



Control Number: 47477



Item Number: 22

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**DOCKET NO. 47477**

**APPLICATION OF UNDINE TEXAS,  
LLC AND CONSUMERS WATER, INC.  
FOR SALE, TRANSFER, OR MERGER  
OF FACILITIES AND CERTIFICATE  
RIGHTS IN HARRIS AND  
MONTGOMERY COUNTIES**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

## **COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE PROPOSED TRANSACTION**

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

### **I. BACKGROUND**

On August 7, 2017, Undine Texas, LLC (Undine) and Consumers Water, Inc. (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of certificate rights in Harris and Montgomery counties (Application).<sup>1</sup> Supplements to the application were filed on August 11, 2017, August 28, 2017, and September 18, 2017.

On October 19, 2017, Order No. 5 was entered, requiring Staff to file a recommendation on approval of the proposed transaction by November 29, 2017. This pleading is timely filed.

### **II. RECOMMENDATION**

Consistent with the attached memorandum of Leila Guerrero, Water Utilities Division, Staff recommends and respectfully request the entry of an order permitting the proposed transaction to proceed. Staff recommends that the proposed transaction satisfies the criteria in Texas Water Code § 13.246(c) and Tex. Admin. Code §§ 24.101–24.107 (TAC).

If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition

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<sup>1</sup> Application (August 7, 2017).

of any remaining deposits have been addressed as soon as possible, pursuant to 16 TAC § 24.109(f).

Finally, Staff notes that there is currently a pending rate case, filed by Consumers, in which abatement and interim rates have been ordered.<sup>2</sup> Staff recommends that, if the Commission does not approve final rates consistent with the interim rates, Undine may be required to provide refunds to customers.<sup>3</sup> Staff has conferred with Undine, which does not oppose Staff's recommendation.

### **III. CONCLUSION**

Staff respectfully requests the entry of an order permitting Undine to proceed with the proposed transaction.

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<sup>2</sup> *Application of Consumers Water, Inc. for a Rate/Tariff Change*, Docket No. 43076, SOAH Order No. 11 (May 3, 2017).

<sup>3</sup> 16 TAC § 24.29(h).

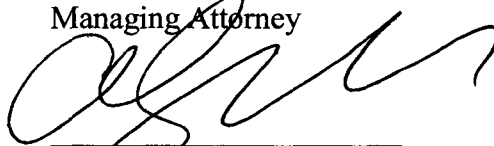
Date: November 29, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

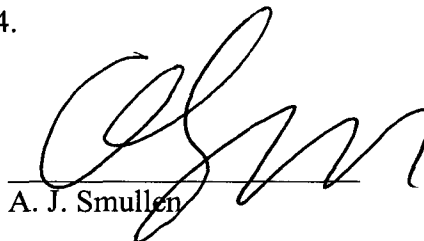
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CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on November 29, 2017 in accordance with 16 TAC § 22.74.



A. J. Smullen

## PUC Interoffice Memorandum

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**TO:** A. J. Smullen, Attorney  
Legal Division

**THRU:** Tammy Benter, Director  
Heidi Graham, Manager  
Water Utility Regulation

**FROM:** Leila Guerrero, Regulatory Accountant/Auditor  
Water Utility Regulation

**DATE:** November 29, 2017

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

On August 7, 2017, Consumers Water, Inc. (“Consumers” or “Seller”) and Undine Texas, LLC, (“Undine” or “Purchaser”), (collectively Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Harris and Montgomery Counties pursuant to Tex. Water Code Ann. § 13.301 (West 2008) (TWC) and the 16 Tex. Admin. Code § 24.109 (TAC). Specifically, Undine seeks approval to acquire facilities and to transfer water service area from Consumers under Certificate of Convenience and Necessity (CCN) No. 10347. The requested area includes 14 public water systems, approximately 1,518 acres and 1,746 current customers.

The 20-day comment period ended October 16, 2017 and no protests or requests for hearing were received.

### **Criteria Considered**

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, Staff considered the following nine criteria:

***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.***

Consumers has 14 Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS). The PWSs being transferred by this application are listed below:

<b><u>PWS NAME</u></b>	<b><u>PWS ID</u></b>
Green Acres	TX1010132
Highland Mobile Home Subdivision	TX1010285
Highland Ridge Subdivision	TX1010157
Huffman Heights Subdivision	TX1010700
Joy Village	TX1700021
Lakewood Colony	TX1700029
Meadowlake Estates	TX1010287
Peach Creek Oaks Subdivision	TX1700051
Pioneer Trails Subdivision	TX1700114
Porter Terrace	TX1700161
Spring Forest Subdivision	TX1700033

Springmont Subdivision  
Tall Cedars Mobile Home Park  
Urban Acres Subdivision

TX1010255  
TX1010219  
TX1010252

A review of TCEQ's Central Registry indicates that the 14 PWSs have no active water violations. However, each one of the 14 PWSs to be transferred, requires capital improvements to be in compliance with TCEQ rules. The public will be better served through Undine's ownership of PWSs due to improvements in customer service and operations and maintenance.

***TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.***  
There are 1,746 existing connections in the requested areas that are currently receiving service from Consumers which demonstrates a need for service.

***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 will be the transfer of facilities, water service area and current customers from Consumers to Undine. In addition, water rates will not change due to the transfer. Only Undine and Consumers will be affected by this transaction. There are no other retail public utilities of the same kind that would be affected by the proposed transaction.

***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 customer service. 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, to keep them in full compliance with all TCEQ and Commission regulations. In addition, Undine employs 16 operators with a cumulative 33 water and waste water operation licenses.

***TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.***

There are existing facilities and customers in the requested area; therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.***

Pursuant to 16 TAC § 24.11(e), the Buyer (owner or operator) must meet both a leverage test and an operations test.

- 1. Leverage Test:** Pursuant to 16 TAC § 24.11(e)(2) the Buyer must meet a leverage test. The Commission's rule provides five methods by which an applicant may satisfy the leverage test, of which the Buyer need only satisfy one.<sup>1</sup> Staff recommends the application be approved based on the consolidated financial statements for Undine Group, LLC (affiliate), which show that the Buyer's affiliate possesses a debt-to-equity ratio of less than one, satisfying the leverage test method set out in 16 TAC § 24.11(e)(2)(E).<sup>2</sup> The Applicants provided a confidential consolidated balance sheet for an affiliate as of June 30, 2017. The balance sheet shows a cash balance and total equity in excess of long-term liabilities, resulting in a debt-to-equity ratio of less than one, meaning that the affiliate meets the leverage test set out in 16 TAC § 24.11(e)(2)(A). The

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<sup>1</sup> 16 TAC § 24.11(e)(2).

<sup>2</sup> See Undine Texas LLC's Notice of Supplemental Filing (Aug. 11, 2017) (providing a supplement to Confidential Attachment G to the application).

confidential financial information also demonstrates that the affiliate is capable, available, and willing to cover temporary cash shortages.

2. **Operations Test:** Pursuant to 16 TAC § 24.11(e)(3) and § 24.11(e)(4)(B), the Buyer must meet the operations test which states that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the next five years of operations for an existing utility. Based on the projected revenues and operating expenses, the Buyer's net income from continuing operations is projected to be positive for the next six years. Therefore, no operations and maintenance shortages are indicated for the next six years. Since the utility subject to this application includes existing and operating systems, operations and maintenance costs is projected based on using the utility's past financial experience. In addition, Attachment G to the application reflects that capital infusions will be available when the need for extra cash for operations and maintenance arises. The Applicant meets the operations test.

Staff recommends that Undine has demonstrated adequate financial capability to support approval of the application in this proceeding, consistent with 16 TAC §§ 24.11 and 24.109.

***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 will not be affected by this transaction since there are existing customers and facilities in the current service area.

***TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.***

As a result of the transaction, the customers should enjoy a stable water supply from a PWS that is professionally operated and maintained, and the rates will not change as a result of this transaction.

Based on the information in the application and the applicable laws and rules, the Applicant meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Staff recommends that Undine is capable of providing continuous and adequate service to the requested areas, the transaction will serve the public interest, 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 180 days 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).