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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, 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 §

**ORDER NO. 13
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas, LLC and Texas Water Systems, Inc. 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 (CCNs) to add uncertificated area; for dual certification with Pritchett Water Supply Corporation and Crystal Systems Texas, Inc.; and to decertify a portion of Undine's CCN. The administrative law judge (ALJ) grants that the transaction between the applicants may proceed and be consummated.¹

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants and Interested Parties

1. Texas Water is a domestic corporation registered with the Texas secretary of state under file number 109227500.

¹ This Order only addresses the proposed sale and transfer of facilities and certificate rights from Texas Water to Undine. At this time, the Commission takes no action on Undine's request to add uncertificated area, to obtain dual certification, and to decertify a portion of its CCN.

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. Texas Water provides water service from several Texas Commission on Environmental Quality (TCEQ)-registered public water systems.
4. Undine is a Delaware limited liability company registered with the Texas secretary of state under file number 802339329.
5. Undine operates, maintains, and controls facilities for providing water service in Gregg, Henderson, Smith, Upshur, and Van Zandt Counties, Texas under CCN number 13260.
6. Pritchett Water is a domestic non-profit corporation registered with the Texas secretary of state under file number 26158701.
7. Pritchett Water operates, maintains, and controls facilities for providing water service in Atascosa, Bexar, Upshur, and Wood Counties, Texas under CCN number 10478.
8. Crystal Systems is a domestic for-profit corporation registered with the Texas secretary of state under file number 51759500.
9. Crystal Systems operates, maintains, and controls facilities for providing water service in Smith County, Texas under CCN number 10804.

Application

10. On February 25, 2019, the 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.
11. The applicants supplemented the application on March 11, July 12, August 1, September 13, and December 3, 2019.
12. 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 proposed transaction concerns the sale and transfer of approximately 5,638 acres and 811 current customers from Texas Water to Undine. Additionally, Undine requests a CCN amendment to add 5,076 acres of uncertificated area with 186 current customers and seeks dual certification of eight

acres with Pritchett Water (water CCN number 10478) and 21 acres with Crystal Systems (water CCN number 10804).²

13. The requested areas subject to the proposed transaction located as follows:³

Camp Joy

Approximately two miles north-northeast of downtown Ore City, Texas, and is generally bounded on the north by a line approximately a half mile south of and parallel to Upshur County Landing Road; on the east by Lake O'the Pines; on the south by the 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 119 current customers.

Cape Tranquility

Approximately two 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 a line approximately 200 feet west of and parallel to County Road 4202 in Henderson County. The total area being requested includes approximately 81 acres and 70 current customers.

Country Club

Approximately two miles south southwest of downtown Gilmer, Texas, and is generally bounded on the north by State Highway 155; on the east by U.S. Highway 271 South; on the south by Sugar Creek; and on the west by Farm-to-Market Road 2685 in Upshur County. The total area being requested includes approximately 23 acres and 34 current customers.

Friendship

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 Farm-to-Market Road 852 and Kelsey Creek in Upshur County. The total area being requested includes approximately 1,088 acres and 92 current customers.

² See, *supra* note 1.

³ *Id.*

Garden Acres

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 the Sabine River; and on the west by Hawkins Creek in Gregg County. The total area being requested includes approximately 256 acres and 79 current customers.

Harmony and Rosewood

Approximately 6.2 miles west of downtown Gilmer, Texas, and is generally bounded on the north by Farm-to-Market 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 199 current customers.

Mount Sylvan

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 the Neches River and County Road 49; and on the west by Mill Break Creek and Neches River in Smith County. The total area being requested includes approximately 5,006 acres and 312 current customers.

Stallion Lake and Garden Valley

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 the Neches River; 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.

14. The approximate total acreages for the requested areas subject to this transaction are described as follows:⁴
- Requested area and customers to be transferred: 5,638 acres and 811 customers;
 - Requested uncertificated area and customers to be added: 5,076 acres and 186 customers;

⁴ *Supra* note 1.

- Requested area to be decertified: 12 acres and no customers;
 - Requested area requiring dual certification with Pritchett WSC, CCN number 10478: eight acres and two customers;
 - Requested area requiring dual certification with Crystal Systems, CCN number 10804: 21 acres and six customers
15. In Order No. 9 filed on February 5, 2020, the ALJ found the application administratively complete.

Notice

16. On February 26, 2020, Undine filed the following affidavits:
- a. The affidavit of Carey Thomas, senior vice president of Undine, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on February 10, 2020;
 - b. A publisher's affidavit attesting to publication of notice in the *Longview News Journal*, a newspaper of general circulation in Longview County, on February 12 and 19, 2020.;
 - c. 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 and 20, 2020;
 - d. A publisher's affidavit attesting to publication of notice in the *Tyler Morning Telegraph*, a newspaper of general circulation in Tyler County, on February 12 and 19, 2020;
 - e. A publisher's affidavit attesting to publication of notice in *The Gilmer Mirror*, a newspaper of general circulation in Upshur County, on February 13 and 20, 2020; and
 - f. 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 and 23, 2020.
17. In Order No. 10 filed on March 20, 2020, the ALJ found the notice sufficient.

Evidentiary Record

18. On May 15, 2020, the applicants filed a joint motion to admit evidence.

19. In Order No. 11 filed on June 10, 2020, the ALJ admitted the following evidence into the record: (a) the 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) the applicants' response to Commission Staff's first 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) the applicants' proof of notice and supporting documentation, including confidential material, filed on February 26, 2020; (e) Commission 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); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(i)(3)(A), (i)(5)(A)

20. Undine has not been subject to any enforcement action by the Commission, the TCEQ, the Texas Department of Health, the Office of Attorney General, or the United States Environmental Protection Agency for noncompliance with any applicable rules, orders, or statutes.
21. Texas Water does not have any unaddressed violations listed in the TCEQ database.
22. Texas Water and Undine have demonstrated a compliance history adequate for approval of the proposed sale and transfer.

Adequacy of Existing Service in Texas Water's Certificated Areas Being Transferred—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(j)(5)(B)

23. The certificated areas being sold and transferred are being served by eight existing TCEQ-registered public water systems.
24. According to the TCEQ's database, the eight public water systems, collectively, either have no violations or are on the path to compliance.

Need for Additional Service in Texas Water's Certificated Areas Being Transferred —TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(j)(5)(C)

25. The certificated areas being sold and transferred consist of approximately 5,638 acres and 811 existing customers who will continue to need service.

26. No new customers will be added to the certificated areas being sold and transferred; therefore, there is no need for additional service.

Effect of Approving the Sale and Transfer of Texas Water's Certificated Area—TWC §§ 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(j)(5)(D)

27. This transaction will transfer ownership of a portion of Texas Water's assets and service area to Undine.
28. Notice of the application was provided to utilities within a two-mile radius of the outer boundary of the area being transferred. No protests or motions to intervene were filed in this docket; therefore, there will be no effect on any other retail public utility of the same kind servicing the proximate area.

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

29. Undine has several existing public water systems registered with the TCEQ and employs a sufficient number of TCEQ-licensed operators.
30. Undine has access to an adequate supply of water and is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, Chapter 13, TWC, and TCEQ's rules.
31. Undine has the managerial and technical capability to provide continuous and adequate service to the certificated areas being sold and 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), (e)(6), 24.239(2), (j)(5)(G)

32. Undine has a debt to equity ratio of less than one and a debt service coverage ratio of more than 1.25, both of which satisfy the leverage test.
33. Undine has demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the sale and transfer, satisfying the operations test.
34. Undine has demonstrated the financial capability and stability to provide continuous and adequate service to the certificated areas being sold and transferred.

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

35. The certificated areas being sold and transferred have existing facilities and are currently being served by Texas Water.
36. Notice of the sale and transfer of a portion of Texas Water's certificated areas was provided to utilities within a two-mile radius of the outer boundary of the area being transferred. No protests or adverse comments were filed in this docket.
37. It is not feasible for an adjacent utility to provide service to the certificated areas being sold and transferred.

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

38. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

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

39. The certificated areas being sold and transferred are already receiving service.
40. No additional construction is necessary for Undine to continue serving the requested area; therefore, the environmental integrity of the certificated areas being sold and transferred will not be impacted.

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

41. The certificated areas being sold and transferred will continue to be served by existing systems and facilities and no additional construction is needed; therefore, there will likely be no effect on the land.

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

42. Undine will continue to provide water service comparable to Texas Water to the existing customers in the certificated area being sold and transferred.
43. No lowering of cost to customers in the certificated area will result from the sale and transfer from Texas Water to Undine.

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

44. Construction of a new, physically separate public water system is not necessary for Undine to provide service to the certificated area being sold and transferred; therefore, concerns of regionalization and consolidation are inapplicable.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The applicants provided notice of the application that complies with the requirements of TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the certificated area being sold and transferred. TWC § 13.301(b).
3. Texas Water and Undine demonstrated that the sale and transfer of a portion of Texas Water's service area under water CCN number 12473 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 transfer is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must 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 § 24.109(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 the 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 Texas Water's water CCN number 12473 until final approval of the application in accordance with Commission rules.
6. This Order does not address Undine's request to add uncertificated area, to obtain dual certification with Pritchett Water, water CCN number 10478, and Crystal Systems, water CCN number 10804, and decertify a portion of its water CCN number 13260.
7. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
8. 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 must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 1st day of July 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**