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PUC DOCKET NO. 47639

<p>APPLICATION OF GULF COAST UTILITY COMPANY, INC. AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF SEWER FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY</p>	<p>§ § § § § § §</p>	<p style="text-align: right;">2018 JAN 13 PM 2:16 PUBLIC UTILITY COMMISSION FILING CLERK OF TEXAS</p>
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COMMISSION STAFF’S RECOMMENDATION ON THE PROPOSED TRANSACTION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 3, Staff’s Recommendation on the Proposed Transaction. Staff recommends that the proposed transaction be approved to proceed and close. In support thereof, Staff shows the following:

I. BACKGROUND

On September 22, 2017, Gulf Coast Utility Company, Inc. (Seller) and Undine Texas Environmental, LLC (Purchaser) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Brazoria County, Texas pursuant to Tex. Water Code § 13.301 (TWC) and 16 Tex. Admin. Code § 24.109 (TAC). Specifically, Purchaser seeks approval to acquire all sewer system assets and the associated service area currently held by Seller under sewer certificate of convenience and necessity (CCN) No. 20688.¹ The total area being requested for the Southwood Estates portion is approximately 245 acres with 530 affected customers and for Spring Crossing is approximately 286 acres and 0 current customers. If the acquisition is approved, the Applicants clarified their request that rather than cancel Seller’s CCN and issue a new CCN number, Purchaser be allowed to keep sewer CCN No. 20688 under Purchaser’s name.²

On December 5, 2017, the Commission administrative law judge (ALJ) issued Order No. 3 deeming Applicants’ notice to be sufficient and establishing Staff’s deadline to file a recommendation on the proposed transaction as January 17, 2018. Therefore, this pleading is timely filed.

¹ Application at 1 (Sept. 22, 2017).

² Clarification Letter at 1 (Oct. 26, 2017).

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II. RECOMMENDATION TO APPROVE TRANSACTION TO PROCEED

As further detailed in the attached memorandum of Debbie Reyes Tamayo of the Commission's Water Utility Regulation Division, Staff has reviewed the Applicants' proposed transaction and determined that the application meets the requirements of TWC §§ 13.241, 13.246, and 13.301 as well as 16 TAC §§ 24.109 and 24.112. Therefore, Staff respectfully recommends that the Applicants be approved to proceed with the proposed transaction to sell and transfer the facilities and service area certificated under Seller's sewer CCN No. 20688 to Purchaser. Following final approval in this docket, Seller's sewer CCN No. 20688 will be certificated to Purchaser under the same CCN number.

Furthermore, pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), 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. No motions to intervene or public requests for a hearing were filed. Staff has determined that the application meets the pertinent requirements and is in the public interest; therefore, Staff does not request a hearing.

Dated: January 17, 2018

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney



Matthew A. Arth
State Bar No. 24090806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7021
(512) 936-7268 (facsimile)
Matthew.Arth@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record January 17, 2018, in accordance with 16 Tex. Admin. Code § 22.74.



Matthew A. Arth

PUC Interoffice Memorandum

To: Matthew Arth, Attorney
Legal Division

Thru: Lisa Fuentes, Manager
Water Utility Regulation Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utility Regulation Division

DATE: January 11, 2018

SUBJECT: *Docket No. 47639, Application of Gulf Coast Utility Company, Inc. and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Sewer Facilities and Certificate Rights in Brazoria County*

On September 22, 2017, Undine Texas Environmental (Undine or Buyer) and Gulf Coast Utility Company, Inc. (Gulf Coast or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Brazoria County, Texas, pursuant to Tex. Water Code § 13.301 (TWC) and 16 Tex. Admin. Code § 24.109 (TAC). Specifically, Undine seeks approval to acquire all facilities and associated service area from Gulf Coast's sewer Certificate of Convenience and Necessity (CCN) No. 20688 and subsequently cancel sewer CCN No. 20688. Undine also requests a new sewer CCN Number. The requested area for Southwood Estates includes approximately 245 total acres and 530 current customers. The requested area for Spring Crossing includes approximately 286 total acres and 0 current customers. If approved, the public water system (PWS) under Texas Commission on Environmental Quality (TCEQ) ID No. TX0093823 and the TCEQ Water Quality Discharge Permit No. WQ0012780001 in Southwood Estates, will be transferred to the Buyer. This application is being reviewed under 16 TAC §§ 24.102 and 24.109 and TWC §§ 13.241, 13.246, and 13.301.

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 30-day comment period ended December 18, 2017. The Commission did not receive any protests or requests for a hearing during the 30-day comment period. The 120-day notification period concludes on March 16, 2018.

TWC § 13.246(c) and 16 TAC § 24.102(d) require the Commission to consider nine criteria when granting or amending a water or sewer CCN. 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. The sewer system being transferred by this application is located in Southwood Estates and is associated with the Water Quality Discharge Permit No. WQ0012780001. The TCEQ application for the transfer of the discharge permit was included with the present application. The customers are served by a 0.40 million gallons per day sewer treatment facility. Given a TCEQ criterion of 300 gallons per day per connection, the sewer facility is adequate to serve the 530 connections.

TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2) require the Commission to consider the need for service in the requested area. There are existing customers in the requested areas, therefore there is a need for service.

TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) require the Commission to consider the effect of granting 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 all of the sewer assets and service area from Gulf Coast to Undine. Undine will retain CCN No. 20688 for the requested area.

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 system into its overall sewer system, and intends to raise the standards for quality customer service.

TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5) require the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. This is not applicable. The Applicants agreed to the sale and transfer of the Gulf Coast sewer system.

TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6) require 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. Pursuant to 16 TAC § 24.11(e)(1), Buyer must meet both a financial leverage test and an operations test:

Leverage Test: Pursuant to 16 TAC § 24.11(e)(2), 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 Applicant need only satisfy one.¹ Staff recommends that the leverage test is satisfied based on the financial statements provided for Undine, LLC (affiliate), which shows that 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). The affiliate provided balance sheet and income statements for the nine months ended September 30, 2017.² The balance sheet shows that the affiliate has no long-term debt, or a ratio of less than one, meaning that the affiliate meets the leverage test set out in 16 TAC § 24.11(e)(2)(A). The affiliate affirmed that it will provide funds to the Applicant for operations and investment in plant as the need arises. Since the affiliate has no long-term debt, the debt to service coverage ratio (DSCR) is not applicable to this analysis.

Operations Test: Pursuant to 16 TAC §§ 24.11(e)(3) and(4)(B), Buyer must meet the operations test which states that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the next five years of operations for an existing utility. The projected operations and maintenance for the next

¹ See 16 Tex. Admin. Code § 24.11(e)(2) (TAC).

² See Undine Texas Environmental, LLC's Confidential Financial Statements (Jan. 5, 2018).

five years are not available at this time, however Undine, through its senior vice president, filed an “Affidavit of Undine Commitment”³ certifying that Undine, LLC or one of its affiliates guarantee to cover any operations and maintenance cash shortages for the sewer assets acquired from Gulf Coast in order to satisfy the operations test set out in 16 TAC § 24.11(e)(3). Staff recommends that this commitment by Buyer’s affiliate satisfies the operations test.

Based on the above discussion, Staff recommends that the Commission find that the Applicant possesses adequate financial and managerial capability.

TWC §§ 13.246(c)(7) & (9) and 16 TAC §§ 24.102(d)(7) & (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 are currently receiving service.

TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8) require the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers of Gulf Coast should enjoy stable sewer service from a system that is professionally operated and maintained, and the rates will not change as a result of the transaction. The system will be served by one Class A and one Class C operator, which satisfies the permit requirement.

Staff has reviewed the above referenced application and based on the information in the application, Staff has determined that Undine is capable of providing continuous and adequate service to the requested areas in accordance with applicable statutes and rules. Furthermore, Staff believes that the transaction will serve the public interest. Therefore, Staff recommends that a public hearing is not necessary and that the Applicants be allowed to proceed with the proposed transaction to sell and transfer the facilities and service area associated with sewer CCN No. 20688 to Undine Texas Environmental, LLC and for Buyer to retain such CCN number.

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 customer 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.

³ See Undine Texas Environmental LLC’s Response to Commission Staff’s First RFI to Undine Texas Environmental, LLC at Exhibit A-2 (Jan. 5, 2018).