



Control Number: 47640



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DOCKET NO. 47640

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**APPLICATION OF UNDINE TEXAS,
LLC AND GULF COAST UTILITY
COMPANY, INC. FOR SALE,
TRANSFER, OR MERGER OF
WATER FACILITIES AND
CERTIFICATE RIGHTS IN
BRAZORIA AND MATAGORDA
COUNTIES**

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PUBLIC UTILITY COMMISSION

OF TEXAS

FILED IN PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION
ON FINAL DISPOSITION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response to Order No. 3, Staff's Recommendation on Final Disposition. Staff recommends that the application be approved. In support thereof, Staff shows the following:

I. BACKGROUND

On September 22, 2017, Undine Texas, LLC and Gulf Coast Utility Company, Inc. filed an application for sale, transfer, or merger of facilities and certificate rights in Brazoria and Matagorda Counties. Specifically, Undine seeks approval to acquire all water system assets and certificated service area held by Gulf Coast under certificate of convenience and necessity (CCN) No. 12094, to be held by Undine under the same water CCN assigned to Undine in Docket No. 46745.¹ Gulf Coast's water CCN No. 12094 will be canceled.

On December 18, 2017, Order No. 3 was issued, establishing a deadline of January 17, 2018, for Staff to request a hearing or file a recommendation on approval of the sale and on issuance of certificate. Therefore, this pleading is timely filed.

II. RECOMMENDATION

As detailed in the attached memorandum from Fred Bednarski in the Commission's Water Utility Regulation Division, Staff recommends that the application be approved.

¹ *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*, Docket No. 46745, Notice of Approval (Jan. 9, 2018).

Specifically, Staff has reviewed the application and supplemental material that has been provided, and recommends that Undine possesses the necessary financial, managerial, and technical capability to provide continuous and adequate service.

Staff also requests that Undine or Gulf Coast be directed to notify the Commission within 30 days after the date of the proposed transaction is completed, consistent with the requirements of 16 Tex. Admin. Code § 24.111(g) (TAC).

III. CONCLUSION

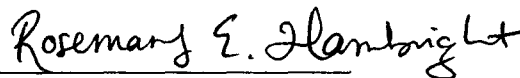
For the reasons detailed above, Staff recommends that the application be approved.

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 January 17, 2018, in accordance with 16 TAC § 22.74.



Rosemary E. Hambright

PUC Interoffice Memorandum

To: Rosemary E. Hambright, Attorney
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Engineer Manager
Water Utility Regulation Division

From: Fred Bednarski, Financial Examiner
Water Utility Regulation Division

Date: January 17, 2018

Subject: **Docket 47640**, *Application of Undine Texas, LLC and Gulf Coast Utility Company, Inc. for Sale, Transfer or Merger of Water Facilities and Certificate Rights in Brazoria and Matagorda Counties*

On September 22, 2017, Undine Texas, LLC (Undine or applicant) and the Gulf Coast Utility Company, Inc. (Gulf Coast) filed an application for the sale, transfer, or merger of facilities and certificate rights in Brazoria and Matagorda Counties, Texas, pursuant to Tex. Water Code Ann. § 13.301 (West 2008 & Supp. 2017) (TWC) and 16 Tex. Admin. Code § 24.109 (TAC). Specifically, Undine seeks approval to acquire all facilities and cancel Gulf Coast Utility Company, Inc.'s water Certificate of Convenience and Necessity (CCN) No. 12094. The requested area includes approximately 715 acres and 583 connections.

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(j), 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 comment period ended on December 19, 2017, and no protests or requests to opt out were received by the Commission. Staff recommends that a public hearing is not necessary.

Based on the information in the application Staff recommends that Undine has demonstrated adequate financial, managerial, and technical capability to provide service to its existing service area plus the additional area requested in this application, as required by TWC § 13.301(b). Staff's recommendation is based on the following nine criteria as listed in TWC § 13.246(c) and 16 TAC §§ 24.11 and 24.102(d):

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. Gulf Coast currently provides service to the area which consists of three Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) ID Nos. 0200665, 0200403, and 0200666, which contain 684 total acres and 583 customers. Staff recommends that the Gulf Coast meets the requirements of 16 TAC § 24.102(a)(1) since it has approved TCEQ systems that are capable of providing drinking water that meets the requirements of Texas Health and Safety Code Chapter 341 and TCEQ rules and it has access to an adequate supply of water. The PWSs also have no outstanding violations.

TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2) require the Commission to consider the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service. The fact that there are existing customers in the requested area demonstrates the 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 of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area. There will be no effect since the Gulf Coast PWSs are already providing service to the area.

TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4) require the Commission to consider the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area. Undine has access to an adequate supply of water and has the capacity to serve the requested area. Undine employs TCEQ certified water operators.

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. In this case, the requested area has existing facilities and is currently being served by Gulf Coast PWSs. Additionally, utilities within a two mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

TWC § 13.246(c)(6) and 16 TAC §§ 24.11 and 24.102(d)(6) require the Commission to consider the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio.
Undine meets the following one out of the four leverage tests set out in 16 TAC § 24.11(e), of which Undine is only required to meet one.

- a. Title 16 TAC § 24.11(e)(2)(A) states that the owner or operator must have a **debt to equity ratio of less than one**, using long term debt and equity or net assets. Based on the information below, Undine meets the debt to equity ratio since the applicant has [REDACTED] in long term debt.

[REDACTED]

- b. Additionally, Undine meets the operations test set forth in 16 TAC § 24.11(e)(3), which states that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Undine submitted confidential historical and five years of projected financial statements. Staff reviewed the statements and identified no shortages that need to be covered; however, should they arise, the applicant has sufficient capability of covering them.

TWC §§ 13.246(7) and (9) and 16 TAC §§ 24.102(d)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate. There will be no impact on the environment and the land as the system is already in place.

TWC § 13.246(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' rates will not change as a result of the proposed transaction.

TWC §13.241(b) and 16 TAC §24.102(a)(1) require the Commission to ensure that the applicant both (1) is capable of providing drinking water that meets the requirements of Chapter 341 of the Health and Safety Code the rules of TCEQ, and the requirements of the TWC; and (2) has access to an adequate supply of water. Staff recommends that the applicant has met the requirements. Undine has access to an adequate supply of water and has the capacity to serve the requested area. Undine employs TCEQ certified water operators and is in compliance with the TCEQ's rules.

Based on the above analysis, Staff recommends the Commission find that the transaction will serve the public interest and allow Undine and Gulf Coast to proceed with the proposed transaction. In addition, Staff recommends that Gulf Coast and Undine be ordered to file documentation as evidence that all assets have been transferred from Gulf Coast to Undine and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(n).

The approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale has not been consummated within that period and unless Gulf Coast and Undine have requested and received an extension from the Commission, the approval is void and Gulf Coast and Undine must re-apply for the approval of the sale. In addition, Gulf Coast and Undine should be informed that the CCN will remain in the name of Gulf Coast until the transfer is complete and approved in accordance with Commission rules and regulations as required by 16 TAC §§ 24.109(o), and (q).