



Control Number: 49260



Item Number: 51

Addendum StartPage: 0



**DOCKET NO. 49260**

**APPLICATION OF TEXAS WATER § PUBLIC UTILITY COMMISSION  
SYSTEMS, INC. AND UNDINE TEXAS, §  
LLC FOR SALE, TRANSFER, OR § OF TEXAS  
MERGER OF FACILITIES AND §  
CERTIFICATE RIGHTS IN GREGG, §  
HENDERSON, LIMESTONE, SMITH, §  
AND UPSHUR COUNTIES AND TO §  
AMEND THEIR WATER §  
CERTIFICATES OF CONVENIENCE §  
AND NECESSITY §**

**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE AND  
ON THE CERTIFICATE OF CONVENIENCE AND NECESSITY AMENDMENT**

**COMES NOW** the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Approval of the Sale and on the Certificate of Convenience and Necessity Amendment. In support thereof, Staff shows the following:

**I. BACKGROUND**

On February 25, 2019, Undine Texas, LLC (Undine) and Texas Water Systems, Inc. (TWS) (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, Upshur, and Van Zandt Counties, Texas. On March 11, 2019, Applicants filed an amended application. Specifically, Undine seeks approval to acquire facilities and to transfer a portion of water service area currently owned by TWS under Certificate of Convenience and Necessity (CCN) No. 12473. The requested transfer includes approximately 5,638 acres and 811 current customers. In addition, Undine is requesting a CCN amendment for uncertificated area that includes 5,076 acres and 186 current customers and dual certification of 8 acres with Pritchett Water Supply Corporation and 21 acres with Crystal System.

On March 20, 2020, the Administrative Law Judge (ALJ) issued Order No. 10, establishing a deadline of April 20, 2020 for Staff to request a hearing or file a recommendation on the approval of the sale and on the certificate of convenience and necessity amendment. Therefore, this pleading is timely filed.

**II. RECOMMENDATION**

As supported by the attached memorandum of Greg Charles of the Commission's Infrastructure Division, Staff recommends and respectfully requests an 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). If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence, within 30 days of the effective date of the transaction, demonstrating that all assets have been transferred to Undine, and that the disposition of any customer deposits has been addressed pursuant to 16 Texas Administrative Code (TAC) §24.239(m) and (n).

The approval of the sale expires 180 days from the date of the Commission's written 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's rules and regulations as required by 16 TAC §24.239(o).

### **III. REQUEST TO RESTYLE THE DOCKET**

Staff requests that this docket be restyled as *Application of Texas Water Systems, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Water Facilities and Certificate Rights in Gregg, Henderson, Smith, Upshur, and Van Zandt Counties, to Amend Their Water Certificates of Convenience and Necessity, and for Dual Certification with Crystal Systems Texas, Inc. and Pritchett Water Supply Corporation*. As supported by the notice to customers and other affected parties and notice for publication prepared in this docket, none of the CCN changes requested by the Applicants will take place in Limestone County; however, a small part of Van Zandt County will be affected. In addition, the current case style does not acknowledge the request for dual certification with portions of the CCNs held by Crystal Systems Texas, Inc. and Pritchett Water Supply Corporation. Accordingly, Staff recommends that the docket be restyled to reflect these aspects of the proposed transaction.

### **IV. CONCLUSION**

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

**Dated: April 20, 2020**

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Eleanor D'Ambrosio  
Managing Attorney

/s/ John Harrison  
John Harrison  
State Bar No. 24097806  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7277  
(512) 936-7268 (facsimile)  
John.Harrison@puc.texas.gov

**DOCKET NO. 50551**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 20, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ John Harrison  
John Harrison

## PUC Interoffice Memorandum

---

**To:** John Harrison, Attorney  
Legal Division

**From:** Greg Charles, Engineer  
Infrastructure Division

**Date:** April 20, 2020

**Subject:** **Docket No. 49260**, *Application of Texas Water Systems, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Gregg, Henderson, Limestone, Smith, and Upshur Counties and to Amend Their Water Certificates of Convenience and Necessity*

On February 25, 2019, Undine Texas, LLC (Undine or Purchaser) and Texas Water Systems, Inc., (Texas Water Systems or Seller), (collectively, Applicants), filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Gregg, Henderson, Limestone, Smith and Upshur Counties, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, Undine seeks approval to acquire facilities and to transfer a portion of the water service area from Texas Water Systems under Certificate of Convenience and Necessity (CCN) No. 12473 to CCN No. 13260, which is held by Undine. In addition, Undine is requesting a CCN amendment for uncertificated areas that includes 5,076 acres and 186 customers, to decertify 12 acres of CCN No. 12473, and to obtain dual certification with a portion of Crystal Systems Texas, Inc.'s water CCN No. 10804, and a portion of Pritchett Water Supply Corporation's (WSC) water CCN No. 10478. The total requested area includes approximately 10,731 acres and 1,005 connections.

### **Notice**

The comment period ended March 31, 2020, 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 currently has 8 Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS). The PWSs being transferred are listed below:

<b><u>PWS NAME</u></b>	<b><u>PWS ID</u></b>	<b><u>PWS Source of Water</u></b>
Cape Tranquility System	TX1070176	2 Water wells
Country Club Estates	TX2300021	1 Water well
Friendship Water System	TX2300020	1 Water well
Garden Acres System	TX0920031	2 Water wells
Garden Valley Resort	TX2120081	1 Water well
Mount Sylvan Water System	TX2120034	4 Water wells
Rosewood Water system	TX2300026	3 Water wells
Stallion Lake Ranch	TX2120104	3 Water wells

For the 8 systems, the Seller does not have any violations or is on the path to compliance according to the TCEQ database.

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

There will be no new customers or services that will be added to the requested area. All of the current customers in the requested area will be transferred to the Purchaser. The area to be transferred originally consisted of only facility lines. The Purchaser requests a bounded area encompassing 5,638 acres of facilities lines serving 811 customers and 5,076 acres of uncertificated area serving 186 customers. Undine additionally requests 8 acres of dual certification with Pritchett WSC, CCN No. 10478, serving 2 customers, and 21 acres of dual certification with Crystal Systems, CCN No. 10804, serving 6 customers. Undine also requested 12 acres to be decertified to clean up CCN boundaries. There is no need for additional service at this time.

***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 of a portion of the Seller's assets and service area. The Purchaser possesses the financial, managerial, and technical resources to maintain the regulatory standards required to serve the requested area. Therefore, the transfer will not affect any other retail public utility of the same kind servicing the proximate area.

The CCN amendment will result in the dual certification of 8 acres with Pritchett Water Supply Corporation and 21 acres with Crystal System. These areas include 2 current customers and 6 current customers, respectively.

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

The Purchaser has existing public water systems registered with the TCEQ in Harris, Brazoria, Matagorda, and Fort Bend counties. According to a status update filed on July 12, 2019, the Purchaser does not have any TCEQ outstanding violations. The Seller's water supply is sufficient to serve the current 997 connections within the Seller's service area. 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.***

The existing customers in the requested area are adequately served by the existing water system. 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 include a leverage test and operations test. The Applicant provided an unaudited consolidated balance sheet to represent their financial position as of December 31, 2018.

The Commission rules identify five leverage tests, of which the Applicant must demonstrate that it meets one. The Applicant meets two of the leverage tests. The first test is met with a debt to equity ratio less than one calculated as follows: long term debt of \$0.00 divided by equity of

\$342,761.00 equals 0 which is less than one.<sup>1</sup> The Applicant also meets the second test with net operating income of \$65,903.00 and annual debt service of \$0.00.<sup>2</sup>

The Commission rules also identifies an operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Applicant submitted projected financial statements in its application and there are no operational shortages to cover.<sup>3</sup> No improvements are needed to provide continuous and adequate service to the requested area. Therefore, the Applicant meets the operations test.

***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 affected 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 water service to the existing customers in the requested area.

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 a portion of the facilities and water service area of water CCN No. 12473 to Undine Texas, LLC, and amend CCN No. 13260 held by Undine Texas, LLC, decertify a portion of CCN No. 12473, obtain dual certification with a portion of Crystal Systems Texas, Inc.'s water CCN No. 10804, and obtain dual certification with a portion of Pritchett Water Supply Corporation's water CCN No. 10478 is necessary for the service, accommodation, convenience and safety of the public.

#### **Recommendation on approval of sale**

Staff recommends that the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes that are deposits are held by the Seller for the customers being served by Texas Water Systems. Staff further recommends that a public hearing is not necessary.

---

<sup>1</sup> Confidential – Attachment G – Financial Information at 81.

<sup>2</sup> Id at 81 and 82.

<sup>3</sup> Id at 84.