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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

PUBLIC UTILITY COMMISSION
FILING CLERK

**ORDER NO. 9
ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the March 27, 2019, application of Nerro Supply, LLC and Undine Texas Environmental, LLC for a sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Chambers, Harris, and Walker counties. The applicants seek approval for the sale of Nerro Supply's sewer system facilities and transfer of a portion of the service area held under CCN number 20366 to Undine Texas Environmental's sewer CCN number 20816. On October 24, 2019, Commission Staff recommended that the transaction proceed in this docket. 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 is a domestic limited liability company registered with the Texas secretary of state on February 7, 2011 under file number 801380548.
2. Nerro Supply is an investor owned utility that operates, maintains, and controls facilities for providing sewer service under CCN number 20366.
3. Nerro Supply owns three wastewater systems registered in Chambers, Harris and Walker counties, permitted by the Texas Commission on Environmental Quality (TCEQ) under water quality permit numbers WQ0013643-001, WQ0003792-000, and WQ0014154-001.
4. Undine Texas Environmental is a domestic limited liability company registered with the Texas secretary of state on April 15, 2013 under file number 801768069.

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5. Undine Texas Environmental is an investor owned utility that operates, maintains, and controls facilities for providing sewer service under CCN number 20816.

Application

6. On March 27, 2019, the applicants filed an application for the approval of the sale of wastewater facilities currently owned and operated by Nerro Supply and transfer of service area held under CCN number 20366 in Chambers, Harris, and Walker counties from Nerro Supply to Undine Texas Environmental, sewer CCN number 20816.
7. The three wastewater facilities and wastewater discharge permits owned by Nerro Supply being transferred as a result of this application are:
 - (a) Bayridge Sewer Treatment Plant, operated under TCEQ water quality permit number WQ0013643-001;
 - (b) Greens Bayou Fabrication Yard Facility, PWS number TX0100935, operated under TCEQ water quality permit number WQ0003792-000; and
 - (c) HUI Enterprises, Inc. (Wildwood Shores), operated under TCEQ water quality permit number WQ0014154-001.
8. Undine Texas Environmental owns ten wastewater facilities registered with the TCEQ.
9. The requested area includes approximately 637 acres and 394 customers and consists of portions of the Bayridge, Oaks at Houston Point, Greens Bayou Fabrication Yard, and HUI Enterprises, Inc. (Wildwood Shores) subdivisions as follows:
 - (a) Bayridge and Oaks at Houston Point: 143 total acres and 116 current customers, located approximately 5.8 miles southwest of downtown Beach City, and generally bounded on the north by Tri City Beach Road; on the east by Jordan Road; on the south by Trinity Bay; and on the west Cedar Point Road;
 - (b) Green Bayou Fabrication Yard: 254 total acres and 148 current customers, located approximately 3.4 miles east/northeast of downtown Galena Park, and generally bounded on the north and east by Greens Bayou, on the south by Buffalo Bayou, and on the west by Industrial Road; and

(c) HUI Enterprises, Inc. (Wildwood Shores): 240 total acres and 130 current customers, located approximately 7.3 miles west of downtown New Waverly, and generally bounded on the north by a line 0.64 miles south of and parallel to Pipkin Road; on the east by Forest Service Road 222; on the south and west by Lake Paula (reservoir at Lake Conroe).

10. In Order No. 4 filed on July 18, 2019, the ALJ deemed the application administratively complete.

Notice

11. On August 8, 2019 and August 27, 2019, Undine Texas Environmental filed the affidavit of Carey A. Thomas, senior vice president, attesting that notice was provided to all current wastewater customers of Nerro Supply, neighboring utilities, counties, cities, and affected parties on July 26, 2019 and August 27, 2019.

12. In Order No. 6 filed on September 12, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

13. On December 9, 2019, Commission Staff filed a joint motion to admit evidence.

14. In Order No. 8 filed on January 22, 2020, the ALJ admitted the following evidence into the record: (a) the application, filed on March 27, 2019; (b) Undine Texas Environmental's response to Commission Staff's first request for information, filed on July 23, 2019 (c) Undine Texas Environmental's proof of notice and supporting documentation, filed on August 8, 2019; (d) Undine Texas Environmental's responses to Commission Staff's second request for information, filed on August 26, 2019; (e) Undine Texas Environmental's supplement to its proof of notice, filed on August 27, 2019; and (f) Commission Staff's recommendation on the transaction, and attachments thereto, filed on October 24, 2019.

System Compliance—TWC § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

15. Nerro Supply's facilities are currently in compliance with the TCEQ design criteria and operation requirements and have no reported violations.

16. Nerro Supply has not been subject to any enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of the Attorney General, or the United States Environmental Protection Agency.

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

17. Nerro Supply is serving 394 existing customers in the requested area using three wastewater facilities and wastewater discharge permits.
18. There is no further construction necessary to provide adequate service to the requested area.

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

19. There are 394 existing connections in the areas to be transferred, therefore there is a need for service.
20. 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)

21. Nerro Supply and Undine Texas Environmental are the only utilities affected by this sale and transfer.
22. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
23. 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)

24. Undine Texas Environmental has extensive experience operating sewer systems and has no violations listed in the TCEQ database.
25. Undine Texas Environmental has the managerial and technical capability to provide continuous and adequate service to the requested area.

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)

26. Undine Texas Environmental has a debt-to-equity ratio of 0.39 which is less than one, satisfying the leverage test.
27. Undine Texas Environmental 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.
28. Undine Texas Environmental has demonstrated the financial capability and stability to provide continuous and adequate water service.

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)

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

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

32. There is no need to require Undine Texas Environmental 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)

33. The requested area will continue to be served by existing facilities and no construction is needed; therefore, the proposed transaction will not adversely impact the environmental integrity of the land.

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

34. Because the area will be served by existing facilities and only no construction is needed, there will be no 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)

35. Undine Texas Environmental will continue to provide the same level of water service as has already been provided to the existing customers in the area.
36. 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)

37. Because Undine Texas Environmental does not anticipate building any new facilities to continue serving the requested area, 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 Environmental has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area. TWC § 13.301(b).
3. The applicants have demonstrated that the sale of Nerro Supply's sewer facilities and the transfer of service area under sewer CCN number 20366 to Undine Texas Environmental will serve the public interest and 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 Nerro Supply and Undine Texas Environmental 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 applicants must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. The applicants have 180 days to complete the transaction.
4. 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.

5. The applicants are advised that the corresponding service areas will remain under sewer CCN number 20366 and held by Nerro Supply until the sale and transfer transaction is complete in accordance with Commission rules.
6. 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.
7. Within 15 days following the filing of 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 28th day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



STEVEN LEARY
ADMINISTRATIVE LAW JUDGE