis County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Sewer CCN

 20948 - Undine Development LLC

0 625 1,250
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Map by: Komal Patel
 Date created: December 7, 2018
 Project Path: n:\finalmapping\
 46150UndineDevSewer.mxd
 Edits: Kristy Nguyen January 7, 2019



Public Utility Commission of Texas

By These Presents Be It Known To All That

Undine Development, LLC

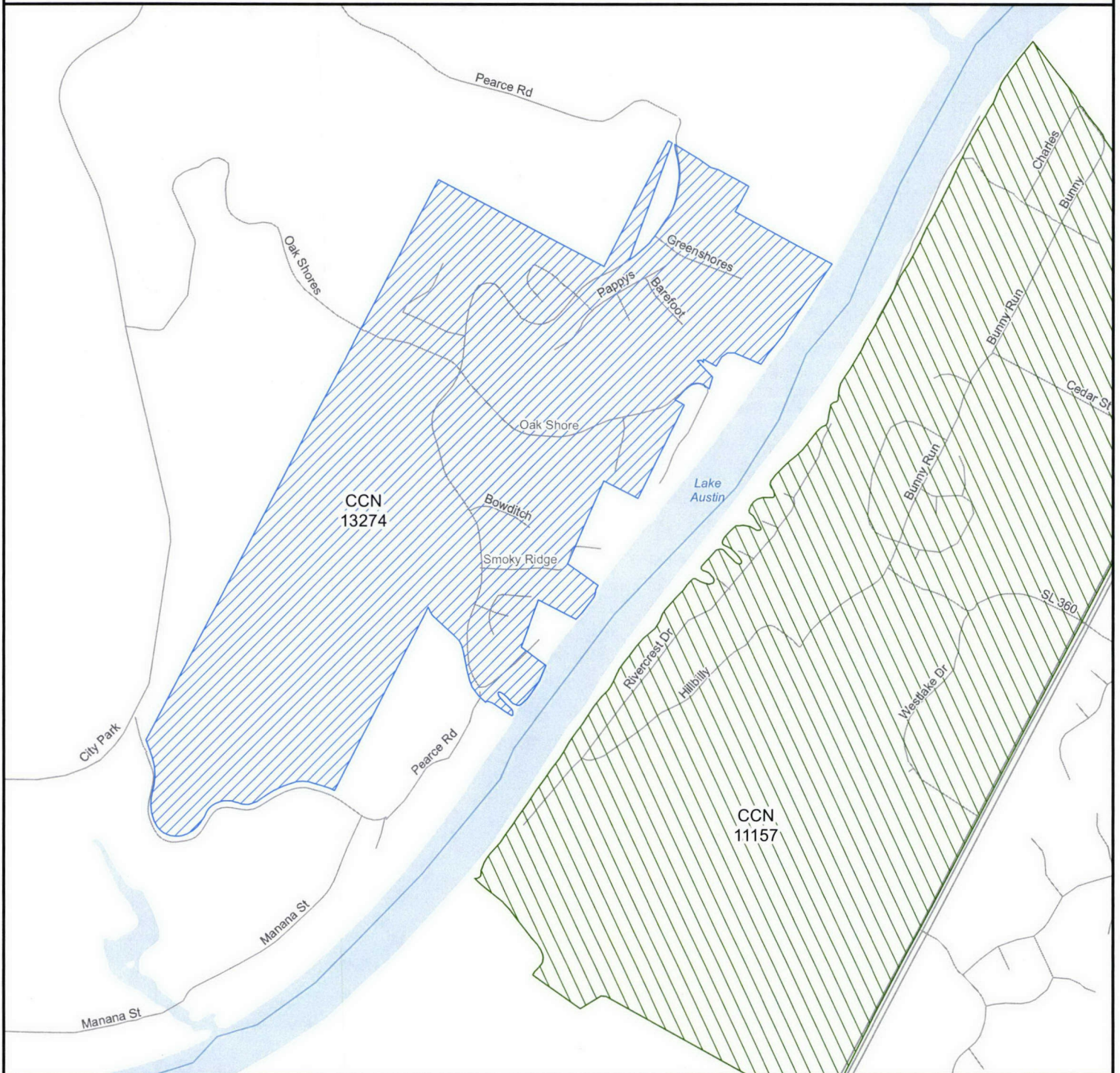
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Undine Development, LLC, is entitled to this

Certificate of Convenience and Necessity No. 12407

to provide continuous and adequate water utility service to that service area or those service areas in Travis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 46150 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Undine Development, LLC, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



Issued at Austin, Texas, this 13th day of March 2019.

Undine Development, LLC
 Water CCN No. 12407
 PUC Docket No. 46150
 Transferred all of PK-RE Development Company, Inc., CCN No. 12407 in Travis County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

-  12407 - Undine Development LLC
-  11157 - Aqua Texas Inc

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Map by: Komal Patel
 Date created: December 7, 2018
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 46150UndineDevWater.mxd
 Edits: Kristy Nguyen, January 7, 2019

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