



Control Number: 47441



Item Number: 41

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DOCKET NO. 47441

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APPLICATION OF COMMUNITY §
UTILITY COMPANY AND UNDINE §
TEXAS, LLC FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN HARRIS §
AND MONTGOMERY COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

NOTICE OF APPROVAL

This Notice of Approval addresses the application of Undine Texas, LLC and Community Utility Company for approval of Undine's purchase and transfer of all water service area rights and public water systems from Community under water certificate of convenience and necessity (CCN) number 10350 to Undine's CCN number 13260. Community's CCN number 10350 will be cancelled as a result of the transfer. The Commission approves the application.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Community is a domestic for-profit corporation registered with the Texas secretary of state under file number 800689273.
2. Community operates, maintains, and controls facilities for providing water service under CCN number 10350 in Harris and Montgomery counties.
3. Undine is a foreign limited-liability company registered with the Texas secretary of state under file number 802339329.
4. Undine operates, maintains, and controls facilities for providing water service under CCN number 13260 in Brazoria, Fort Bend, Harris, Matagorda, and Montgomery counties.

Application

5. On July 25, 2017, Undine and Community requested approval of the sale of Community's public water systems and the transfer of the area certificated under Community's water CCN number 10350 to Undine. The sale will affect 125 existing customers. The following four service areas totaling 302 acres are to be transferred to Undine: (a) 133 acres within

the Forest Manor subdivision, public water system number 1010264; (b) 40 acres within the Sweetgum Forest subdivision, public water system number 1700113; (c) an area of approximately 99 acres in Harris County located approximately 10 miles northwest of downtown Houston in which there are currently no customers and no public water system; and (d) an area of approximately 30 acres located approximately 30 miles north north-east of downtown Houston in which there are currently no customers and no public water system.

6. Undine and Community agreed to the sale of facilities and transfer of service area under Community's water CCN number 10350 to Undine.
7. On August 7, 2017, Undine filed a first errata of the application containing updated maps showing the correct areas subject to the application.
8. On August 11, 2017, Undine filed a supplement of the application under seal containing financial information.
9. In Order No. 2 issued on August 28, 2017, the administrative law judge (ALJ) found the application administratively complete.

Notice

10. On July 25, 2017, Undine filed a motion for waiver of notice and hearing.
11. Notice of the application appeared in the August 18, 2017 issue of the *Texas Register*.
12. In Order No. 2 issued on August 28, 2017, the ALJ denied Undine's motion for waiver of notice and instructed Undine to provide proof of notice to current customers.
13. On September 27, 2017, Undine filed the affidavit of Carey Thomas, Senior Vice President of Undine, attesting that notice was mailed to current customers of Community on September 19, 2017.
14. In Order No. 3 issued on October 11, 2017, the ALJ found that notice of the application was sufficient.

Sale

15. In Order No. 4 issued on November 27, 2017, the ALJ authorized the sale to proceed and ordered the applicants to file proof that the sale had been completed and that customer deposits had been addressed.
16. On July 16, 2018, Undine filed notice that the sale had closed on July 2, 2018 and attached a bill of sale and the affidavit of Mr. Thomas, attesting that the customer deposits held by Community had been transferred to Undine on July 2, 2018. Undine filed a detailed list of customer deposits under seal.
17. In Order No. 6 issued August 2, 2018, the ALJ found the closing documents were sufficient and that the outstanding customer deposits were addressed.

Evidentiary Record

18. On November 30, 2018, the parties filed a joint motion to admit evidence into the record.
19. In Order No. 9 issued on January 3, 2019, the ALJ admitted the following evidence into the record: (a) the application of Community and Undine and all attachments filed on July 25, 2017; (b) the applicants' first errata to the application filed on August 7, 2017; (c) the applicants' supplement to the application filed on August 11, 2017; (d) the applicants' affidavit and proof of notice filed on September 27, 2017; (e) Commission Staff's recommendation on approval of sale and all attachments filed on November 16, 2017; (f) the applicants' notice of proof that the transaction was completed and customer deposits have been properly addressed filed on July 16, 2018; (g) Commission Staff's recommendation on sufficiency of closing documents filed on July 30, 2018; (h) Undine's consent form to the final maps and certificate filed on September 26, 2018; and (i) the final maps and certificate filed on October 3, 2018.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

20. Undine has not been subject to any enforcement action by the Commission, TCEQ, the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.

21. There is no evidence in the record regarding Community's history of compliance with any enforcement action by the Commission, the TCEQ, the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.

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

22. Forest Manor subdivision is served by public water system number 1010264. Sweetgum Forest subdivision is served by public water system number 170013. Both public water systems have been approved by the Texas Commission on Environmental Quality (TCEQ). The requested area located approximately 99 acres in Harris County and the requested area located 30 miles north north-east of downtown Houston do not have any current customers or public water systems.
23. The public will be better served through Undine's ownership of public water systems due to improvements in customer service and operations and maintenance.

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

24. No new requests for service have been received within the requested areas and Undine did not request to add any uncertificated areas.
25. There are 125 existing connections in the requested areas that are currently receiving service from Community, which demonstrates a need for service.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

26. There are 54 utilities, cities, or political subdivisions providing water service within two miles of the requested areas.
27. There are no other retail public utilities providing water service that would be affected by the proposed transactions.
28. Undine intends to integrate the acquired systems into its overall water systems, and intends to raise the standards for quality customer service.
29. As a result of the transaction, the customers will benefit from a public water system that is professionally operated and maintained and capable of providing continuous and adequate service.
30. The water rates in the requested areas will not change due to the transfers.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

31. Undine will hire Utility Group of Texas, LLC, who has experience in utility management, to operate the purchased water systems.
32. Undine has management capable of managing the water systems and providing service that is continuous and adequate.
33. Undine's management possesses lengthy experience in utility-related accounting and project development.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)

34. 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 systems, as needed, and to keep them in full compliance with TCEQ rules and Commission regulations. Additionally, Undine will use Utility Group of Texas, LLC, a third-party contractor with experience in utility management, to operate the acquired systems.
35. Undine is capable of providing continuous and adequate service in the requested areas.
36. Undine has demonstrated adequate financial and managerial capability to provide service to the requested areas.
37. The consolidated financial statements for Undine's affiliate, Undine Group, LLC, show that Undine's affiliate possesses a debt-to-equity ratio of less than one.
38. Undine's net income from continuous operations is projected to be positive for the next six years, with no operations or maintenance shortages expected.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)

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

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

40. Following the transfer, water service to the requested areas will be provided by Undine using existing infrastructure; therefore, it is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation—TWC §§ 13.241(d); 16 TAC § 24.227(b)

41. Since Undine does not anticipate building any new facilities to continue serving the requested areas, regionalization or consolidation is not a factor.

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

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

Improvement of Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

43. Undine intends to improve customer service and communications with customers.
44. Undine intends to improve regulatory compliance issues.
45. Customers in the requested areas will be charged the same rates they were charged before the sale of Community's water systems.

Effect on Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

46. The requested areas are already being served; therefore, the transfer should have a minimal effect on the land.

Tariffs and Maps

47. On August 29, 2018, Commission Staff emailed to Undine and Community proposed maps, certificates, and tariffs related to this docket and Docket Nos. 47396¹ and 47477.²
48. On September 26, 2018, Undine filed a consent form concurring with the proposed maps, certificates, and tariffs, as prepared by Commission Staff.
49. On October 3, 2018, the proposed tariffs, certificates, and maps were filed as an attachment to the joint motion for approval of a notice of approval.

Certificates

50. Community has sold all of its water systems and will no longer provide water service.

¹ Application of Undine Texas, LLC and Suburban Utility Company for Sale, Transfer or Merger of Facilities and Certificate Rights in Harris County, Docket No. 47396, Notice of Approval (Dec. 21, 2018).

² Application of Undine Texas, LLC and Consumers Water, Inc. for Sale, Transfer or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties, Docket No. 47477 (pending).

51. Because Community will have no customers and no further need for CCN number 10350, the CCN should be cancelled.

Informal Disposition

52. More than 15 days have passed since the completion of notice provided in this docket.
53. No person filed a protest or motion to intervene.
54. Community, Undine, and Commission Staff are the only parties to this proceeding.
55. No party requested a hearing and none is needed.
56. Commission Staff recommended approval of the application.
57. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under TWC §§ 13.041, 13.241, 13.242, 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 Texas Administrative Code (TAC) § 24.3(59).
3. Public notice of the application was provided as required by TWC § 13.301 and 16 TAC § 24.239.
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,³ and Commission rules.
5. Undine and Community completed the sale within the time required by 16 TAC § 24.239(o).
6. Undine and Community complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.

³ Tex. Gov't Code ch. 2001.

7. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested areas. TWC §13.301(b).
8. Undine and Community have demonstrated that the sale and transfer of the public water systems and the water service area of CCN number 10350 from Community to Undine's CCN number 13260 will serve the public interest and are necessary for the service, accommodation, convenience, or safety of the public. TWC § 13.301(d), (e).
9. Undine must record a certified copy of the CCN granted and maps approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Harris and Montgomery counties within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC § 13.257(r), (s).
10. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

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 Community's public water systems and the transfer of Community's water service area under CCN number 10350, as identified in this Notice of Approval, to Undine.
2. The Commission amends Undine's CCN number 13260 to include the four areas described by this Notice of Approval and shown on the attached maps.
3. The Commission cancels Community's CCN number 10350.
4. The Commission approves the tariffs filed on October 3, 2018.
5. Within ten days of the date of this Notice, Commission Staff shall provide a clean copy of the tariff approved by this Notice to central records to be marked *Approved* and filed in the Commission's tariff books.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Undine Texas, 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 Texas, LLC, is entitled to this

Certificate of Convenience and Necessity No. 13260

to provide continuous and adequate water utility service to that service area or those service areas in Brazoria, Fort Bend, Harris, Matagorda and Montgomery counties as by final Orders duly entered by this Commission, which Orders resulting from Docket No. 47396, 47441 and 47477 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Undine Texas, 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, the 25th day of July 2019.

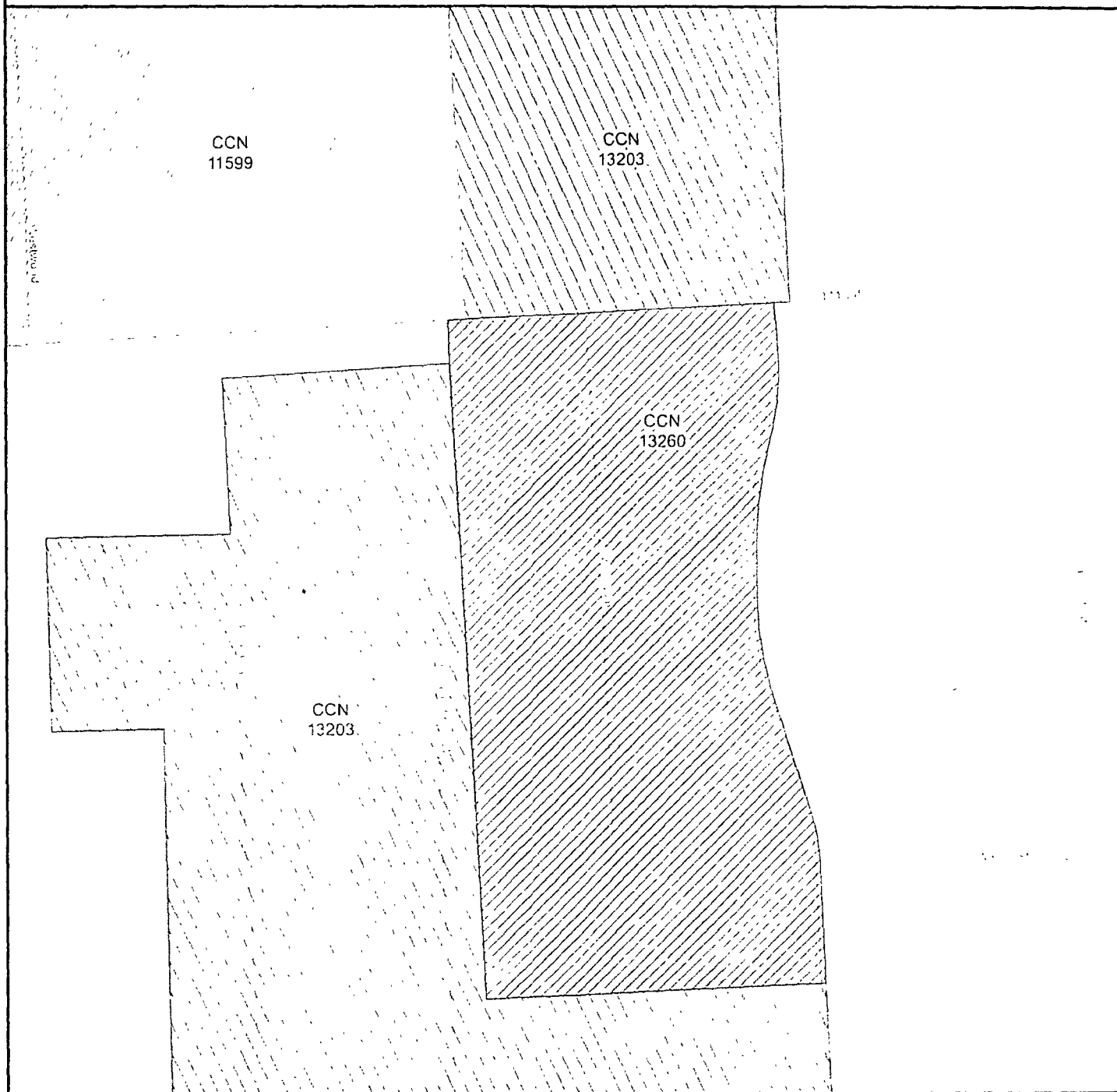
6. Undine must provide continuous and adequate water service to every customer and applicant for service within the service area for water CCN number 13260 in accordance with Undine's water tariff.
7. Undine must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Harris and Montgomery counties affected by the application.
8. Undine must submit to the Commission evidence of the recording no later than 45 days after receipt of this Notice of Approval.
9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 25th day of July 2019.






CHRISTOPHER OAKLEY
ADMINISTRATIVE LAW JUDGE

Undine Texas, LLC
Portion of Water CCN No. 13260
PUC Docket No. 47441
Transferred all of Community Utility Company, CCN No. 10350 in Montgomery County



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

Water CCN

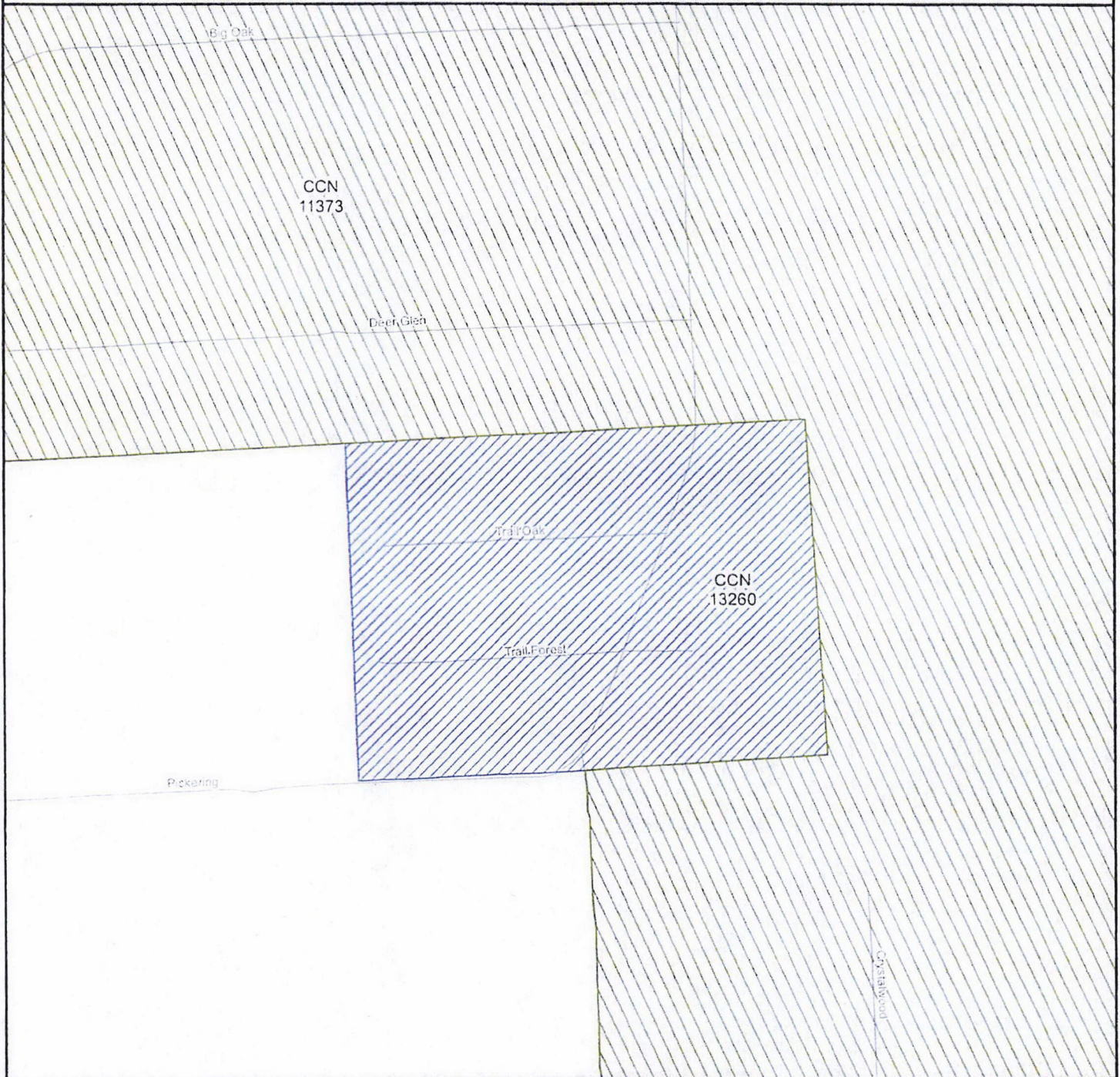
-  13260 - Undine Texas LLC
-  13203 - Aqua Texas Inc
-  11599 - Westwood North WSC

0 200 400
Feet





Map by: Komal Patel
Date created: August 27, 2018
Project Path: n:\finalmapping\
47441UndineTXMap2.mxd
Map 2 of 4

Undine Texas, LLC
Portion of Water CCN No. 13260
PUC Docket No. 47441
Transferred all of Community Utility Company, CCN No. 10350 in Montgomery County



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

Water CCN

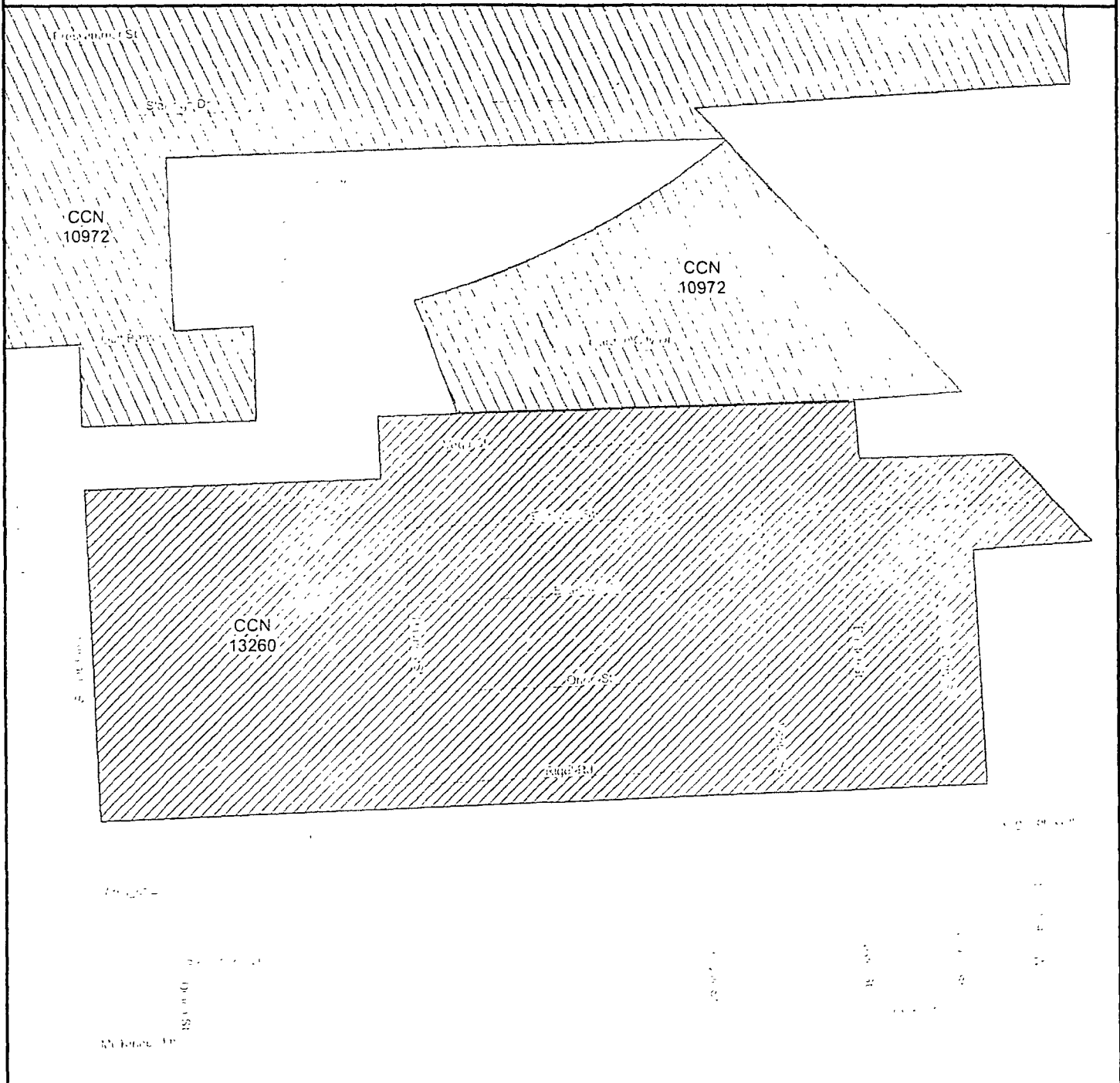
-  13260 - Undine Texas LLC
-  11373 - Crystal Springs Water Co Inc

0 200 400
Feet





Map by: Komal Patel
Date created: August 27, 2018
Project Path: n:\finalmapping\
47441UndineTXMap1.mxd
Map 1 of 4

Undine Texas, LLC
 Portion of Water CCN No. 13260
 PUC Docket No. 47441
 Transferred all of Community Utility Company, CCN No. 10350 in Harris County



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

Water CCN

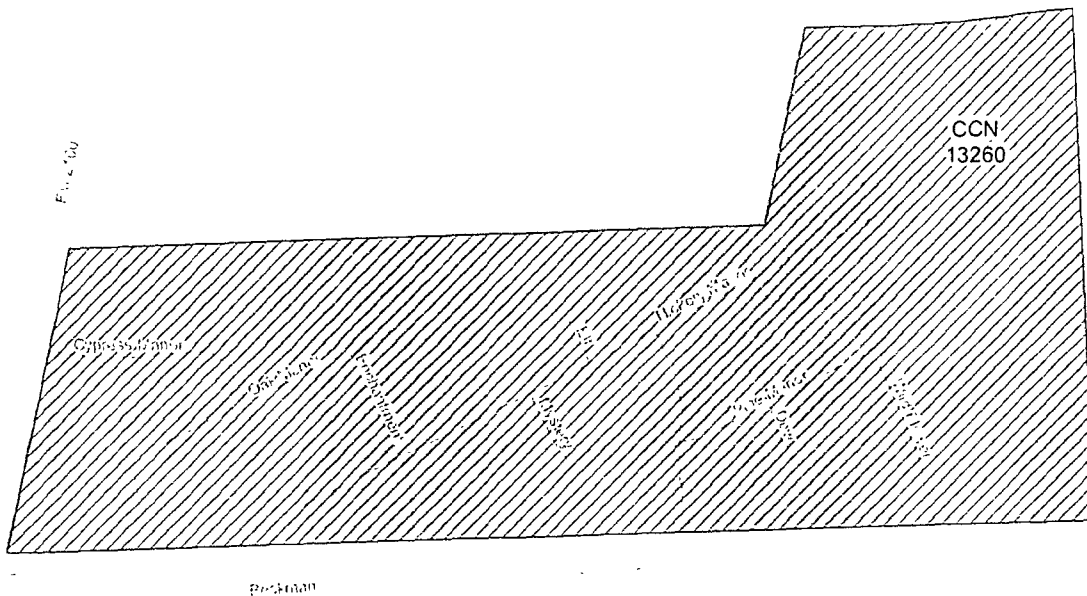
-  13260 - Undine Texas LLC
-  10972 - Champs

Feet 250 500



Map by: Komal Patel
 Date created: August 27, 2018
 Project Path: n:\finalmapping\47441UndineTX\Map3.mxd
 Map 3 of 4

Undine Texas, LLC
Portion of Water CCN No. 13260
PUC Docket No. 47441
Transferred all of Community Utility Company, CCN No. 10350 in Harris County



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

Water CCN



13260 - Undine Texas LLC

0 350 700
Feet



Map by: Komal Patel
Date created: August 27, 2018
Project Path: n:\finalmapping\
47441UndineTXMap4.mxd
Map 4 of 4