

Control Number: 47477



Item Number: 28

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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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BEFORE THE PUBLIC UTILITY COMMISSION  
 OF TEXAS  
 MAY -3 PM 12:59  
 PUBLIC UTILITY COMMISSION CLERK

**MOTION FOR EXTENSION OF TIME TO COMPLETE  
APPROVED SALE TRANSACTION**

COMES NOW, Undine Texas, LLC (Undine) and files this Motion for extension of time to complete the sale transaction previously approved by the Public Utility Commission of Texas (Commission), and as good cause therefore would show the following:

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On August 7, 2017, Undine and Consumers Water, Inc. (Consumers) filed an Application for Sale, Transfer, or Merger (STM) for approval to acquire the facilities and certificate rights.<sup>1</sup> The Commission issued Order No. 6 in this docket on December 4, 2017, approving the sale and transfer transaction, and authorizing the parties to proceed to consummate the transaction.<sup>2</sup>

Pursuant to 16 Tex. Admin. Code § 24.109(o), the Commission's approval of a transaction expires 180 days following the date of the Commission order allowing the transaction to proceed. Under this rule, if closing documents are not submitted within this period, or an extension granted, approval of the transaction is void. The Commission's approval, unless extended, will expire on June 2, 2018. However, this rule also provides that the approval may be extended for good cause shown.

**II. GOOD CAUSE**

Undine has been diligently working to finalize and close the transaction since the Commission issued its approval in December 2017. The Commission has also approved the

<sup>1</sup> Application of Undine Texas, LLC and Consumers Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties (Aug. 7, 2017).

<sup>2</sup> Order No. 6, Approving Transaction to Proceed (Dec. 4, 2017).

purchase by Undine of two additional systems owned by Consumers' owners: Community Utility Company (Community)<sup>3</sup> and Suburban Utility Company (Suburban).<sup>4</sup> Undine and its principals have completed preparation of the Asset Purchase Agreements and have been working with the owners of Consumers, Community, and Suburban to finalize the documents and tasks necessary to close on all three of these utilities simultaneously.

In performing due diligence on these systems, Undine discovered a number of complex issues, the resolution of which has necessarily required additional time and resulted in the closing date being extended beyond the parties' originally-anticipated time-line. For example, Suburban is the subject of an Agreed Judgment in an enforcement proceeding brought by the State of Texas, and an Abstract of Judgment has been filed for the unpaid amounts resulting from that judgment. The resolution of this issue, and the release of the judgment lien, has added to the time needed to close this transaction. Undine has been working closely with the Texas Commission on Environmental Quality, even before the approval of the STMs, to develop and finalize Compliance Agreements for all three of the systems that will be in place once Undine becomes the owner. Other tax and permitting issues have arisen with respect to all three utilities.

While it has been working towards closing of all three transactions, Undine has also been acting as Temporary Manager of Suburban since September 2017. Recognizing that the temporary management was going to expire on March 21, 2018, and wanting to avoid any gap in its management and ultimate ownership of the facilities, Undine requested an extension and was

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<sup>3</sup> *Application of Community Utility Company and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*, Docket No. 47441, Order No. 4, Approving Sale/Transfer to Proceed (Nov. 27, 2017).

<sup>4</sup> *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, Order No. 6, Approving Transaction to Proceed (Oct. 13, 2017).

granted an additional 180-day extension to its role.<sup>5</sup> Undine's appointment as Suburban's Temporary Manager now ends on September 23, 2018.

The temporary management extension will ensure that Suburban's customers receive continuous and adequate service while the sale is finalized and Undine can take ownership. Undine also sought an extension of the time approving the Suburban STM until May 5, 2018. The Commission granted that extension,<sup>6</sup> and Undine will seek another extension for the Suburban transaction to match the extension requests filed in this docket and in the Community docket.

In finalizing the transaction with Consumers' owners, Undine has encountered additional issues concerning taxes and the titles with all three utilities that require more time and due diligence to resolve the issues and complete the transaction. Undine and the owners of the three utilities anticipate a closing date before the end of Undine's term as Suburban's Temporary Manager. Therefore, Undine respectfully asks for additional time to finalize the Consumers STM that coincides with the termination of its role as Suburban's Temporary Manager, until September 23, 2018.

Undine respectfully submits that good cause exists for an extension of the time period provided by statute for the closing of the transaction with Consumers. Undine has been diligent and has expended significant amounts of time and resources in its efforts to identify and resolve a very complex situation in order to bring this transaction to closure. This request for additional time will preserve the investment made by all the parties in pursuing the resolution of this transaction, and will enable the transaction to proceed to closure.

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<sup>5</sup> *Commission Staff's Application for an Emergency Order Appointing a Temporary Manager to Suburban Utility Company Under Texas Water Code § 13.4132 and 16 TAC § 24.142*, Docket No. 47638, Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Suburban Utility Company (Mar. 21, 2018).

<sup>6</sup> Docket No. 47396, Order No. 7, Granting Extension of Time to Complete Sale Transaction (Apr. 4, 2018).

Undine requests that the Commission also extend the time approving the sale and transfer transaction of Consumers for an additional one hundred thirteen (113) days until September 23, 2018. If the transaction closes before this date, Undine will notify the Commission.

### **III. CONCLUSION**

Undine respectfully submits that good cause exists for an extension of time to complete the approved transaction, and requests that the Commission issue an order granting the extension of time requested herein. Undine further asks for all other relief in law or equity to which it is entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

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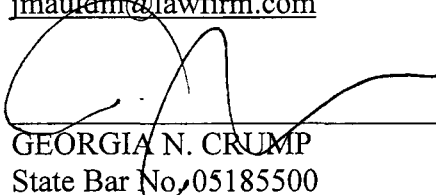
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ATTORNEYS FOR UNDINE TEXAS, LLC

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2018, true and correct copy of the foregoing document has been served on all parties of record in accordance with 16 Tex. Admin. Code § 22.74.



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JAMIE L. MAULDIN