

Control Number: 49169



Item Number: 20

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APPLICATION OF UNDINE TEXAS, §
LLC AND UNDINE TEXAS §
ENVIRONMENTAL, LLC FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN BRAZORIA COUNTY §

PUBLIC UTILITY COMMISSION

2019 MAR 26 AM 10:30
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Final Disposition in response to Order No. 3. In support thereof, Staff shows the following:

I. BACKGROUND

On February 4, 2019, Undine Texas Environmental, LLC (UTE) and Undine Texas, LLC (UT) (Collectively, Applicants) filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Brazoria County, Texas. Specifically, the applicants seek to transfer all of UT’s facilities and service area under sewer certificate of convenience and necessity number 21106 to UTE. The requested transfer includes approximately 205 acres and 119 current customers. Applicants filed supplemental information on February 19, 2019.

On March 26, 2019, Order No. 3 was issued, establishing a deadline of May 13, 2019, for Staff to request a hearing or file a recommendation on approval of the sale. This pleading is therefore timely filed.

II. RECOMMENDATION

As supported by the attached memorandum of Spencer English of the Water Utility Regulation Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Staff recommends that the proposed transaction be found to satisfy the criteria in Texas Water Code § 13.246(c) and Texas Administrative Code (TAC) §§ 24.225-24.239. If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that

the disposition of any remaining deposits have been addressed as soon as possible, pursuant to 16 TAC § 24.239(n).

Staff notes that the approval of the sale expires 180 days 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 as required by 16 TAC § 24.227(o).

III. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

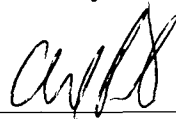
Dated: May 13, 2019

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 May 13, 2019, in accordance with 16 TAC § 22.74.



Alexander Petak

Confidential
Provided in Envelope

PUC Interoffice Memorandum

To: Alexander Petak, Attorney
Legal Division

Thru: Heidi Graham, Manager
Water Utility Regulation Division

From: Spencer English, Financial Analyst
Water Utility Regulation Division

Date: May 9, 2019

Subject: **Docket No. 49169**, *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Brazoria County*

On February 2, 2019, Undine Texas Environmental, LLC (Purchaser) and the Undine Texas, LLC (Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Brazoria County, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Purchaser seeks approval to acquire facilities, transfer sewer service area from Undine Texas, LLC held under sewer Certificate of Convenience and Necessity (CCN) No. 21106, cancel CCN No. 21106 and amend CCN No. 20816. The requested area includes the Angle Acres Subdivision, which includes approximately 25 acres and 22 existing connections, and the Beechwood Subdivision, which includes approximately 180 acres and 97 existing connections.

Background

The Purchaser and Seller in this application are affiliated entities.

Notice

The comment period ended April 12, 2019, 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 wastewater discharge permits WQ0012420001 (Angle Acres) and WQ0012113001 (Beechwood) registered with the Texas Commission on Environmental Quality (TCEQ). 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.

There are approximately 119 existing customers in the requested area to be transferred, therefore, there is a need for service.

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.

This transaction will transfer ownership to an affiliated entity operated by the same individuals. Therefore, there will be no effect on any other retail public utility of the same kind servicing the proximate area.

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

The Purchaser has existing wastewater discharge permits registered with the TCEQ under WQ0014163001 (Sugartree), WQ0013518001 (Mayfair Addition), WQ0013846001 (Grand Ranch Phase 2), and WQ0013769001 (Country Vista Plant). The Purchaser does not have any violations listed in the TCEQ database. Sufficient capacity exists with the Purchaser's and the Seller's existing sewer facilities and wastewater discharge permits, therefore, no additional construction is necessary 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.

There are existing customers in the requested area, 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 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Purchaser meets three out of the five leverage tests. The Purchaser is only required to meet one. The first test is met because, long term debt, which equals zero, divided by equity, which equals [REDACTED] produces a debt to equity ratio less than one. The second test is met because net operating income, which equals [REDACTED] divided by annual debt service, which equals zero, produces an effective debt service coverage ratio greater than 1.25¹. The third test is met according to a sworn response to a request for information that proves the Purchaser is affiliated to Undine Group, LLC. Undine Group, LLC is capable, available, and willing to cover any debt service for the first two years.

Referring to the discussion of the leverage test above, the Purchaser meets the operations test due to the Purchaser's affiliation to Undine Group, LLC. The Purchaser has submitted projected financial statements in its application. The owner or operator has demonstrated sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations.

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.

The Purchaser will continue to provide sewer service to the existing customers in the requested area.

¹See Attachment

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer facilities and sewer service area from Undine Texas, LLC held under sewer Certificate of Convenience and Necessity (CCN) No. 21106, cancel CCN No. 21106 and amend CCN No. 20816 is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.239(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 deposits held by the Seller for the customers being served by Angle Acres and Beechwood Subdivisions.