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DOCKET NO. 48151

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APPLICATION OF BOLIVER §
UTILITY SERVICES, LLC AND §
UNDINE TEXAS ENVIRONMENTAL, §
LLC FOR SALE, TRANSFER, OR §
MERGER OF FACILITIES AND §
CERTIFICATES RIGHTS IN §
GALVESTON COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On March 8, 2018, Bolivar Utility Services, LLC (Bolivar), and Undine Texas Environmental, LLC (Undine) (collectively Applicants), filed an application for a sale, transfer, or merger of facilities and Certificate of Convenience and Necessity (CCN) rights in Galveston County, Texas. Specifically, Bolivar seeks to sell its sewer system and transfer the service area under CCN No. 21026 to Undine. The total area being requested includes approximately 37,468 acres and serves 702 current customers.¹

On November 29, 2018, Order No. 7 was issued in this docket, granting Commission Staff an extension of time in order to allow for the resolution of Bolivar’s related sewer rate change application in Docket No. 47680. On January 18, 2019, the Commission issued a final order in Docket No. 47680, approving Bolivar’s change in sewer rates, as modified by an unopposed agreement between the parties in that proceeding and the final order.

Order No. 7 also established a deadline for Staff to request a hearing or file a recommendation on approval of the sale, and on the CCN and necessity amendment, by January 18, 2019. Therefore, this pleading is timely filed.

¹ Applicants’ application identified 668 current customers at the time of filing. Application at 20 (March 8, 2018). The copy of notice included in the proof of notice filing identified 702 current customers. Undine’s Response to Order No. 3 at 5 (September 28, 2018).

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II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum of Jolie Mathis, Water Utility Regulation Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Staff's review of the application indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to Texas Water Code § 13.246(c). Additionally, Staff recommends that Undine has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction and that a public hearing is not necessary. 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 effectuated 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 approval of the sale.

Finally, Staff also recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required pursuant to 16 Texas Administrative Code §§ 24.109(m)-(n). The CCN remains in the name of the Seller until the transfer is complete and approved in accordance with the Commission's rules and regulations.

III. CONCLUSION

Staff respectfully requests that the ALJ issue an order permitting the proposed transaction to proceed.

DATED: January 18, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 18, 2019, in accordance with. 16 TAC § 22.74.



Richard Nemer

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

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

From: Jolie Mathis, Engineering Specialist
Water Utility Regulation Division

Date: January 18, 2019

Subject: **Docket No. 48151**, *Application of Bolivar Utility Services, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Galveston County*

On March 8, 2018, Undine Texas Environmental, LLC (Buyer) and Bolivar Utility Services, LLC (Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Galveston County, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239 (formerly 16 TAC § 24.109). Specifically, the Buyer seeks approval to acquire facilities and to transfer the service area from the Seller under sewer Certificate of Convenience and Necessity (CCN) No. 21026. The requested area includes approximately 37,468 acres and 702 connections.

Notice

The comment period ended October 29, 2018, and no protests or opt-out requests were received.

Criteria Considered

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

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The Seller has Texas Commission on Environmental Quality (TCEQ) approved Wastewater Discharge Permit Nos. WQ0014452001 and WQ0012936001. The Seller does not have any violations listed in the TCEQ database.

TWC § 13.246(c)(2) requires the Commission to consider the need for additional service in the requested area.

The existing customers are currently receiving sewer treatment service from the Laguna Harbor wastewater system. The Crystal Palace wastewater system is currently not in operation.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail public utility of the same kind already servicing the proximate area.

There will be no effect on any retail public utility servicing the proximate area as there are no other sewer providers in the area.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.

As a result of the transaction, the Buyer will acquire the Laguna Harbor WWTP and the Crystal Palace WWTP and Wastewater Discharge Permit Nos. WQ0014452001 and WQ0012936001. No additional construction is necessary for the Buyer to serve the requested area.

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

The Seller is currently serving customers and has sufficient capacity. 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.

16 TAC § 24.11 includes the leverage tests and an operations test.

Leverage Test

The leverage test requires an applicant to meet one or more of the five tests listed under § 24.11(e)(2). Based on the projected financial statements filed confidentially with the application, the Buyer meets two out of the five leverage tests in 2021, and three out of five tests from 2022–2024. Additionally, in response to Staff’s request for information, the Buyer filed a confidential statement and financial assurance regarding the amount of member’s equity committed to Undine Group, LLC, the amount of cash received in the form of contributed capital, and the balance to be received by the Buyer in cash as the needs arise. Therefore, the Buyer meets 16 TAC 24.11(e)(1)(E).

Operations Test

Pursuant to § 24.11(e)(3), the operations test requires that the owner or operator demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Buyer meets the operations test. Within the application, the Buyer submitted projected financial statements from 2018-2024. The projected income statements do not show any operations and maintenance shortages for the next five years. In addition, Carey A. Thomas, Senior Vice President of Undine, LLC, executed an affidavit certifying that Undine, LLC, or one of its affiliates, guarantees to cover any operations and maintenance cash shortages for the sewer assets acquired from Bolivar Utility Services, LLC. The affidavit provides a secondary basis for satisfying the operations test under 16 TAC § 24.11(e)(3). Therefore, there are no shortages to cover.

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 effected as no additional construction is needed to provide service to the requested area.

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

Service will remain the same and the customers’ rates will not change as a result of the transaction.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.239(i) (formerly 16 TAC § 24.109(i)), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes there are no deposits held by Seller for the customers being served by Laguna Harbor. The Crystal Palace wastewater system is currently not in operation.