



Control Number: 49382



Item Number: 61

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DOCKET NO. 49382



APPLICATION OF NERRO SUPPLY §
INVESTORS, 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

NOTICE OF APPROVAL

This Notice of Approval addresses the application Nerro Supply, LLC and Undine Texas Environmental, LLC for the sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Walker counties. The Commission approves the sale and transfer of portions of Nerro Supply’s facilities and sewer service area under certificate of convenience and necessity (CCN) number 20366 to Undine’s CCN number 20816.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro Supply is a Texas limited liability company registered with the Texas secretary of state under file number 801380548.
2. Nerro Supply operates, maintains, and controls facilities for providing sewer service in Chambers, Harris, and Walker counties under CCN number 20366.
3. Nerro Supply owns three sewer systems in Chambers, Harris and Walker counties, permitted with the Texas Commission on Environmental Quality (TCEQ) under Texas Pollutant Discharge Elimination System (TPDES) permit numbers WQ0013643-001, WQ0003792-000, and WQ0014154-001.
4. Undine is a Texas limited liability company registered with the Texas secretary of state on April 15, 2013 under file number 801768069.
5. Undine is an operates, maintains, and controls facilities for providing sewer service in Brazoria, Tarrant, Parker, Johnson, and Galveston counties under CCN number 20816.

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Application

6. On March 27, 2019, the applicants filed an application for the approval of the sale and transfer of Nerro Supply's sewer facilities and service area held under CCN number 20366 in Chambers, Harris, and Walker counties to Undine under sewer CCN number 20816.
7. The three sewer facilities and sewer discharge permits owned by Nerro Supply being transferred as a result of this application are:
 - (a) Bayridge Sewer Treatment Plant, operated under TPDES permit number WQ0013643-001;
 - (b) Greens Bayou Fabrication Yard Facility, operated under TDPEs permit number WQ0003792-000; and
 - (c) HUI Enterprises, Inc. (Wildwood Shores), operated under TDPEs permit number WQ0014154-001.
8. 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:

Bayridge and Oaks at Houston Point: 143 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 by Cedar Point Road;

Green Bayou Fabrication Yard: 254 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

HUI Enterprises, Inc. (Wildwood Shores): 240 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; and on the south and west by Lake Paula (reservoir at Lake Conroe).

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 and 27, 2019, Undine 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 and August 27, 2019.
11. In Order No. 6 filed on September 5, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

12. In Order No. 7 filed on November 5, 2019, the ALJ admitted the following evidence into the record: (a) the application filed on March 27, 2019; (b) proof of notice filed on August 8 and 27, 2019; and (c) Commission Staff's recommendation on the sale to proceed filed on October 24, 2019.
13. On December 9, 2019, the parties 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's responses to Commission Staff's first request for information filed on July 23, 2019; (c) Undine's proof of notice and supporting documentation filed on August 8, 2019; (d) Undine's responses to Commission Staff's second request for information filed on August 26, 2019; (e) Undine's supplement to its proof of notice filed on August 27, 2019; and (f) Commission Staff's recommendation on transaction and attachments thereto filed on October 24, 2019.
15. On October 15, 2020, Commission Staff filed a joint supplemental motion to admit evidence.
16. In Order No. 13 filed on November 6, 2020, the ALJ admitted the following evidence into the record: (a) the applicants' closing documents, filed partially under confidential seal, filed on July 6 and 7, 2020; (b) Commission Staff's closing documents sufficiency recommendation filed on July 22, 2020; (c) the applicants' consent forms filed on September 21, 2020; and (d) the maps, certificate, and tariff attached to the joint motion to admit evidence and proposed notice of approval filed on October 15, 2020.

Sale

17. In Order No. 9 filed on January 28, 2020, the ALJ approved the transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
18. On July 6, 2020, the applicants filed notice that the sale had closed on June 30, 2020, along with the attached bill of sale and affidavit of customer deposits evidencing the transfer of the customer deposits. The applicants filed an accompanying list of customers, incorporated by reference in the affidavit, under confidential seal.
19. In Order No. 10 filed on July 31, 2020, the ALJ found the closing documents sufficient.

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

20. The applicants have not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of State Health Services, the Office of Attorney General, or the United States Environmental Protection Agency.
21. There is no evidence that Undine has a history of continuing mismanagement of misuse of revenues as a utility service provider.
22. The applicants have demonstrated a compliance history adequate for the approval of the transaction.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

23. The existing customers in the requested area receive adequate service from the sewer systems requested to be transferred in this transaction.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

24. There are currently 394 existing connections in the requested areas; therefore, there is a need for service.
25. Undine has adequate financial, technical, and managerial capability to provide service to future customers.
26. 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(e)(3), 24.239(h)(5)(C)

27. Utilities within a two-mile radius were noticed and no protests were received regarding the proposed transaction; therefore, there will not be any effect on any other sewer retail public utility in the areas proximate to the requested areas.
28. The customers in the requested areas will continue to be provided adequate and continuous service after the approval of the transaction.
29. Any landowners in the requested areas that do not currently receive service from Nerro Supply will need to request service from Undine if they require service after the transaction has been completed.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (c), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(e), (h)(5)(D)

30. The sewer systems being sold and transferred are permitted with the TCEQ under TPDES permit numbers WQ0013643001, WQ0003792000, and WQ0014154001 and do not have violations listed in the TCEQ database. Therefore, they meet the TCEQ's design criteria for sewer treatment plants and the requirements of chapter 13 of the TWC.
31. Undine employs TCEQ-licensed operators who will be responsible for the operation of the sewer systems being transferred.
32. Undine 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(e)(5), 24.239(h)(5)(E)

33. The requested area is currently being served by Nerro Supply and the application does not seek to add any uncertificated area; therefore, it is not feasible to obtain service from another 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), (e)(6), 24.239(e), (h)(5)(F)

34. Undine has a debt service-coverage ratio of greater than 1.25, satisfying the leverage test.

35. Undine has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after completion of the transaction, satisfying the operations test.
36. Undine demonstrated the financial capability and stability to provide continuous and adequate sewer service to the requested area.

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

37. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7) (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

38. The proposed transaction will not adversely impact the environmental integrity of the land because the requested area is currently receiving service.
39. Because no additional construction is needed to serve the requested area, 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(e)(8), 24.239(h)(5)(H)

40. Undine will continue to provide the same level of water service as has already been provided to existing customers in the requested area.
41. 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)

42. Because the requested areas will not require construction of a physically separate sewer system, consideration of regionalization or consolidation is not necessary.

Map, Certificate, and Tariff

43. On September 3, 2020, Commission Staff emailed the applicants the final proposed maps, certificate, and tariff related to this docket.
44. On September 21, 2020, Nerro Supply and Undine filed their consent forms concurring with the maps, certificate, and tariff.
45. The final maps, certificate, and tariff were included as attachments to the joint motion to admit evidence and joint proposed notice of approval filed on October 15, 2020.

Informal Disposition

46. More than 15 days have passed since the completion of notice provided in this docket.
47. No person filed a protest or motion to intervene.
48. Nerro Supply, Undine, and Commission Staff are the only parties to this proceeding.
49. No party requested a hearing and no hearing is needed.
50. Commission Staff recommended approval of the application.
51. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Nerro Supply and Undine are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission rules.
5. The applicants completed the sale within the time required by 16 TAC § 24.239(m).
6. The applicants complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Undine demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested areas, as required by TWC § 13.301(b) and 16 TAC § 24.239(g).
8. The applicants demonstrated that the sale of Nerro Supply's sewer systems and the transfer of the corresponding service area will serve the public interest and is necessary for the continued service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d).

¹ Tex. Gov't Code §§ 2001.001-.903.

9. It is not necessary for Undine to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Undine meets the requirements of TWC §§ 13.241(c) and 13.301(b) to provide sewer utility service.
11. Undine must record a certified copy of the certificate granted and maps approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Chambers, Harris and Walker counties within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC§ 13.257(r) and (s).
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the sale and transfer of a portion of Nerro Supply's facilities and sewer service area under CCN number 20366 to Undine's CCN number 20816 to the extent provided in this Notice of Approval.
2. The Commission issues the certificates attached to this Notice of Approval.
3. The commission approves the maps attached to this Notice of Approval.
4. The Commission approves the tariffs attached to the joint motion to admit evidence and proposed notice of approval filed on October 15, 2020.
5. Undine must serve every customer and applicant for service within the approved area under sewer CCN number 20816 who requests sewer service and otherwise meets the terms of Undine's sewer service, and such service must be continuous and adequate.
6. Nerro Supply must serve every customer and applicant for service within the approved area under sewer CCN number 20366 who requests sewer service and otherwise meets the terms of Nerro Supply's sewer service, and such service must be continuous and adequate.
7. Undine must comply with the recording requirements in TWC § § 13.257(r) and (s) for the areas in Chambers, Harris, and Walker counties affected by the application and submit to

the Commission evidence of the recording no later than 45 days after receipt of this Notice of Approval.

8. Nerro Supply must comply with the recording requirements in TWC § § 13.257 (r) and (s) for the areas in Chambers and Harris counties affected by the application and submit to the Commission evidence of the recording no later than 45 days after receipt of this Notice of Approval.
9. Within ten days of the date of this Notice of Approval, Commission Staff must provide clean copies of the tariffs approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
10. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

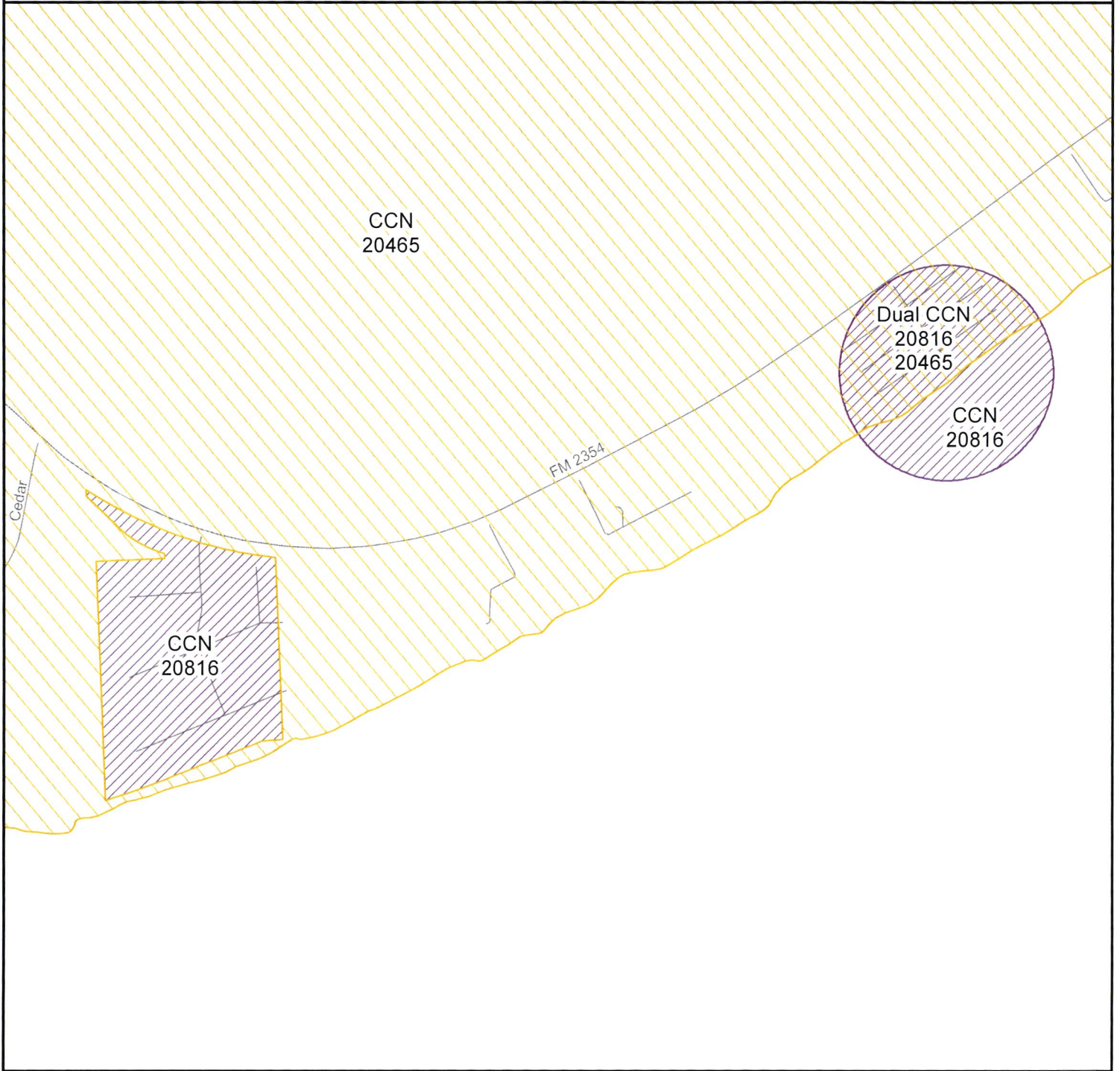
Signed at Austin, Texas the 10th day of November 2020.

PUBLIC UTILITY COMMISSION OF TEXAS





STEVEN LEARY
ADMINISTRATIVE LAW JUDGE

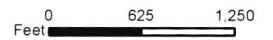
Undine Texas Environmental, LLC
Portion of Sewer CCN No. 20816
PUC Docket No. 49382
Transferred a Portion of Nerro Supply, LLC., CCN No. 20366 in Chambers County



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1701 N. Congress Ave
Austin, TX 78701

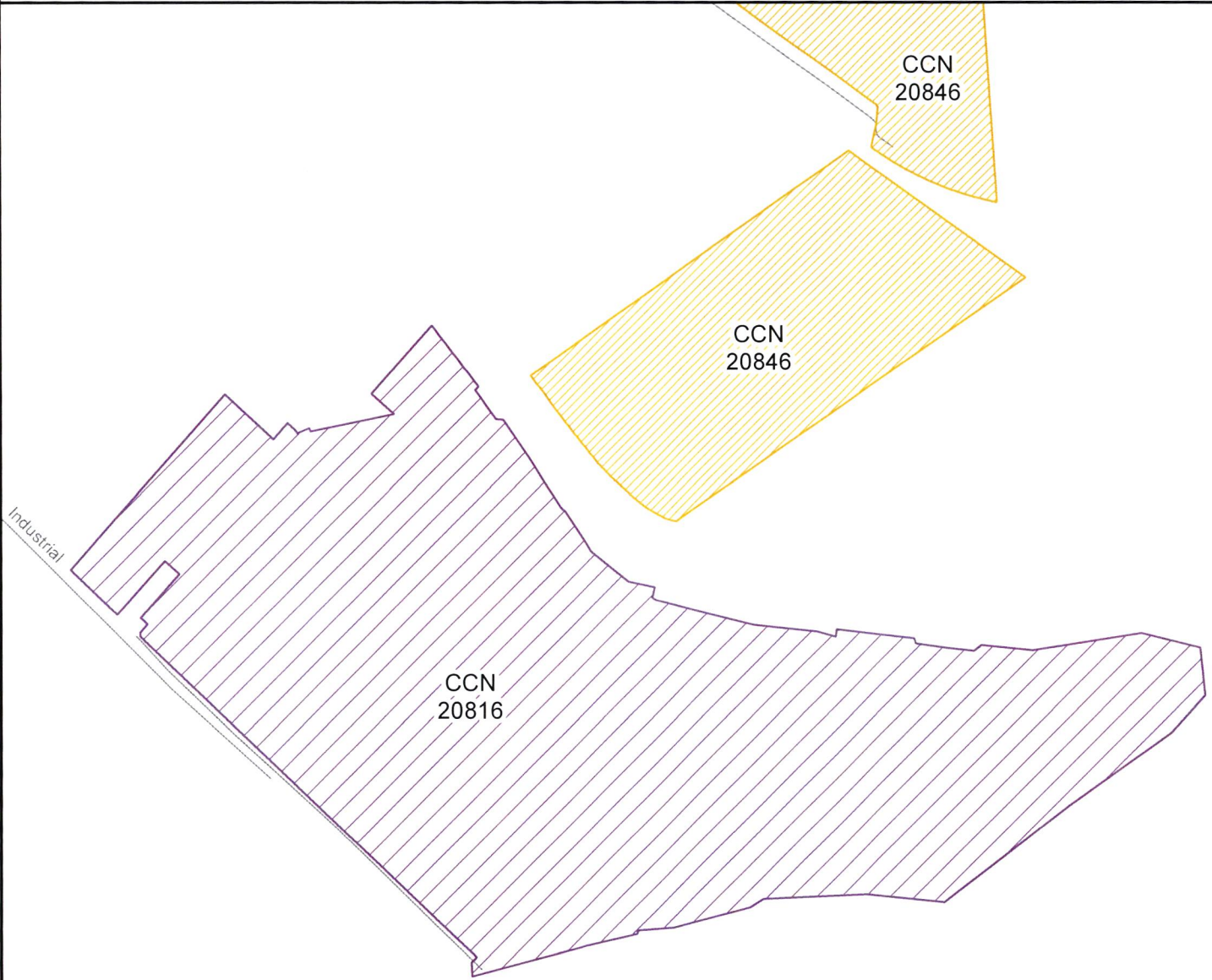
Sewer CCN

-  20816 - Undine Texas Environmental LLC
-  20465 - Gulf Coast Waste Disposal Authority





Map by: Komal Patel
Date created: August 10, 2020
Project Path: n:\finalmapping\
49382UndineChambers.mxd

Undine Texas Environmental, LLC
Portion of Sewer CCN No. 20816
PUC Docket No. 49382
Transferred a Portion of Nerro Supply, LLC., CCN No. 20366 in Harris County



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Austin, TX 78701

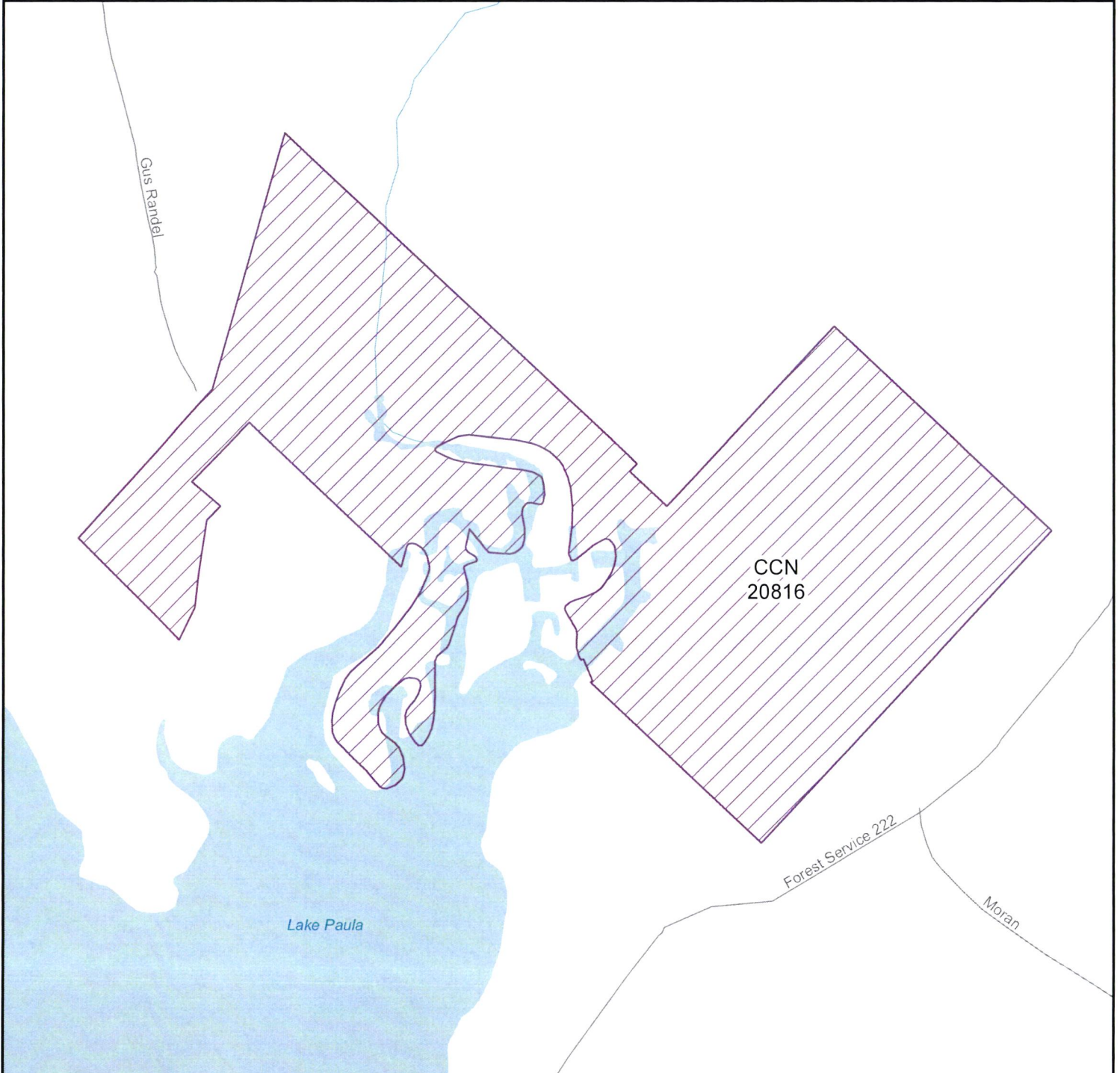
Sewer CCN

-  20816 - Undine Environmental LLC
-  20846 - GB Biosciences Corp



Map by: Komal Patel
Date created: August 10, 2020
Project Path: n:\finalmapping\
49382UndineHarris.mxd

Undine Texas Environmental, LLC
Portion of Sewer CCN No. 20816
PUC Docket No. 49382
Nerro Supply, LLC., CCN No. 20366 in Walker County



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Sewer CCN

 20816 - Undine Texas Environmental LLC

0 450 900
Feet



Map by: Komal Patel
Date created: August 10, 2020
Project Path: n:\finalmapping\
49382UndineWalker.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Undine Texas Environmental, LLC

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Undine Texas Environmental, LLC is entitled to this

Certificate of Convenience and Necessity No. 20816

to provide continuous and adequate sewer utility service to that service area or those service areas in Brazoria, Chamber, Harris, Parker, Tarrant, and Walker Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49382 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Undine Texas Environmental, LLC to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 10th day of November 2020.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Nerro Supply, LLC

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Nerro Supply, LLC is entitled to this

Certificate of Convenience and Necessity No. 20366

to provide continuous and adequate sewer utility service to that service area or those service areas in Chambers, Harris, and Liberty Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49382 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Nerro Supply, LLC to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 10th day of November 2020.