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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 §

PUBLIC UTILITY COMMISSION
OF TEXAS

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NOTICE OF APPROVAL

This Order addresses the February 4, 2019, application of Undine Texas, LLC (UT or Seller) and Undine Texas Environmental, LLC (UTE or Purchaser) (collectively, the applicants) for approval of a 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. The application is granted for the reasons discussed in this Notice of Approval.

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 operates, maintains, and controls facilities for providing 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 operates, maintains, and controls facilities for providing 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: (1) 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; and (2) cancel UT’s CCN number 21106.

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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 filed 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 filed 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 and March 12, 2019; (b) the applicants' proof of notice and supporting documentation, filed on March 14, 2019; (c) the 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. On December 4, 2019, the parties filed a Supplemental Joint Motion to Admit Evidence.
15. In Order No. 9, issued on January 27, 2020, the ALJ admitted the following evidence into the record: (a) the applicants' notice of completed transaction, filed October 8, 2019; (b) Commission Staff's closing documents sufficiency recommendation, filed October 18, 2019; (c) the applicants' consent forms filed on November 20, 2019; and (d) the map, certificate, and tariff attached to the supplement to the joint proposed Notice of Approval filed on December 11, 2019.

Sale

16. In Order No. 6 filed 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.
17. 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.
18. In Order No. 8, filed on October 22, 2019, the ALJ found the closing documents sufficient.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

19. Seller and Purchaser have not been subject to any unresolved enforcement actions by the Commission, Texas Commission on Environmental Quality (TCEQ), the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.
20. Seller and Purchaser do not have any violations listed in the TCEQ database.
21. Seller and Purchaser have demonstrated a compliance status that is adequate for approval of the application.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)

22. Seller has wastewater discharge permits WQ0012420001 (Angle Acres) and WQ0012113001 (Beechwood) issued by the TCEQ.
23. Seller does not have any violations listed in the TCEQ database.

24. Seller has been providing adequate service to the area being transferred.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)

25. There are approximately 178 existing customers in the requested area to be transferred, therefore, there is an ongoing need for service.

26. Purchaser has received no new requests for service and is not requesting to add additional uncertificated area.

27. This application is to transfer only existing facilities, customers, and service area.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

28. 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.

29. Landowners in the area will likely benefit from the transfer of ownership because they will receive an improved level of sewer service.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

30. Purchaser has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.

31. Purchaser and Seller have sufficient capacity to serve the customers and no additional construction is necessary.

32. Seller has existing wastewater discharge permits from the TCEQ under WQ0012420001 (Angle Acres) and WQ0012113001 (Beachwood). Purchaser has existing wastewater discharge permits from the TCEQ under WQ0014163001 (Sugartree), WQ0013518001 (Mayfair Addition), WQ0013846001 (Grand Ranch Phase 2), and WQ0013769001 (Country Vista Plant). Purchaser does not have any violations listed in the TCEQ database. Sufficient capacity exists with Purchaser's and Seller's existing sewer facilities and wastewater discharge permits; therefore, no additional construction is necessary to serve the requested area.

33. Purchaser has the managerial and technical capability to provide continuous and adequate service to the area being transferred.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)

34. Purchaser meets the leverage test with an effective debt service coverage ratio greater than 1.25.
35. Purchaser's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer, thus meeting the operations test.
36. Purchaser has demonstrated the financial capability and stability to provide continuous and adequate sewer service to the area being transferred.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§, 24.227(e), 24.239(h)

37. There is no need to require Purchaser to provide a bond or other financial assurance to ensure continuous and adequate service to the area being transferred.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

38. The requested area has existing facilities and is currently being served by Seller.
39. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
40. It is not feasible for an adjacent utility to provide service to the requested area.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

41. Because no new public water system is proposed to be constructed, concerns of regionalization or consolidation are not applicable.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)

42. The proposed transaction will not adversely impact the environmental integrity of the land because no additional construction is needed to provide service to the requested area.

Effect on Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

43. The requested area will continue to be served by existing facilities and no new construction is needed; therefore, the effect on the land will be minimal.

Improvement of Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

44. The proposed transaction will improve customer service to existing customers because the sewer system will be integrated into the system of Purchaser, and the rates will not change.

Tariff, Certificate, and Map

45. On November 8, 2019, Commission Staff emailed to the applicants the final proposed map, certificate, and sewer tariff related to this docket.
46. On November 19, 2019, Commission Staff emailed to the applicants the revised final proposed sewer tariff related to this docket.
47. On November 20, 2019, UT and UTE each filed its consent form concurring with the map, certificate, and revised sewer tariff.
48. On December 11, 2019, the final map, certificate, and tariff were filed attached to the supplement to the joint proposed Notice of Approval.
49. 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.

Informal Disposition

50. More than 15 days have passed since the completion of notice provided in this docket.
51. No person filed a protest or motion to intervene.
52. UT, UTE, and Commission Staff are the only parties to this proceeding.
53. No party requested a hearing and no hearing is needed.
54. Commission Staff recommended approval of the application.
55. This 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, 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,¹ and Commission Rules.
5. UT and UTE completed the sale within the time required by 16 TAC § 24.239(o).
6. The applicants complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.
7. 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).
8. 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 §§ 13.246(b), 13.301(d), (e).
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.

¹ 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 supplement to the joint proposed Notice of Approval, filed on December 11, 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 28th day of January 2020.



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE

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