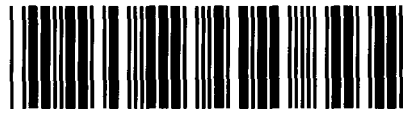




Control Number: 49379



Item Number: 37

Addendum StartPage: 0

RECEIVED

APPLICATION OF NERRO SUPPLY §
INVESTORS, LLC AND UNDINE §
TEXAS, LLC FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN HARRIS §
AND MONTGOMERY COUNTIES §

PUBLIC UTILITY COMMISSION

2019 OCT -4 PM 2:35

OF TEXAS UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Commission Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 7, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On March 27, 2019, Nerro Supply Investors, LLC (Nerro Investors), and Undine Texas, LLC (Undine) (collectively, Applicants), filed an application for the Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties, Texas. Specifically, the applicants seek to sell and transfer portions of Nerro Investors' facilities and service area under water Certificate of Convenience and Necessity (CCN) No. 10336 to Undine's CCN No. 13260. The requested transfer includes approximately 916 acres and 988 current customers.

On September 5, 2019, the Commission administrative law judge issued Order No. 6, finding notice sufficient and establishing a procedural schedule. The schedule identified a deadline for Staff to request a hearing or file a recommendation on approval of the sale by September 25, 2019.

On August 23, 2019, the San Jacinto River Authority (SJRA) intervened in this docket. On September 18, 2019, Undine filed a Request for Extension to Respond to Order No. 6 and indicated that it was nearing a resolution with SJRA. Undine stated that if the parties reached an agreement, SJRA would withdraw as an intervenor in the present docket. On October 4, 2019 SJRA withdrew from this docket.

Earlier, on September 20, 2019, Order No. 7 was issued granting Undine’s extension request. Order No. 7 also established a deadline for Staff to request a hearing or file a recommendation on approval of the sale by October 9, 2019. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memoranda from Emily Sears in the Commission's Rate Regulation Division and Nabaraj Pokharel in the Infrastructure Division, Staff's review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to Texas Water Code, Chapter 13, and under Texas Administrative Code (TAC), Chapter 24. Additionally, based upon its review, Staff recommends that Undine has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends the entry of an order permitting the proposed transaction to proceed. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n). Staff notes that there are customer deposits to be addressed as required under 16 TAC § 24.239(m).

III. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the Commission ALJ issue an order consistent with this recommendation.

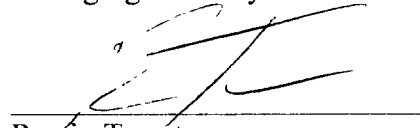
Dated: October 4, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

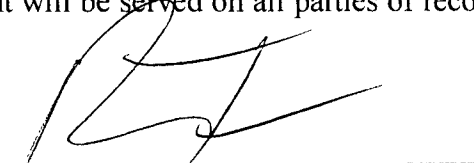


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DOCKET NO. 49379

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 4, 2019, in accordance with 16 TAC § 22.74.


Rustin Tawater

Public Utility Commission of Texas

Memorandum

TO: Rustin Tawater, Legal Division

FROM: Emily Sears, Financial Review, Rate Regulation Division
Nabaraj Pokharel, Engineering Specialist, Infrastructure Division

DATE: October 4, 2019

RE: **Docket No. 49379** – *Application of Nerro Supply Investors, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*

On March 27, 2019, Nerro Supply Investors, LLC (Seller), and Undine Texas, LLC (Purchaser) (collectively, Applicants), filed an application for sale, transfer, or merger (STM) of water facilities and water certificate rights in Harris and Montgomery Counties, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Purchaser, holder of certificate of convenience and necessity (CCN) No. 13260, seeks approval to acquire facilities and to receive via transfer a portion of Seller's water CCN No. 10336. The requested area includes approximately 916 acres and 988 connections.

The comment period ended August 25, 2019, and no protests were received.

Texas Water Code, Chapter 13, and Texas Administrative Code (TAC), Chapter 24 require the Commission to consider nine criteria when granting or amending a water or sewer 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 has multiple public water systems (PWS) registered with the Texas Commission on Environmental Quality (TCEQ), including Hazy Hollow East Estates under PWS ID No. 1700013, Spring Creek Valley Estates under PWS ID No. 1010213, and Shady Brook Acres under PWS ID No. 1700031. A review of TCEQ's Central Registry database indicates that Seller has no unresolved TCEQ violations.

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

The purpose of the transaction is to transfer a portion of the Seller's facilities, existing customers, and CCN area to the Purchaser. The customers are currently receiving water from the Seller's water system. Therefore, there is no need for additional service.

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.

There will be no effect on any retail public utility servicing the proximate area, as this area is currently certificated and served by a utility. There will be no effect on landowners as the area is currently certificated.

TWC §§ 13.241(b), 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.

The Purchaser owns and operates a total of 50 public water systems. The TCEQ database has issued minor violations for some of the Purchaser's public water systems, however, Staff did not find any current capacity type violations requiring resolution. Staff also determined that no additional construction is necessary for the Purchaser to serve in the requested area.

The Purchaser has extensive water industry experience and knowledge of water systems, which will enable it to provide continuous and adequate service. The Purchaser is committed to compliance with TCEQ's rules and regulations and to provide continuous and adequate service to the requested area. In addition, the Purchaser has shown good faith in moving towards compliance with TCEQ's rules for the minor violations.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

The Seller is currently serving customers and has sufficient capacity. Therefore, it was unnecessary for Staff to consider the feasibility of obtaining service from another adjacent retail public utility.

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. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.¹ The Purchaser must demonstrate that it meets one of the five tests.²

The following shows that the Purchaser meets one out of five leverage tests. Staff's analysis is based on confidential financial statements ending December 31, 2018. The financial statements show that the Purchaser has zero long-term debt. Therefore, the Purchaser meets the first leverage test based on its debt to equity ratio being less than one.

16 TAC § 24.11(e)(3) refers to the 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 Purchaser submitted projected financial statements in its application, which show that there are no shortages to cover. Also, no improvements are needed to provide continuous and adequate service to the requested area. Therefore, the Purchaser meets the operations test.

TWC § 13.246(d)(6) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

Staff does not recommend that the Purchaser be required to provide a bond or other financial assurance to ensure continuous and adequate service.

TWC §§ 13.246(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 effected as no additional construction is needed to provide service to the requested area.

¹ See 16 TAC § 24.11(e)(2).

² *Id.*

TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

The Purchaser will continue to provide the same level of water service to the existing customers in the area. The utility will not change rates in this application.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approval of Applicant's application to transfer a portion of the water facilities in the requested area, and a portion of the water service area under water CCN No. 10336 to the Purchaser and to amend both the water CCN of the Purchaser (CCN No. 13260) and the Seller (CCN No. 10336) is necessary for the service, accommodation, convenience and safety of the public.

Pursuant to 16 TAC § 24.239(i), Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes that the Seller is in possession of deposits for those customers currently being served in the requested water service area. Staff further recommends that a public hearing is not necessary.