



Control Number: 49169



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**DOCKET NO. 49169**

<b>APPLICATION OF UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT PROPOSED NOTICE OF APPROVAL**

COME NOW Undine Texas, LLC (UT) and Undine Texas Environmental (UTE) (collectively, the Applicants), together with the staff of the Public Utility Commission of Texas (Commission Staff) (collectively, the Parties), and file this Joint Proposed Notice of Approval. In support thereof, the Parties show the following:

**I.**

**BACKGROUND**

On February 4, 2019, Applicants filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of facilities and certificate rights in Brazoria County. Specifically, the Applicants seek to transfer all of UT's facilities and service area under sewer Certificate of Convenience and Necessity No. 21106 to UTE in Brazoria County, Texas. The requested transfer includes approximately 205 acres and 178 current customers.

On July 15, 2019, Staff filed a Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. On July 23, 2019, the Commission administrative law judge (ALJ) issued Order No. 5 admitting evidence.

On July 25, 2019, the ALJ issued Order No. 6, permitting the transaction to proceed and requiring the filing of documents demonstrating the close of the transaction. On October 8, 2019, Applicants filed the required closing documents.

On October 18, 2019, Staff filed a recommendation that the Applicants' closing documents were consistent with applicable Commission rules. On October 22, 2019, Order No. 8 was issued, finding the closing documentation sufficient and establishing a procedural schedule.

On November 8, 2019, Staff provided a proposed map, certificate, and sewer tariff to UT and UTE for review and consent. On November 19, 2019, Staff provided a revised proposed sewer tariff to UT and UTE for review and consent. On November 20, 2019, UT and UTE filed their consent forms concurring with the map, certificate, and revised tariff.

Order No. 8 also established a deadline of December 5, 2019 for the Parties to file a proposed Notice of Approval, including proposed findings and fact, conclusions of law and ordering paragraphs. Therefore, this pleading is timely filed.

## **II.**

### **SUPPLEMENTAL JOINT MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following items into the records of this proceeding:

- (1) Applicants' notice of completed transaction, filed October 8, 2019 (AIS Item No. 29);
- (2) Staff's closing documents sufficiency recommendation, filed October 18, 2019 (AIS Item No. 31);
- (3) UT's and UTE's consent forms filed on November 20, 2019 (AIS Item No. 34);
- (4) The attached final map, certificate, and tariff.

## **III.**

### **JOINT PROPOSED NOTICE OF APPROVAL**

The Parties have agreed to the attached Joint Proposed Notice of Approval, which would grant Applicants' application for approval of the sale of UT's sewer facilities to UTE. Approval of Applicants' application will also facilitate the transfer of UT's sewer service area under certificate of convenience and necessity (CCN) number 21106 to UTE's sewer CCN number

20186. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from Notice of Approval.

**IV.**

**CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Commission adopt the attached Proposed Notice of Approval.

Respectfully submitted,

**DuBois, Bryant & Campbell, LLP**

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**CERTIFICATE OF SERVICE**

I certify by my signature above that a true and correct copy of the foregoing document will be served by email to all parties of record in accordance with 16 TAC § 22.74 on this the 4<sup>th</sup> day of December, 2019:

**DOCKET NO. 49169**

<b>APPLICATION OF UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Undine Texas, LLC (UT) and Undine Texas Environmental, LLC (UTE) (collectively, the Applicants) for the sale, transfer, or merger of facilities and certificate rights in Brazoria County. The Commission approves the sale of UT's sewer system and the transfer of its sewer service area under certificate of convenience and necessity (CCN) number 21106 to UTE's sewer CCN number 20186.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. UT is a Delaware limited liability company registered with the Texas secretary of state under file number 802339329.
2. UT is an investor owned utility that provides sewer service in Texas under CCN number 21106 in Brazoria County.
3. UTE is a domestic limited liability company registered with the Texas secretary of state under file number 801768069.
4. UTE is an investor owned utility that provides sewer service in Texas under CCN number 20816 in Brazoria County.

### Application

5. On February 4, 2019, the Applicants filed an application for approval to transfer all of UT's facilities and service area under sewer CCN number 21106 to UTE, to be merged into UTE's sewer CCN number 20816.
6. The requested service area subject to this transaction consists of:
  - Approximately 25 acres located in the Angle Acres Subdivision approximately two miles east of downtown Angleton, Texas, and generally bounded on the north by East Kiber Street, on the east by FM 523, on the south by Fort Road (CR 233), and on the west by Jamison Road (CR 428); and
  - Approximately 180 acres located in the Beechwood Subdivision approximately 3.5 miles north of downtown Angleton, Texas, and generally bounded on the north by FM 45, on the east by SH 288 Business, on the south by CR 229, and on the west by FM 521.
7. The total area affected by the transfer comprises approximately 205 acres and 178 current customers.
8. In Order No. 2 issued on March 11, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

### Notice

9. Notice of the application appeared in the *Texas Register* on August 10, 2018.
10. On March 14, 2019, the Applicants filed the affidavit of Carey A. Thomas, Purchaser's Senior Vice President and Secretary, attesting that notice was provided to current customers, neighboring utilities, and affected parties on March 13, 2019.
11. In Order No. 3 issued on March 26, 2019, the ALJ deemed the notice sufficient.

*Evidentiary Record*

12. On July 15, 2019, the parties filed a joint motion to admit evidence and proposed order approving the sale/transfer to proceed.
13. In Order No. 5, issued on July 23, 2019 the ALJ admitted the following evidence into the record: (a) the Applicants' application, filed on February 4, 2019, as supplemented on February 19, 2019 and March 12, 2019; (b) Applicants' proof of notice and supporting documentation, filed on March 14, 2019; (c) Applicants' responses to Staff's first request for information, filed on April 9, 2019; and (d) Staff's recommendation on the sale to proceed, filed May 13, 2019.
14. In Order No. 6 issued July 25, 2019, the ALJ approved the transaction to proceed and required the Applicants to file proof that the transaction had closed and that customer deposits had been addressed.
15. On December 5, 2019, the parties filed a Supplemental Joint Motion to Admit Evidence.
16. In Order No. \_\_\_\_, issued on \_\_\_\_\_, 20\_\_, the ALJ admitted the following evidence into the record: (a) Applicants' notice of completed transaction, filed October 8, 2019; (b) Commission Staff's closing documents sufficiency recommendation, filed October 18, 2019; (c) Applicants' consent forms filed on November 20, 2019; and (d) the attached map, certificate, and tariff.

*Sale*

17. In Order No. 6 issued July 25, 2019, the ALJ approved the transaction to proceed and required the Applicants to file proof that the transaction had closed and that customer deposits had been addressed.
18. On October 8, 2019, the Applicants filed notice that the sale had closed effective as of January 31, 2019, and the customer deposits were transferred to UTE on September 30, 2019.

19. In Order No. 8, issued on October 2, 2019, the ALJ found the closing documents sufficient.

**Tariff and Map**

20. On November 8, 2019, Commission Staff emailed to the Applicants the final proposed map, certificate, and sewer tariff related to this docket.

21. On November 19, 2019, Commission Staff emailed to the Applicants the revised final proposed sewer tariff related to this docket.

22. On November 20, 2019, UT and UTE filed their consent forms concurring with the map, certificate, and revised sewer tariff.

23. The final map, certificate, and tariff were filed as an attachment to the proposed Notice of Approval

**Certificate**

24. UT has sold and transferred all of its facilities and sewer service area under sewer CCN number 21106 to UTE's sewer CCN number 20816.

25. As a result of the transaction, UT's sewer CCN number 21106 is cancelled.

**Informal Disposition**

26. More than 15 days have passed since the completion of notice provided in this docket.

27. No person filed a protest or motion to intervene.

28. UT, UTE, and Commission Staff are the only parties to this proceeding.

29. No party requested a hearing and no hearing is needed.

30. Commission Staff recommended approval of the application.

31. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. UT and UTE are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Public notice of the application was provided as required by TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
5. UT and UTE completed the sale within the time required by 16 TAC § 24.239(o).
6. After consideration of the factors in TWC § 13.246(c), UTE has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC §§ 13.301(b).
7. UT and UTE have demonstrated that the sale of UT's sewer system will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public. TWC §§ 13.301(d), 13.246(b).
8. A sale not completed in accordance with TWC § 13.301 is void. TWC § 13.301(h).
9. UTE must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Brazoria County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC § 13.257(r), (s).
10. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

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<sup>1</sup> Tex. Gov't Code ch. 2001.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves UTE's purchase of UT's sewer system and the transfer of UT's sewer service area under CCN number 21106 to UTE's CCN number 20816, and the cancellation of UT's CCN number 21106, to the extent provided in this Notice of Approval.
2. The Commission approves the map, certificate, and tariff attached to the Joint Proposed Notice of Approval filed on December 5, 2019.
3. UTE must serve every customer and applicant for service within the approved area under sewer CCN number 20816 that requests sewer service and meets the terms of UTE's sewer service, and such service must be continuous and adequate.
4. UTE must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Brazoria County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.
5. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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ADMINISTRATIVE LAW JUDGE