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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
OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

**ORDER NO. 11
ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the March 27, 2019 application of Nerro Supply, LLC and Undine Texas, LLC for sale, transfer, or merger of facilities and certificate rights in Harris and Montgomery Counties. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro Supply Investors is a domestic for-profit corporation registered with the Texas secretary of state on January 26, 2015 under file number 802143247.
2. Nerro Supply Investors provides water service in Texas under certificate of convenience and necessity (CCN) number 10336.
3. Nerro Supply Investors owns three public water systems (PWSs) registered with the Texas Commission on Environmental Quality (TCEQ) under the following PWS numbers: Hazy Hollow East Estates, 1700013, Shady Brooks Acres, 1700031, and Spring Creek Valley Estates, 1010213.
4. Undine Texas is a foreign for-profit corporation registered with the Texas secretary of state on November 25, 2015 under file number 802339329.
5. Undine Texas provides water service in Texas under CCN number 13260.
6. Undine Texas owns sixty-three PWSs registered with the TCEQ.

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Application

7. On March 27, 2019, Nerro Supply Investors and Undine Texas filed an application for the approval of the sale, transfer, or merger of facilities and certificate rights Harris and Montgomery Counties. Specifically, Undine Texas seeks approval for the purchase of facilities and the transfer of a portion of Nerro Supply Investors' service area under water CCN number 10336.
8. The requested area includes approximately 916 acres and 988 connections and consists of portions of the Hazy Hollow East Estates, Shady Brook Acres, and Spring Creek Valley Estates PWSs as follows:
 - (a) Hazy Hollow East Estates: 667 total acres and 742 current customers, located 2.5 miles east/southeast of downtown Magnolia, Texas, and generally bounded on the north by Little Thorn Lane and 260 feet north of Green Tree Road; on the east by Little Thorn Lane and Mildred Lane; on the south by Magnolia Boulevard/Farm-to-Market Road 1774; and on the west by North Cripple Creek Drive;
 - (b) Shady Brooks Acres: 95 total acres and 57 current customers, located 1.5 miles south of downtown Magnolia, Texas, and generally bounded on the north by Old Hockley Road; on the east by Nichols Sawmill Road; on the south by Country Place Road and Mink Branch; and on the west by Mink Branch; and
 - (c) Spring Creek Valley Estates: 154 total acres and 189 current customers, located 1.8 miles northwest of downtown Tomball, Texas, and generally bounded on the north by Spring Creek; on the east by Parkplace Drive; on the south by Brown Road; and on the west by Spring Creek Park.
9. In Order No. 4 filed on July 18, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

10. On August 8, 2019, Carey A. Thomas, senior vice president, filed an affidavit on behalf of Undine Texas, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on July 26, 2019.
11. In Order No. 6 filed on September 5, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

12. On November 12, 2019, the parties filed a joint motion to admit evidence.

13. In Order No. 10 filed on January 14, 2020, the ALJ admitted the following evidence into the record: (a) the application, filed on March 27, 2019 (b) Undine Texas' proof of notice and supporting documentation, filed on August 8, 2019; (c) Undine Texas' responses to Commission Staff's first request for information, filed on September 9, 2019; and (d) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed October 4, 2019.

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)

14. The applicants have not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of Health, the Office of Attorney General, or the United States Environmental Protection Agency.

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

15. Nerro Supply Investors currently provides adequate water service to the customers in the requested area and does not have any unresolved violations from the TCEQ.

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

16. There are 988 existing connections in the areas to be transferred; therefore, there is a need for service.
17. Undine Texas has received no new requests for service and is not requesting to add additional uncertificated area.
18. 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)

19. Nerro Supply Investors and Undine Texas are the only utilities affected by this sale and transfer.
20. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
21. The customers in the requested areas will continue to be provided adequate and continuous serve after the approval of the transaction.

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)

22. Undine Texas has extensive experience operating water systems and has a sufficient number of licensed operators to provide service to the requested area.
23. Undine Texas has the managerial and technical capability to provide continuous and adequate service to the requested area.

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)

24. Nerro Supply Investors is currently serving the existing customers in the requested area.
25. Undine Texas will serve the area using the existing facilities and no additional construction is necessary.
26. It is not feasible for service to be provided by any adjacent retail public utility.

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)

27. Undine Texas has a debt service-coverage ratio of greater than 1.25, satisfying the leverage test.
28. Undine Texas has sufficient cash available to cover any projected operations and maintenance shortages during the first five years of operations following the transaction, satisfying the operations test.
29. Undine Texas has demonstrated the financial ability and stability to provide continuous and adequate water service to the requested area.

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

30. There is no need to require Undine Texas 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)

31. The requested area will continue to be served by existing facilities and minimal construction is needed; therefore, the proposed transaction will not adversely impact the environmental integrity of the land.

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

32. Because the area will be served by existing facilities and only minimal construction is needed, any effect on the land will be minimal.

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

33. Undine Texas will improve customer service to existing customers because the water systems will be operated and maintained by a sufficient number of licensed operators, and there will be no change in rates.

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

34. Undine Texas does not anticipate building any new facilities to continue service the requested area and is not requesting to add service area in the proposed transaction; therefore, concerns of regionalization or consolidation are not applicable.

II. Conclusions of Law

The Commission makes the following conclusions of law.


1. Notice of the application was provided in compliance with 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 Texas has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. TWC § 13.301(b).
3. Nerro Supply Investors and Undine Texas have demonstrated that the sale of Nerro Supply Investors' water systems PWS numbers 1700013, 1010213, 1700031 and the transfer of a portion of Nerro Supply Investors' water CCN number 10336 to Undine Texas 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 Undine Texas and Nerro Supply Investors 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 Undine Texas and Nerro Supply Investors shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. Undine Texas and Nerro Supply Investors 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 Undine Texas and Nerro Supply Investors will have to reapply for approval.
5. Undine Texas and Nerro Supply Investors are advised that water CCN number 10336 will be held by Nerro Supply Investors until the sale and transfer traction is complete in accordance with the Commission's rules.
6. In an effort to finalize this proceeding as soon as possible, Undine Texas and Nerro Supply Investors shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the Undine Texas' and Nerro Supply Investors' 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 28th day of January 2020.



STEVEN LEARY
ADMINISTRATIVE LAW JUDGE

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