

Control Number: 46745



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RECEIVED

APPLICATION OF ORBIT SYSTEMS, §  
INC. AND UNDINE, TEXAS, LLC FOR §  
THE SALE, TRANSFER, OR MERGER §  
OF FACILITIES AND CERTIFICATE §  
RIGHTS IN BRAZORIA, FORT BEND, §  
AND MATAGORDA COUNTIES §

PUBLIC UTILITY COMMISSION

2017 MAY 19 9 39 AM  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
HEARINGS CLERK

**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Sufficiency of Notice.

**I. BACKGROUND**

On January 9, 2017, Orbit Systems, Inc. (Orbit) and Undine, Texas, LLC (Undine) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Brazoria, Fort Bend, and Matagorda Counties. Undine seeks to acquire a portion of water and wastewater assets of Orbit under water certificate of convenience and necessity (CCN) 11982 and sewer CCN No. 20682.

On February 10, 2017, the administrative law judge (ALJ) issued order No. 2, which found the application administratively complete and ordered the Applicants to provide notice as described in Staff's recommendation. Subsequently, the Commission received a request for a hearing from Groundworks of Palm Beach County Inc. d/b/a Groundworks Texas! (Groundworks) on March 13, 2017. The Commission also received letter from Adan G. Cardenas on April 5, 2017.

On March 22, 2017, the ALJ issued Order No. 3, which deemed the Applicants' notice sufficient and set May 4, 2017 as the deadline for Staff to request a hearing or file a recommendation on the sale and on the CCN amendment. Following this Order, Undine notified Staff that Undine and Groundworks had a reached an agreement regarding Groundworks' request for a hearing. Therefore, Staff requested an extension to allow Undine and Groundworks to file their agreement of withdrawal.

On May 8, 2017, the ALJ issued Order No. 4, which set May 12, 2017 as the deadline for Undine and Groundworks to file an agreement of withdrawal of Groundworks' request for a hearing. The Order also set May 19, 2017 as the deadline for Staff to request a hearing or file a recommendation on the sale and on the CCN amendment. On May 15, 2017, Undine filed

Groundworks' Notice of Withdrawal of Hearing Request. Staff now timely files this Recommendation on Approval.

## II. RECOMMENDATION ON APPROVAL

As an initial matter, Staff addresses Adan G. Cardenas' April 5, 2017 request. Staff's February 9, 2017 Recommendation on Administrative Completeness inadvertently included the opt-out provision in the notices that were subsequently provided to customers. Section 24.102 of the Texas Administrative Code (TAC), which pertains to CCN applications and amendments, allows certain landowners who own property in the requested area to exclude that property (opt-out) from the requested area. Thus, when a provider seeks to certificate a landowner's property, the landowner is allowed a relatively simple way to make sure their land is not included in the area to be certificated, so long as they have at least 25 acres. The sale, transfer, or merger (STM) section of 16 TAC § 24.109 does not have a similar opt-out provision, but in STM cases, property that is already certificated is often what is being transferred between entities, and if a landowner does not want their already-certificated land to be in a certificated area, they can file for expedited or streamlined-expedited release under 16 TAC § 24.113, so long as they meet certain acreage, location, and service requirements. It was therefore incorrect for Staff's sample notice to include opt-out language in this STM proceeding, and if Mr. Cardenas' April 5<sup>th</sup> letter is interpreted to be an opt-out request, it should be denied.

It has been slightly problematic for Staff to arrive at a recommendation regarding how to treat Mr. Cardenas' April 5, 2017 request, given that the intent of the request is unclear and the request may have been filed as a result of Staff's incorrect sample notice provided to the Applicants in this case. In fact, the request by Mr. Cardenas never states that it is an "opt-out." Rather, it states that "this letter is to opt from these services." Further, if intended to be an "opt-out" request, the letter lacked the required "large scale map and a metes and bounds description of the landowner's tract of land" described in the notice. Therefore, it seems most likely to Staff that Mr. Cardenas' request was meant to be a request to not receive any additional materials regarding this process; he also states, "This is to advise you that I am not interested in engaging in this process . . . At this time I am not interested in participating in your proposals." Mr. Cardenas does not appear to be contesting the sale, but rather, appears to be saying that he does not want to participate in this docket.

However, if Mr. Cardenas' request was meant to be an "opt-out" request, Staff cannot be certain whether Mr. Cardenas would have chosen to intervene in this docket had the notice correctly indicated that intervention was the only method available to him to influence the course of the proceeding. However, Order No. 3 set April 4, 2017 as the deadline to intervene, and this deadline would have been the deadline to opt-out had this proceeding been eligible for opt-outs under 16 TAC § 24.102, and was the deadline the notice included for opt-outs. The request by Mr. Cardenas was filed on April 5, 2017, and therefore missed the intervention deadline and opt-out deadline, and the request did not plead a good cause exception to the deadline.

Thus, Staff believes that Mr. Cardenas' request should not result in referral to SOAH for a hearing or the removal of his land from the land Undine seeks to acquire for the following reasons: (1) It does not appear that Mr. Cardenas intended or desired to intervene in this docket or opt-out of the certificated area; (2) his request should not be read liberally as an intervention request given his stated level of desired involvement; (3) even if his request is read liberally to be an intervention request, it was not timely filed; and (4) a landowner cannot opt-out of an STM proceeding.

With respect to the sale, Staff has reviewed the criteria set forth in the Texas Water Code §§ 13.246 and 13.301 and 16 TAC § 24.109 and has determined that the proposed transaction meets the relevant statutory and regulatory requirements. Therefore, as detailed in the attached memorandum of Gregory Charles of the Commission's Water Utility Regulation Division, Staff recommends that the Applicants be allowed to proceed with the proposed transaction.

### **III. CONCLUSION**

Staff respectfully requests that the Applicants be allowed to proceed with the proposed transaction.

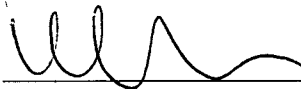
Date: May 19, 2017

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Respectfully Submitted,

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**DOCKET NO. 46745**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this May 19, 2017, in accordance with 16 TAC § 22.74.



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Vera Dygert

## PUC Interoffice Memorandum

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**To:** Vera Dygert, Attorney  
Legal Division

**Thru:** Heidi Graham, Manager  
Water Utilities Division

**From:** Greg Charles, Engineering Specialist  
Water Utilities Division

**Date:** May 2, 2017

**Subject:** **Docket 46745**, *Application of Orbit Systems Inc. and Undine Texas LLC for Sale, Transfer, or Merger of Facilities and Certificate rights in Brazoria, Fort Bend, and Matagorda Counties*

On January 9, 2017, Orbit Systems Inc. (Seller or Orbit) and Undine Texas LLC (Purchaser or Undine), (collectively, Applicants) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of certificate rights in Brazoria, Fort Bend, and Matagorda Counties. The application was reviewed pursuant to Texas Water Code §13.241, §13.246, and §13.301, and 16 Texas Administrative Code § 24.102 and § 24.109. Specifically, Undine seeks approval to acquire a portion of Orbit's facilities, service area, and customers held under water certificate of convenience and necessity (CCN) No. 11982 and sewer CCN No. 20682.

The application was accepted for filing on January 9, 2017. Notice was provided to customers, neighboring utilities, and affected parties on February 26, 2017, and March 5, 2017, in Matagorda County, February 23, 2017, and March 2, 2017, in Fort Bend County, and February 23, 2017, and February 27, 2017, in Brazoria County. The affidavits of notice were received by the Commission on March 10, 2017.

Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. The intervention period ended April 3, 2017. The Commission did not receive any requests for a hearing during the 30 day comment period. The 120-day notification period concludes on July 3, 2017.

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. As a result of this application, the Seller will transfer a portion of its certificated water and sewer service areas to the Purchaser. Staff considered the following nine criteria:

***TWC § 13.241(b) and 16 TAC § 24.102(a) require the Commission to ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules, and has access to an adequate supply of water.*** The Applicants have thirty eight TCEQ approved public water systems with adequate water supplies and two TCEQ approved wastewater systems with adequate treatment capacity. The Applicants are currently providing adequate service to their respective areas.

**TWC §13.246(c)(1) and 16 TAC § 24.102(d)(1) require the Commission to consider the adequacy of service currently provided to the requested area.** The Applicants are currently providing adequate service to their respective areas.

**TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.** Orbit is currently providing service to the certificated areas, therefore the need for service was not considered.

**TWC § 13.246(c)(3) requires the Commission to consider the effect of granting of a certificate or of an amendment on the recipient and on any other retail water utility servicing the proximate area.** The effect of the proposed transaction is that it would transfer a portion of the water and sewer assets from Orbit to Undine. Undine will obtain a new CCN for the service areas to include the areas formerly served by Orbit.

**TWC §13.246(c)(4) and 16 TAC § 24.102(d)(4) require the Commission to consider the ability of the Buyer to provide adequate service.** Undine intends to integrate the acquired systems into its overall system, and intends to raise the standards for quality of customer service.

**TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.** This is not applicable. The Applicants agreed to an acquisition of a portion of Orbit's water systems.

**TWC § 13.246(c)(6) requires the Public Utility Commission of Texas (Commission) to consider the financial ability of Undine to pay for facilities necessary to provide continuous and adequate service and the financial stability of Undine.** 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 areas. 16 TAC § 24.11(e) lists the financial tests. The applicant must meet one of the leverage tests and the operations test.

The application included Undine's five-year projections which was filed confidentially with the central records (projected balance sheets, sources and uses of cash, and projected income statements), for the years 2017 to 2022. On April 21, 2017, the Applicant provided a response to Staff's request for information (RFI) and provided the Applicant's projected financial statements for the years 2017 to 2022. Based on the information provided, Staff has determined that the Applicant met the leverage test by demonstrating a debt service coverage ratio of 1.99, and the operations test, because no operations and maintenance shortages were projected. Therefore, based on the review of the application and information provided, the Applicant has demonstrated adequate financial and managerial capabilities to provide service to the areas being requested.

**TWC §§13.246(c)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.** The environmental integrity of the land included in the areas to be acquired should not be affected by this transaction since the areas is currently receiving service.

**TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.** The customers of Orbit should enjoy a stable water supply from a system that is professionally operated and maintained, and are to be charged the same rates as Orbit.

Staff has reviewed the above referenced application, and based on the information in the application and the applicable laws and rules, Staff has determined that Undine is capable of providing continuous and adequate service to the requested areas. Furthermore, Staff believes the transaction will serve the public

interest. Therefore, Staff recommends that a public hearing is not necessary and the Applicants be allowed to proceed with the proposed transaction.

Staff further recommends that the Applicants be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible.

The approval of the sale expires six months from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, the CCN will remain in the name of the Seller until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.109(o).