



Control Number: 48307



Item Number: 6

Addendum StartPage: 0

APPLICATION OF UNDINE TEXAS §
LLC FOR PASS-THROUGH RATE §
CHANGE §

BEFORE THE PUBLIC UTILITY COMMISSION
OF TEXAS
2018 JUN -5 PM 3:14
PUBLIC UTILITY COMMISSION
FILED CLERK

**UNDINE TEXAS LLC'S SUGGESTED CORRECTIONS
TO NOTICE OF APPROVAL**

Undine Texas LLC (Undine) files these suggested corrections to the Notice of Approval issued in this matter on May 25, 2018, and would respectfully show as follows:

I. PROCEDURAL HISTORY

The Cypress Bend subdivision is part of the Suburban Utility Company systems. Undine has been acting as Temporary Manager of Suburban Utility Company since September 23, 2017. The Cypress Bend subdivision receives groundwater, and thus is subject to rules and regulations adopted by the North Harris County Regional Water Authority (Authority). The Authority imposes a pumpage fee on each non-exempt well subject to the Authority's jurisdiction, which includes the well serving the Cypress Bend subdivision. On December 4, 2017, the Authority increased the pumpage fee to \$3.40 per 1,000 gallons pumped, effective April 1, 2018.

On April 23, 2018, Undine, acting as Temporary Manager, filed an Application for Pass-Through Rate Change (Application) for the Cypress Bend subdivision, and in the Application grossed up the proposed increase to account for actual line loss experienced on the system over a twelve-month period, resulting in a pass-through rate of \$5.28/1,000 gallons pumped.

On May 23, 2018, the Public Utility Commission of Texas (Commission) Staff filed Sufficiency and Final Disposition Recommendations. Commission Staff found Undine's application and notice to be sufficient, and recommended that the application be found administratively complete and requiring no further notice.¹ However, Commission Staff also recommended reducing the pass-through rate from \$5.28 per 1,000 gallons to \$4.00 per 1,000 gallons. Instead of using the actual line loss of 35.6%, Commission Staff recommended a

¹ Commission Staff's Sufficiency and Final Disposition Recommendations at 2 (May 23, 2018).

maximum line loss recovery of 15%. In its recommendation, Commission Staff stated “[t]his [15%] policy is in place in order to conserve water and encourage management to fix leaks.”²

A Notice of Approval was issued on May 25, 2018, as recommended by Commission Staff. Pursuant to 16 Tex. Admin. Code § 22.35(d), Undine files these suggested corrections to the Notice of Approval. This rule allows parties to file suggested corrections to a notice of approval within fifteen days of the issuance of such notice. Therefore this filing is timely made.

II. INTRODUCTION

The Notice of Approval prejudices Undine by requiring Undine, as Temporary Manager, to make capital investments on a system that it does not own and was not managing or operating for most of the period in which line loss occurred. The Commission’s rules instruct that for pass-through rate filings, line loss will be considered on a case-by-case basis. In its filing, Undine established its status as a temporary manager, as well as the limited time that it was able to exert any influence over the operation of the subject system. As Temporary Manager, Undine is currently unable to rectify the actual line losses suffered by the Cypress Bend system, yet it will be required to make up the revenue shortfall between the amounts billed by the Authority and the amounts Undine is able to recover from the customers of the system. The resulting shortfall works an inequitable hardship on the Temporary Manager, and is not required by the Commission’s rules.

III. ARGUMENT

Suburban Utility Company (Suburban) is the owner of the system serving the Cypress Bend subdivision. The systems owned by Suburban have been under temporary management since March 27, 2017.³ Undine has been acting as Temporary Manager of Suburban Utility Company

² PUC Interoffice Memorandum at 1 (May 23, 2018).

³ *In the Matter of an Enforcement Action Against Suburban Utility, Co.*, TCEQ Docket No. 2017-0392-UCR-E, Order Affirming, with Modification, an Emergency Order Granted by the Executive Director Appointing Quadvest L.P. as Temporary Manager of Four Utilities Owned by Suburban Utility Co. (May 20, 2017).

since late September 2017.⁴ At all times prior to, and during, the time the systems have been operated under temporary managers, Suburban has been under an Agreed Final Judgment and Permanent Injunction (dated January 19, 2016) with the State of Texas that required Suburban to undertake significant capital improvements in all of the systems owned by Suburban, including the Cypress Bend subdivision system.⁵ The capital improvements required in the Agreed Final Judgment for Cypress Bend included additional ground storage capacity and additional well capacity.⁶ Suburban has not made such improvements.

The twelve-month time period used to calculate the line loss experienced by the Cypress Bend system included less than four months in which Undine operated the system as Temporary Manager. As a temporary manager, Undine is authorized to collect the assets and carry on the business of the utility, and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate service is provided.⁷ A temporary manager is neither authorized, nor obligated, to invest its own funds in making capital improvements of the type required to eliminate or reduce the systemic problems associated with line loss.

Further, Undine has not requested compensation for its services as Temporary Manager, although the Commission's rules would have allowed a management fee.⁸ Undine is diligently working to close the Commission-approved transaction whereby it will acquire ownership of the Suburban systems, after which it will be able to undertake a large number of repairs and improvements needed across the entire system. Until that time, however, Undine is tasked with

⁴ *Petition for an Order Appointing a Temporary Manager to Suburban Utility Company Pursuant to under Tex. Water Code Ann. § 13.4132 and 16 TAC § 24.142*, PUC Docket No. 47638, Emergency Order to Appoint a Temporary Manager to Suburban Utility Company (September 22, 2017); Order Affirming Emergency Order (Oct. 26, 2017).

⁵ *Petition for an Order Appointing a Temporary Manager to Suburban Utility Company Pursuant to Tex. Water Code Ann. § 13.4132 and 16 TAC § 24.142*, PUC Docket No. 47638, Commission Staff's Application for an Emergency Order Appointing a Temporary Manager to Suburban Utility Company Without a Hearing, at Attachment 2 (TCEQ Emergency Order at Exhibit A) (Sept. 22, 2017).

⁶ *Id.* at Section 3.4.

⁷ 16 Tex. Admin. Code (TAC) § 24.143(g).

⁸ 16 TAC § 24.143(f).

managing and making repairs necessary to assure the continuity of service to the customers, which it has been able to accomplish without additional cost to the customers.

In its recommendation, Commission Staff has imposed a limitation that no longer exists in the Commission's rule. In Project No. 47303, the Commission revised 16 TAC § 24.21(b)(2)(E) to remove a reference to a presumed reasonable level of line loss. In that project, comments were filed objecting to a proposed draft of the rule that read: "Unless good cause is shown, L (line loss) shall be limited to the lesser of the actual line loss experienced or 15%." The commenters stated that "there is no basis for presuming that a reasonable amount of line loss should be capped at 15%."⁹

The Commission agreed with these comments, stating that it "retains the right to analyze water loss on a case-by-case issue and makes a change to the rule language to reflect the [commenters'] recommendation and the case-by-case analysis of line loss."¹⁰ As a result, § 24.21(b)(2)(E) now reads: "[l]ine loss will be considered on a case-by-case basis."

The Commission Staff referenced a policy that is not reflected in the adopted rule, and did not fully consider the factual circumstances of this case that support a line loss calculation that reflects the actual conditions faced by Undine as Temporary Manager. This particular case involves a system that has been under temporary management for over 15 months, that has been experiencing significant line loss during all of calendar year 2017, and that is subject to a future capital improvement plan to be overseen by the TCEQ.

⁹ *Amendments to 16 TAC § 24.21 for a Pass-Through Provision Formula and to Implement House Bill 1083 to Allow a Utility to Establish Reduced Water Utility Rates Funded by Donations for Elderly Customers – Pursuant to TWC §§ 13.182 and 13.189*, Project No. 47303, Joint Comments of Aqua Texas, Canyon Lake Water Service Company, and Southwest Water Company on Proposed Amendments to §24.21 at 3-4 (Oct. 13, 2017). The water companies based their objection to the proposed language on the fact that it "fails to consider the multitude of variables that should be considered in determining the amount of line loss that is reasonable for a particular system based on that system's specific set of facts and circumstances. There is no 'one-size-fits-all' standard for this issue, and using an arbitrary percentage standard as proposed is extremely problematic. Yet, an arbitrary 15% standard has been passed down through time the TCEQ/PUC water/sewer utility staff for so long it is unclear how it even originated." *Id.*

¹⁰ Project No. 47303, Order at 11 (Dec. 19, 2017).

The pass-through rate that has been approved in accordance with Staff's recommendation will result in a shortfall in revenues to be paid to the Authority in the amount of \$1.28/1,000 gallons—the difference between the \$5.28 pass-through rate that uses actual line loss and the approved \$4.00 pass-through rate using a hypothetical line loss. If line losses for 2018 continue at the same rate as in 2017, Undine will face a shortfall of over \$17,000 per year, with no source of revenue to meet the shortfall other than its own funds.¹¹ Undine will not be able to recover these revenues from the customers of Cypress Bend; it is unreasonable to require Undine's shareholders to cover the shortfall for a system they do not own. A Commission-appointed temporary manager should not be required to be financially harmed in this manner.

IV. CONCLUSION

Therefore, Undine respectfully requests that the Commission correct the Notice of Approval and approve the pass-through rate change as proposed by Undine in the amount of \$5.28/1,000 gallons. Undine further asks for all other relief in law or equity to which it is entitled.

Respectfully submitted,

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

816 Congress Avenue, Suite 1900

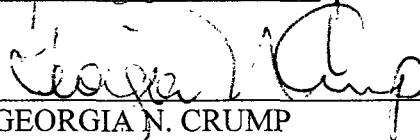
Austin, Texas 78701

(512) 322-5800

(512) 472-0532 (Fax)

gcrump@lglawfirm.com

jmauldin@lglawfirm.com



GEORGIA N. CRUMP

State Bar No. 05185500

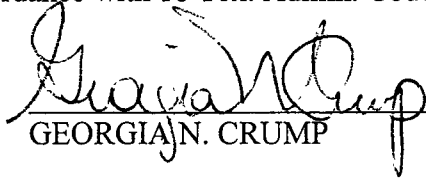
¹¹ Total gallonage pumped in 2017 was 20,833,300 gallons; the Authority's rate of \$3.40/1,000 gallons results in a total pass-through payment to the Authority of \$70,833.22. Total sales on the system in 2017 was 13,426,000 gallons. At \$4.00/1,000 gallons, Undine will only recover \$53,704 from the system customers, leaving a shortfall of \$17,129.

JAMIE L. MAULDIN
State Bar No. 24065694

ATTORNEYS FOR UNDINE TEXAS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 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.


GEORGIA N. CRUMP