



Control Number: 49260



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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 §

PUBLIC UTILITY COMMISSION

OF TEXAS

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING  
SALE/TRANSFER TO PROCEED**

COME NOW, Undine Texas, LLC (Undine) and Texas Water Systems, Inc. (Texas Water) (collectively, Applicants) together with the Staff of the Public Utility Commission of Texas (Staff), (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. In support thereof, the Parties show the following:

**I. BACKGROUND**

On February 25, 2019, 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 the water service area currently owned by Texas Water 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 an uncertificated area that includes 5,076 acres and 186 current customers and dual certification of 8 acres with Pritchett Water Supply Corporation (water CCN No. 10478) and 21 acres with Crystal Systems Texas, Inc. (water CCN No. 10804).

On April 20, 2020, Staff filed a recommendation requesting the entry of an order permitting the proposed transaction to proceed. Order No. 10, issued on March 20, 2020, required that the parties submit a motion to admit evidence and a proposed order approving the sale by May 15, 2020. This pleading is therefore timely filed.

## **II. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following into the record evidence of this proceeding:

- (a) Applicants' application, including confidential materials, filed on February 25, 2019 (AIS Item Nos. 1-6), as supplemented on: March 11, 2019, including confidential materials (AIS Item Nos. 10-16); July 12, 2019, including confidential material, (AIS Item Nos. 27, 28); August 1, 2019 (AIS Item No. 29); August 8, 2019 (AIS Item No. 30); September 13, 2019 (AIS Item No. 35); and December 3, 2019, including confidential materials, (AIS Item Nos 40-43);
- (b) Applicants' response to Staff's 1<sup>st</sup> Request for Information, filed on July 12, 2019 (AIS Item No. 26);
- (c) Staff's supplemental recommendation on administrative completeness and proposed procedural schedule, filed on January 23, 2020 (AIS Item No. 45);
- (d) Applicants' proof of notice and supporting documentation, including confidential material, filed on February 26, 2020 (AIS Item Nos. 47, 48);
- (e) Staff's recommendation on sufficiency of notice, filed on March 18, 2020 (AIS Item No. 49); and
- (f) Staff's recommendation on the sale to proceed, filed on April 20, 2020 (AIS Item No. 51).

## **III. JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

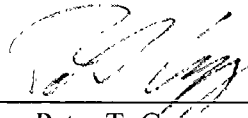
The attached Joint Proposed Order Approving Sale/Transfer to Proceed would authorize the following transactions to proceed: Undine to acquire facilities and to transfer a portion of water service area currently owned by Texas Water under CCN No. 12473; and a CCN amendment for uncertificated area and for dual certification with Pritchett Water Supply Corporation (water CCN No. 10478) and with Crystal Systems Texas, Inc. (water CCN No. 10804).

## **IV. CONCLUSION**

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Joint Proposed Order Approving Sale/Transfer to Proceed.

Respectfully Submitted,

**DuBois, Bryant & Campbell, LLP**

By:   
Peter T. Gregg  
State Bar No. 00784174  
303 Colorado, Suite 2300  
Austin, Texas 78701  
[pgregg@dbcllp.com](mailto:pgregg@dbcllp.com)  
(512) 457-8000  
(512) 457-8008 (fax)

**Attorneys for Undine Texas, LLC**

**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](mailto:John.Harrison@puc.texas.gov)

### **CERTIFICATE OF SERVICE**

I certify by my signature above that a true and correct copy of the foregoing document was served on the persons as indicated below on this the 15th day of May, 2020:

John Harrison  
Public Utility Commission of Texas  
Legal Division  
1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
john.harrison@pucc.texas.gov

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

**JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas, LLC (Undine) and Texas Water Systems, Inc. (Texas Water) (collectively, Applicants) for the sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, Upshur and Van Zandt Counties, Texas, to amend their water Certificates of Convenience and Necessity (CCN), and for dual certification with Pritchett Water Supply Corporation (Prichett Water) and Crystal Systems Texas, Inc. (Crystal Systems). The Commission approves the sale and authorizes the transaction proposed in this application to proceed.

**I. Findings of Fact**

The Commission makes the following findings of fact:

**Applicants**

1. Texas Water is a domestic corporation registered with the Texas secretary of state under file number 109227500.
2. Texas Water operates, maintains, and controls facilities for providing water service in Gregg, Henderson, Limestone, Smith, and Upshur Counties, Texas under CCN number 12473.
3. Undine is a Delaware limited liability company registered with the Texas secretary of state under file number 802339329.
4. Undine operates, maintains, and controls facilities for providing water service in Gregg, Henderson, Smith, Upshur, and Van Zandt Counties, Texas under CCN number 13260.

**Application**

5. On February 25, 2019, Applicants filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, Upshur, and Van

Zandt Counties. Applicants supplemented the application on the following dates: March 11, 2019, July 12, 2019, August 1, 2019, September 13, 2019 and December 3, 2019.

6. Undine seeks approval to acquire facilities and to transfer a portion of water service area currently owned by Texas Water under CCN number 12473. The requested transfer includes approximately 5,638 acres and 811 current customers. In addition, Undine is requesting a CCN amendment for an uncertificated area that includes 5,076 acres and 186 current customers and dual certification of 8 acres with Pritchett Water (water CCN number 10478) and 21 acres with Crystal Systems (water CCN number 10804).
7. The following requested areas subject to this transaction are located as follows:

**Brookshires Camp Joy Water System**

The requested area subject to this transaction is located approximately 2 miles north-northeast of downtown Ore City, Texas, and is generally bounded on the north by a line approximately half mile south of Upshur County Landing Road; on the east by Lake O' the Pines; on the south by Upshur/Marion County Line; and on the west by North Front Street in Upshur County. The total area being requested includes approximately 405 acres and serves 119 current customers.

**Cape Tranquility System**

The requested area subject to this transaction is located approximately 2 miles north of downtown Coffee City, Texas, and is generally bounded on the north by Jamison Drive; on the east and south by Lake Palestine; and on the west by approximately 200 feet west of County Road 4202 in Henderson County. The total area being requested includes approximately 81 acres and serves 70 current customers.

**Country Club Estates**

The requested area subject to this transaction is located approximately 2 miles south-southwest of downtown Gilmer, Texas, and is generally bounded on the north by State Highway 155; on the east by US Highway 271 S; on the south by Sugar Creek; and on the west by FM 2685 in Upshur County. The total area being requested includes approximately 23 acres and serves 34 current customers.

### **Friendship Water System**

The requested area subject to this transaction is located approximately 1.3 miles west of downtown Gilmer, Texas, and is generally bounded on the north by Lake Gilmer and Kelsy Creek; on the east by Brooks Creek and North Bradford Street; on the south by State Highway 154; and on the west by FM 852 and Kelsey Creek in Upshur County. The total area being requested includes approximately 1,088 acres and serves 92 current customers.

### **Garden Acres System**

The requested area subject to this transaction is located approximately 4.5 miles west of downtown Longview, Texas, and is generally bounded on the north by Mistletoe Street; on the east by Swinging Bridge Road; on the south by Sabine River; and on the west by Hawkins Creek in Gregg County. The total area being requested includes approximately 256 acres and serves 79 current customers.

### **Harmony Water System and Rosewood Water System**

The requested area subject to this transaction is located approximately 6.2 miles west of downtown Gilmer, Texas, and is generally bounded on the north by FM 852; on the east by FM 1795 and State Highway 154; on the south by Cedar Road; and on the west by Raintree Lakes and Kelsey Creek in Upshur County. The total area being requested includes approximately 1,801 acres and serves 199 current customers.

### **Mount Sylvan Water System**

The requested area subject to this transaction is located approximately 4.6 miles southwest of downtown Lindale, Texas, and is generally bounded on the north by Interstate Highway 20; on the east by the intersection of State Highway 110 and County Road 412; on the south by Neches River & County Road 49; and on the west by Mill Break Creek & Neches River in Smith County. The total area being requested includes approximately 5,006 acres and serves 312 current customers.

### **Stallion Lake Ranch and Garden Valley Resort**

The requested area subject to this transaction is located approximately 3.5 miles east/southeast of downtown Van, Texas, and is generally bounded on the north by the intersection of County Road 424 and State Highway 110; on the east by State Highway 101; on the south by Neches River and ; and on the west by County Road 426 in Smith County. The total area being requested includes approximately 2,080 acres and serves 211 current customers.

8. The approximate total acreages for the requested areas subject to this transaction includes:



Transferred areas – 5,638 acres; 811 customers

Add uncertificated service areas – 5,076 acres; 186 customers

Decertify areas – 12 acres; 0 customers

Dual area w/Pritchett WSC, CCN number 10478 – 8 acres; 2 customers

Dual area w/Crystal Systems, CCN number 10804 – 21 acres; 6 customers

9. In Order No. 9 issued on February 5, 2020, the administrative law judge (ALJ) found the application administratively complete.

#### **Notice**

10. On February 26, 2020, Carey Thomas filed an affidavit on behalf of Undine, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on February 10, 2020.
11. On February 26, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Longview News Journal*, a newspaper of general circulation in Gregg County, on February 12, 2020 and February 19, 2020.
12. On February 26, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Athens Daily Review*, a newspaper of general circulation in Henderson County, on February 13, 2020 and February 20, 2020.
13. On February 26, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Tyler Morning Telegraph*, a newspaper of general circulation in Smith County, on February 12, 2020 and February 19, 2020.
14. On February 26, 2020, Undine filed a publisher's affidavit attesting to publication of notice in *The Gilmer Mirror*, a newspaper of general circulation in Upshur County, on February 13, 2020 and February 20, 2020.
15. On February 26, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Van Zandt News*, a newspaper of general circulation in Van Zandt County, on February 16, 2020 and February 23, 2020.
16. In Order No. 10 issued on March 20, 2020, the ALJ deemed the notice sufficient.

#### **Evidentiary Record**

17. On May 15, 2020, the Parties filed a joint motion to admit evidence.
18. In Order No. \_\_\_\_ issued on \_\_\_\_\_, 2020, the ALJ admitted the following evidence into the record: (a) Applicants' application, including confidential materials, filed on February 25, 2019, and as supplemented on: March 11, 2019, including confidential materials, July 12, 2019, including confidential material, August 1, 2019, August 8, 2019, September 13,

2019, and December 3, 2019, including confidential materials; (b) Applicants' response to Commission Staff's 1<sup>st</sup> Request for Information, filed on July 12, 2019; (c) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule, filed on January 23, 2020; (d) Applicants' proof of notice and supporting documentation, including confidential material, filed on February 26, 2020; (e) Staff's recommendation on sufficiency of notice, filed on March 18, 2020; and (f) Commission Staff's recommendation on the sale to proceed, filed on April 20, 2020.

**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. Texas Water and Undine have not been subject to any unresolved enforcement action by the Commission, Texas Commission on Environmental Quality (TCEQ), the Texas Department of Health, the Office of Attorney General, or the United States Environmental Protection Agency.
20. Texas Water and Undine do not have any violations listed in the TCEQ database.

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

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

**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)**

27. This transaction will transfer ownership of a portion of Texas Water's assets and service area.
28. Undine possesses the financial, managerial, and technical resources to maintain the regulatory standards required to serve the requested area.
29. The transfer will not affect any other retail public utility of the same kind servicing the proximate area.

30. The CCN amendment will result in the dual certification of 8 acres with Pritchett Water and 21 acres with Crystal System.

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

31. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
32. Undine and Texas Water have sufficient capacity to serve the customers and no additional construction is necessary.

**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)**

33. Undine's long term debt, divided by equity, produces a debt to equity ration of less than one.
34. Undine demonstrated that it has the available cash levels to serve the requested service area.
35. Undine has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

**The 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)**

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

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

39. Undine's projected operating revenues are sufficient to cover projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
40. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

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

41. The proposed transaction will not adversely impact the environmental integrity of the land because the requested area is currently receiving service.

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

42. The requested area will continue to be served by existing systems and facilities and no additional construction is needed; therefore the effect on the land should be minimal.

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

43. The proposed transaction will improve customer service to existing customers because the water system will be integrated in the system of Undine, and the rates will not change.

**II. Conclusions of Law**

1. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. TWC § 13.301(b).
2. Texas Water and Undine have demonstrated that the transfer of a portion of Texas Water's service area under water CCN number 12473 to Undine's CCN number 13260, and a transfer of a portion of the uncertificated area and dual certification with Pritchett Water under water CCN number 10478 and Crystal Systems Texas, Inc. under water CCN No. 10804 to Undine's CCN number 13260 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

**III. Ordering Paragraphs**

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

1. The sale is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transactions, but not later than 30 days after the effective date, the applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.

5. The applicants are advised that Brookshires Camp Joy Water System, Cape Tranquility Water System, Country Club Estates, Friendship Water System, Garden Acres Water System, Garden Valley Resort, Mount Sylvan Water System, Rosewood Water System, and Stallion Lake Ranch, and the corresponding service area will remain under CCN number 12473 and held by Texas Water until the sale and transfer transaction is complete in accordance with Commission rules.
6. Undine is advised that the uncertificated area and dual certification with Pritchett Water will remain under CCN number 10478 and held by Pritchett Water until final Commission approval of the application.
7. Undine is advised that the uncertificated area and dual certification with Crystal Systems will remain under CCN number 10804 and held by Crystal Systems until final Commission approval of the application.
8. In an effort to finalize this case as soon as possible, the Applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
9. Within 15 days following the filing of the Applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_ day of \_\_\_\_\_, 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**