

Control Number: 49382



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**DOCKET NO. 49382**

**APPLICATION OF NERRO SUPPLY, §  
LLC AND UNDINE TEXAS §  
ENVIRONMENTAL, LLC FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN CHAMBERS, HARRIS, §  
AND WALKER COUNTIES §**

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

**I. BACKGROUND**

On March 27, 2019, Nerro Supply, LLC (Nerro), and Undine Texas Environmental, LLC (Undine) (collectively, Applicants), filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Chambers, Harris, and Walker Counties, Texas. Specifically, the applicants seek to sell and transfer portions of Nerro's facilities and service area under sewer certificate of convenience and necessity (CCN) No. 20366 to Undine's CCN No. 20816. The requested transfer includes service area within the Bayridge Subdivision and Oaks at Houston Point in Chambers County, Wildwood Shores in Walker County, and Greens Bayou Fabrication Yard in Harris County. Applicants filed supplemental information on June 19, 2019.

On September 12, 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 the approval of the sale by October 25, 2019. Therefore, this pleading is timely filed.

**II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED**

As detailed in the attached memoranda from Patricia Garcia 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.

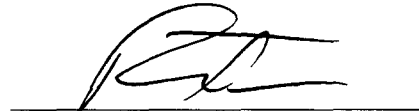
Dated: October 24, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 24, 2019, in accordance with 16 TAC § 22.74.

  
Rustin Tawater

## PUC Interoffice Memorandum

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**To:** Rustin Tawater, Attorney  
Legal Division

**Thru:** Heidi Graham, Manager  
Infrastructure Division

**From:** Patricia Garcia, Engineering Specialist  
Infrastructure Division  
Fred Bednarski III, Financial Analyst  
Rate Regulation Division

**Date:** October 24, 2019

**Subject:** **Docket No. 49382**, *Application of Nerro Supply, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Chambers, Harris, and Walker Counties*

On March 27, 2019, Undine Texas Environmental, LLC (Undine or Purchaser), and Nerro Supply, LLC (Nerro Supply or Seller) (collectively, Applicants), filed an application for sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Walker Counties, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Undine, holder of certificate of convenience and necessity (CCN) No. 20816, seeks approval to acquire facilities and to transfer a portion of Nerro Supply's sewer CCN No. 20366. The requested area includes service area within the Bayridge Subdivision and Oaks at Houston Point in Chambers County; Wildwood Shores in Walker County; and Greens Bayou Fabrication Yard in Harris County. The total requested area is approximately 637 acres and has 394 existing customers. The area is currently certificated to Nerro Supply's sewer CCN No. 20366. There is no uncertificated area to be transferred.

### Notice

The comment period ended September 27, 2019. No protests were received.

### Criteria Considered

TWC, Chapter 13, and 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 is serving 394 existing customers in the requested area using three wastewater facilities and wastewater discharge permits. The Seller does not have any violations listed in the Texas Commission on Environmental Quality (TCEQ) database. The three wastewater facilities and wastewater discharge permits that will be transferring as a result of this application are:

1. Bayridge Wastewater System, Permit No. WQ0013643-001;
2. Greens Bayou Fabrication Yard Facility Permit No. WQ0003792-000; and
3. Wildwood Shores Wastewater Treatment Facility Permit No. WQ0014154-001.

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

The customers are currently receiving water from the Seller's sewer system. No additional landowners, perspective landowners, tenants, or residents have requested service. 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 of the certificate or amendment, on the landowners in the area, 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. 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 following wastewater facilities will be transferred upon approval of this application: Bayridge Wastewater System (Permit No. WQ0013643-001), Greens Bayou Fabrication Yard Facility (Permit No. WQ0003792-000), and Wildwood Shores Wastewater Treatment Facility (Permit No. WQ0014154-001). The Purchaser does not have any violations listed in the TCEQ database. No additional construction is necessary for the Purchaser to serve the requested area. The Purchaser will take over operations of these wastewater facilities from the Seller upon approval of the application. The Applicants currently meet the standards of the Commission based on the fact that there are no violations listed for either party. The Purchaser will continue to meet the standards of the Commission taking into consideration that there is no additional construction necessary to serve the area.

***TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.***

A physically separate sewer system is not required to provide service to the requested area. Therefore, this criteria was not considered.

***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, the feasibility of obtaining service from another adjacent retail public utility was not considered.

***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 meets one out of the five leverage test criteria listed under 16 TAC § 24.11(e)(2). The Purchase must meet one of the criteria to satisfy the leverage test. The Purchaser provided its

parent companies<sup>1</sup> [REDACTED] confidential unaudited balance sheet as of March 31, 2019, which indicated long term liabilities of [REDACTED] and owner's equity of [REDACTED].<sup>3</sup> Therefore, the stated long term liabilities [REDACTED] divided by owner's equity [REDACTED] results in a debt to equity ratio 0.39. One of the leverage test criteria, specifically 16 TAC § 24.11(e)(2)(A), states that "[t]he owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets." Therefore, the Applicant meets the debt to equity criteria.

The Purchaser also meets the operations test. Under 16 TAC § 24.11(e)(3), 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 with its application. The Purchaser and Seller are both existing utilities. Based on the projections provided, the Purchaser has no projected losses.<sup>4</sup> Therefore, there are no shortages to cover. Additionally, no additional infrastructure is needed to provide continuous and adequate service because existing facilities currently serve the requested area.

***TWC § 13.246(d) 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 Applicant 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 certificated area.***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

***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 sewer service to the existing customers in the requested 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. Approving this application to transfer the sewer facilities in the requested area, a portion of the sewer service area under sewer CCN No. 20366 from Nerro Supply, LLC, to Undine Texas Environmental, LLC, and amending sewer CCN No. 20816 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 that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes that deposits are held by Nerro Supply, LLC, for the customers being served by the Bayridge Wastewater System, Greens Bayou Fabrication Yard Facility, and Wildwood Shores Wastewater Treatment Facility. Staff further recommends that a public hearing is not necessary.

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<sup>1</sup> Application, Confidential-Attachment E-Limited Liability Company Agreement and Undine Texas, LLC Organizational Chart (3/27/2019), at Bates No. 66.

<sup>2</sup> *Id.*, Confidential-Exhibit B5-Current Financial Statements (6/19/2019), at Bates No. 45.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, Confidential-Attachment H Financial Information (03/27/2019), at Bates Nos. 85- 87.