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PUBLIC UTILITY COMMISSION
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**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, AND TO AMEND UNDINE §
TEXAS, LLC'S, NERRO SUPPLY, LLC'S, §
AND DEANVILLE WATER SUPPLY §
CORPORATION'S WATER §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 8
APPROVING SALE AND TRANSFER TO PROCEED AND RESTYLING DOCKET**

This Order addresses the March 27, 2019, application of Nerro Supply LLC and Undine Texas Environmental, LLC for the sale, transfer, or merger of water facilities and certificate of convenience and necessity (CCN) rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker counties. Undine Texas seeks approval to acquire water facilities and to transfer water service area held under Nerro Supply's water CCN number 12252 to Undine Texas's CCN number 13260. The applicants also request, in order to correctly align the water CCN service areas with the areas actually being served, the addition of uncertificated area into Undine Texas's CCN number 13260, the decertification of a portion of Nerro Supply's CCN number 12252, and the decertification of a portion (and the addition of that portion to Undine Texas) of Deanville Water Supply Corporation's water CCN number 10177. The administrative law judge (ALJ) grants that the transaction proposed in this application between Undine Texas and Nerro Supply may proceed and be consummated and restyles the docket as reflected in this Order. This Order does not address the approval or denial of the request to add uncertificated water service area to Undine Texas's CCN number 13260, the request to decertify a portion of the water service area held under Nerro Supply's CCN number 12252, or the request to decertify a portion of water service area (and the addition of that portion to Undine Texas) held under Deanville WSC's CCN number 10177.

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I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro Supply is a Texas for-profit corporation registered with the Texas secretary of state on February 7, 2011, under file number 801380548.
2. Nerro Supply provides water service in Texas under CCN number 12252 and owns 22 public water systems (PWSs) registered with the Texas Commission on Environmental Quality (TCEQ).
3. Undine Texas is a Delaware for-profit corporation registered with the Texas secretary of state on November 25, 2015, under file number 802339329.
4. Undine Texas provides water service in Texas under CCN number 13260 and owns 63 public water systems registered with the TCEQ.

Application

5. On March 27, 2019, Nerro Supply and Undine Texas applied for approval of the sale of 18 of Nerro Supply's water systems and the transfer of the corresponding water service area held under Nerro Supply's CCN number 12252 to Undine Texas's CCN number 13260.
6. On April 2 and 23, August 9, and October 4, 2019, the applicants filed supplements to the application.
7. In order to correctly align the certificated service areas with the areas actually being served in the requested transaction, the applicants also request: (a) to decertify approximately 85 acres from Nerro Supply's CCN 12252; (b) to add approximately 337 acres of uncertificated water service area to Undine Texas's CCN number 13260; (c) to add approximately 31 acres, currently certificated under Deanville WSC CCN number 10177, to Undine Texas's CCN number 13260; and (d) to decertify that approximately 31-acre tract from Deanville WSC's water CCN number 10177.
8. The applicants' April 23, 2019 supplement to the application contains a decertification agreement, in which Deanville WSC agrees to the decertification of the 31 acre tract currently held under Deanville WSC's CCN number 10177.

9. The following public water systems are to be sold and the corresponding water service areas are to be transferred to Undine Texas:
- a) Allendale Water System (PWS number 1700187): the requested area is located in Montgomery county, is six miles east-northeast of downtown Shenandoah, and is generally bounded on the north by SH 242; on the east by Big Buck Pond; on the south by Greenbough Street; and on the west by FM 1314. The requested area includes approximately 89 total acres and 50 current customers;
 - b) Apache Hills (PWS number 0260019): the requested area is located in Burleson County, is three miles west-northwest of downtown Somerville, and is generally bounded on the north by CR 460; on the east by Lakeview Drive; on the south by Somerville Lake; and on the west by Yegua Creek. The requested area includes approximately 92 total acres and 67 current customers;
 - c) Benchley Oaks Subdivision (PWS number 0210039) and Lakewood Estates (PWS number 0210042): the requested area is located in Brazos County, is six miles northwest of downtown Bryan, and is generally bounded on the north by SH OSR and Redbud Drive; on the east by Redbud Drive; on the south by Mumford Road; and on the west by SH OSR. The requested area includes approximately 244 total acres and 241 current customers;
 - d) Hillgreen Subdivision Water Co. (PWS number 1700539): the requested area is located in Montgomery County, is four miles northeast of downtown Conroe and, is generally bounded on the north by a line 1000 feet north of and parallel to Hillgreen Drive; on the east by Jeffcote Road; on the south by a line 600 feet south of and parallel to Hillgreen Drive; and on the west by West Fork Crystal Creek. The requested area includes approximately 59 total acres and 46 current customers;
 - e) Lakeview N Marshall Oaks (PWS number 0260010) and Somerville Place (PWS number 0260021): the requested area is located in Burleson County, is four miles west of downtown Somerville, and is generally bounded on the north by Big Creek; on the east by Recreational Road 4; on the south by County Road 416; and on the west by Lakeview Drive. The requested area includes approximately 539 total

acres and 220 current customers. Of the 539 acres, 262 acres are currently uncertificated and are requested to be added;

- f) Little Oak Forest Subdivision (PWS number 0260037): the requested area is located in Burleson County, is eight miles west of downtown Somerville, and is generally bounded on the north by Birch Creek; on the east by Birch Creek; on the south by Giebel Lane; and on the west by Park Road 57. The requested area includes approximately 203 total acres and 36 current customers;
- g) Loch Ness Cove Subdivision Water System (PWS number 1700148): the requested area is located in Montgomery County, is seven miles northwest of downtown Willis, and is generally bounded on the north by Lake Paula Drive; on the east by Lake Conroe and Lake Paula; on the south by Coushatta; and on the west by Lake Conroe. The requested area includes approximately 66 total acres and 80 current customers. Of the 66 acres, 20 acres are uncertificated and are requested to be added;
- h) Lost Lakes (PWS number 0360108): the requested area is located in Chambers County, is two miles southeast of downtown Old River Winfree, and is generally bounded on the north by Old River; on the east by Old River; on the south by River Oaks Drive; and on the west by Farm-to Market Road 565. The requested area includes approximately 49 total acres and 47 current customers;
- i) Oaks at Houston Point (PWS number 0360126) and Bayridge Water System (PWS number 0360028): the requested area is located in Chambers County, is six miles southwest of downtown Baytown, and is generally bounded on the north by Tri City Beach Road; on the east by Jordan Drive; on the south by Trinity Bay; and on the west by Cedar Point Road. The requested area includes approximately 143 total acres and 116 current customers;
- j) Oak Forest Lakeway Manor (PWS number 1980017): the requested area is located in Robertson County, is ten miles northwest of downtown Bryan, and is generally bounded on the north by Noble Oaks Lane; on the east by Anyway Drive; on the south by Lakeway Drive; and on the west by US 190. The requested area includes approximately 86 total acres and 49 current customers;

- k) River Club Water (PWS number 1700185): the requested area is located in Montgomery County, is four miles north of downtown Humble, and is generally bounded on the north by a line 170 feet north of and parallel to Russell Drive; on the east by Sorters McLellan Road; on the south by a line 400 feet south of and parallel to Lake Drive; and on the west by West Fork San Jacinto River. The requested area includes approximately 153 total acres and 75 current customers;
- l) Smetana Forest (PWS number 0210010): the requested area is located in Brazos County, is six miles west of downtown, Bryan and is generally bounded on the north by Smetana Road; on the east by Smetana Road; on the south by Nonie Drive; and on the west by Luza Lane. The requested area includes approximately 70 total acres and 50 current customers;
- m) Whispering Woods (PWS number 0260032): the requested area is located in Burleson County, is seven miles northwest of downtown Somerville, and is generally bounded on the north by County Road 410; on the east by County Road 410; on the south by Farm-to Market 60; and on the west by County Road 405. The requested area includes approximately 190 total acres and 15 current customers. Of the 190 acres, 85 acres are requested to be decertified from Nerro Supply's CCN number 12252, 67 acres are uncertificated and are requested to be added, 31 acres are requested to be decertified from Deanville WSC, CCN number 10177, and then those 31 acres are requested to be added into Undine Texas's CCN number 13260;
- n) Wildwood Shores (PWS number 2360078): the requested area is located in Walker County, is eight miles west of downtown New Waverly, and is generally bounded on the north by Pipken Road; on the east by Forest Service Road 222; on the south by Lake Conroe; and on the west by Lake Conroe. The requested area includes approximately 276 total acres and 173 current customers; and
- o) Woodhaven Estates (PWS number 1700481): the requested area is located in Montgomery County, is five miles west of downtown Conroe, and is generally bounded on the north by Woodhaven; on the east by Elizabeth Ridge; on the south by Farm-to Market Road 2854; and on the west by Old TX 105 West.

The requested area includes approximately 44 total acres and 56 current customers. Of the 44 acres, 19 acres are uncertificated and are requested to be added.

10. The requested areas include approximately 2,303 acres and 1,321 connections, with 85 of those acres to be decertified, leaving approximately 2,218 acres requested to be added to Undine Texas' CCN number 13260.
11. In Order No. 2 filed on April 30, 2019, the ALJ deemed the application administratively complete.

Notice

12. On June 10, 2019, the applicants filed the affidavit of Carey A. Thomas, senior vice president and secretary of Undine Texas, attesting that notice was provided to all current customers, neighboring utilities, counties, cities, and affected parties on June 5, 2019.
13. In Order No. 3 filed on June 21, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

14. On October 28, 2019, the parties filed a joint motion to admit evidence.
15. In Order No. 7 filed on February 3, 2020, the ALJ admitted the following evidence into the record: (a) the application, filed on March 27, 2019; (b) supplements to the application, filed on April 2 and 23, August 9, and October 4, 2019; (c) Undine's responses to Commission Staff's first request for information, filed on June 4, 2019; (d) Undine's proof of notice and supporting documentation, filed on June 10, 2019; (e) Undine's supplement to its proof of notice, filed on June 19, 2019; (f) Undine's responses to Commission Staff's second request for information, filed on July 18, 2019; and (g) Commission Staff's recommendation on the transaction and all attachments, filed on 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)

16. Undine Texas has not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.
17. Although Nerro Supply's public water systems that are to be sold to Undine Texas have had previous violations, Undine Texas operators have resolved the issues, leaving no

outstanding violations with the Commission, the TCEQ, the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.

Adequacy of Existing Service—TWC § 13.301(c)(1); 16 TAC §§ 24.227(d)(1), (j)(5)(B)

18. The 18 public water systems to be transferred have been approved by the TCEQ, are capable of providing drinking water that meets the requirements of the Texas Health and Safety Code, Chapter 341 and TCEQ rules, and have access to an adequate supply of water.
19. The public will be better served through Undine Texas's ownership of the 18 public water systems due to improvements in customer service, operations, and maintenance.

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

20. Customers are currently receiving water from the water systems requested to be transferred.

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)

21. As a result of the transaction, the customers will benefit from public water systems that are professionally operated and maintained and capable of providing continuous and adequate service.
22. Nerro Supply, Undine Texas, and Deanville WSC are the only entities affected by this sale and transfer.
23. There are no other retail public utilities providing water service that would be affected by the proposed transaction.
24. All customers will be charged the same rates as they were charged before 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)

25. Undine Texas has access to an adequate supply of water and has the capacity to serve the requested areas continuously.
26. Undine Texas's management team possesses lengthy experience in utility-related accounting and project development.
27. Undine Texas has the managerial and technical ability to provide continuous and adequate service to the requested areas.

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)

28. Undine Texas meets the debt to equity ratio requirement of less than one, meeting the leverage test.
29. Undine Texas has sufficient cash available to cover any projected operations and maintenance shortages in the next five years of operations.
30. Undine Texas has demonstrated the financial capability and stability to provide continuous and adequate water service to the requested areas.

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)

31. The requested areas have existing facilities and are currently being served by Nerro Supply and Undine Texas.
32. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
33. It is not feasible for an adjacent utility to provide service to the requested areas because water service to the requested areas will be provided by Undine Texas using existing infrastructure.

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

34. 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)

35. The proposed transaction will not adversely impact the environmental integrity of the land because customers will be served using existing infrastructure.

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

36. Because the requested areas will be served with existing infrastructure, the transaction will have minimal effect on the land.

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

37. The proposed transaction will improve service because the customers will benefit from public water systems that are professionally operated and maintained and capable of providing continuous and adequate service.
38. The rates charged to customers will not change as a result of the transaction.

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

39. Because Undine does not anticipate building any new facilities to continue serving the requested areas, regionalization or consolidation is not applicable.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under TWC §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.
2. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
3. After consideration of the factors in TWC § 13.246(c), Undine Texas has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested areas. TWC § 13.301(b).
4. Nerro Supply and Undine Texas have demonstrated that the sale of Nerro Supply's 18 public water systems identified in this Order and the transfer of a portion of Nerro Supply's CCN number 12252 to Undine Texas's CCN number 13260 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 docket is restyled as reflected in this Order.
2. The sale is approved and the transaction between Undine Texas and Nerro Supply may proceed and be consummated.

3. 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, if any, have been addressed.
4. The applicants have 180 days to complete the transaction.
5. Under 16 TAC § 24.109(o), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
6. Undine Texas and Nerro Supply are advised that the eighteen public water systems identified in this Order and the corresponding water service areas will remain under CCN number 12252 and held by Nerro Supply until the sale and transfer transaction is complete in accordance with Commission rules.
7. In an effort to finalize this proceeding as soon as possible, the applicants must 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 procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 6th day of February 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTOPHER OAKLEY
ADMINISTRATIVE LAW JUDGE