



Control Number: 49380



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PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF NERRO SUPPLY, §
LLC AND UNDINE TEXAS, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN BRAZOS, BURLESON, §
CHAMBERS, MONTGOMERY, §
ROBERTSON, AND WALKER §
COUNTIES, AMENDMENT TO §
UNDINE TEXAS, LLC'S WATER §
CERTIFICATE OF CONVENINCE §
AND NECESSITY, AND §
DECERTIFICATION OF A PORTION §
OF NERRO SUPPLY, LLC'S §
CERTIFICATED AREA IN BURLESON §
COUNTY

PUBLIC UTILITY COMMISSION
OF TEXAS

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. 4, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On March 27, 2019, Undine Texas, LLC (Undine) and Nerro Supply, LLC (Nerro) (collectively, Applicants), filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker counties, pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and § 13.301 and 16 Tex. Admin. Code (TAC) §§ 24.225 to 24.237 and § 24.239. Specifically, Undine seeks approval to acquire facilities and to transfer water service area from Nerro under water certificate of convenience and necessity (CCN) No. 12252, to decertify a portion of Deanville Water Supply Corporation's (WSC's) CCN No. 10177, and to amend an uncertificated water service area into its CCN boundaries. The requested areas include approximately 2,212 acres and 1,321 connections.

On June 21, 2019, the Commission administrative law judge (ALJ) issued Order No. 3, 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 August 8, 2019.

On August 8, 2019, Staff requested an extension of time to file Staff's recommendation on approval of the sale. Order No. 4, issued on August 9, 2019, granted Staff's request and extended its deadline to file a recommendation on the approval of the sale to October 7, 2019. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memoranda from Spencer English in the Commission's Rate Regulation 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 areas 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.

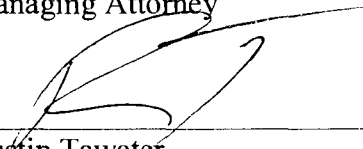
Dated: October 4, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

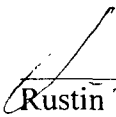


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DOCKET NO. 49380

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

PUC Interoffice Memorandum

To: Rustin Tawater, Attorney
Legal Division

Thru: Heidi Graham, Manager
Water Utility Regulation Division

From: Spencer English, Financial Analyst
Rate Regulation Division

Date: October 4, 2019

Subject: **Docket No. 49380**, *Application of Nerro Supply, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker Counties, Amendment to Undine Texas, LLC's Water Certificate of Convenience and Necessity, and Decertification of a Portion of Nerro Supply, LLC's Certificated Area in Burleson County*

On March 27, 2019, Undine Texas, LLC (Purchaser), and the Nerro Supply, LLC (Seller) (collectively, Applicants), filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker counties, decertification of a portion of the Seller's certificated area and addition of a portion of uncertificated water service area to the Purchaser's CCN boundaries pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and § 13.301 and 16 Tex. Admin. Code (TAC) §§ 24.225 to 24.237 and § 24.239. Specifically, the Purchaser seeks approval to acquire facilities and to transfer water service area from Nerro Supply, LLC, under water Certificate of Convenience and Necessity (CCN) No. 12252, to decertify a portion of Deansville Water Supply Corporation (WSC) CCN No. 10177, and to amend uncertificated water service area into its CCN boundaries. The requested areas include approximately 2,218 acres and 1,321 connections.

Background

The total requested areas total approximately 2,218 acres. Approximately 1,819 acres are proposed to be transferred from the Seller to the Purchaser, approximately 31 acres are to be decertified by Deansville WSC, and approximately 368 acres of uncertificated area is proposed to be amended to the Purchaser's CCN. The uncertificated area that the Purchaser is seeking to certify as part of this application is currently being served by the Seller with existing facilities that have adequate capacity. The Purchaser seeks to correct the CCN boundaries to reflect the actual area being served. No additional construction is necessary to serve the uncertificated area.

Notice

The comment period ended on July 8, 2019, and no protests or opt-out requests were received.

Criteria Considered

Texas Water Code, Chapter 13, and Texas Administrative Code (TAC), Chapter 24 require 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 requested areas are currently served by Nerro Supply, LLC, with eighteen public water systems registered with the Texas Commission on Environmental Quality (TCEQ).

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

There are 1,321 existing connections in the areas to be transferred and the uncertificated areas, therefore there is a need for service. The Purchaser has adequate financial, technical, and managerial capabilities to provide service in case there comes a 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.

A portion of Deanville WSC, CCN No. 10177, is to be decertified, in accordance to the agreement filed in this docket. The requested areas to be transferred and the uncertificated area are currently being served by eighteen existing public water systems. Staff recommends that there is no effect on any other retail public utility of the same kind already servicing the proximate area.

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

There are eighteen existing public water systems proposed to be transferred. Each public water system has an adequate supply of water and is capable of providing drinking water that meets the requirements of Chapter 341 of the Texas Health and Safety Code and TCEQ rules. Additional construction is not necessary to serve the uncertificated area that is to be amended. The Seller is already serving the uncertificated area with adequate existing facilities. The Purchaser has compliance agreements with TCEQ for some of its public water systems that were acquired while under a temporary manager. The Purchaser is in compliance with the agreements.

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 the existing customers with 18 existing public water system registered with the TCEQ 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, each of which must be satisfied.

The purchaser must meet one of the five stated leverage tests in the Commission rules. Based on information included in the application, it successfully meets two of the leverage tests. One of the leverage tests, under 16 TAC § 24.11(e)(2)(A), states that an owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets. The Purchaser's parent company, Undine Group, LLC, meets the debt to equity leverage test with [REDACTED].¹ Another leverage test, under 16 TAC § 24.11(e)(2)(C), states the owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Based on the calculations filed confidentially in the application, there are sufficient cash and pooled investments, including restricted cash for debt service, available for two years of debt service. Therefore, the Purchaser also meets the second leverage test.

¹ Confidential-Attachment 1-Balance Sheet Bate Stamp 6 to 7 (July 18, 2019).

Under the operations test, 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. In this instance the Purchaser has submitted projected financial statements in its application. According to those statements, there are no operating shortages for Nerro Supply, LLC, reflected in the latest historical income statement based on operating income prior to depreciation and interest,² or in the five year projections provided.³ Therefore, the Purchaser meets the operations test.

TWC § 13.246(d) The Commission may 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.

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.

This transaction eliminates the need for land owners to use individual wells. Thus, the transaction protects the environment in the area from potential sources of contamination and encourages regionalization of water service. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested areas.

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 as has already been provided to the existing customers in the area. Rates will not change as a result of the approval of this application.

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 the portion of water CCN No. 12252 to the Purchaser, amend the Purchaser's water CCN No. 13260, decertify a portion of Deanville WSC CCN No. 10177, and amending uncertificated water service area into Purchaser's CCN boundaries is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.239(i), Staff recommends the Commission find that the transaction will serve the public interest and that it allows the Applicants to proceed with the proposed transaction. Staff notes there are customer deposits held by the Seller. Staff further recommends that a public hearing is not necessary.

² *Application of Undine Texas, LLC and Nerro Supply, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker Counties and to Decertify a Portion of Nerro Supply, LLC's Certificated Area in Burleson County, and to Add an Uncertificated Water Service Area Into Undine Texas, LLC's CCN Boundaries*, Docket No. 49380 at 108 (March 27, 2019).

³ *Id.* at 111-113.