



Control Number: 49570



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Addendum StartPage: 0

TARIFF CONTROL NO. 49570

APPLICATION OF UNDINE TEXAS, §
LLC FOR A PASS THROUGH RATE §
CHANGE §

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BEFORE THE PUBLIC UTILITY COMMISSION
OF TEXAS
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**UNDINE TEXAS, LLC’S RESPONSE TO
COMMISSION STAFF’S RECOMMENDATION
AND MOTION TO DISMISS**

Undine Texas, LLC (Undine) files this response to the Public Utility Commission (Commission) Staff’s Recommendation on the Application and Motion to Dismiss filed July 1, 2019.

I. BACKGROUND

On August 7, 2017, Undine and Consumers Water, Inc. (Consumers) filed the Application of Undine Texas, LLC and Consumers Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties in Docket No. 47477 (STM Application).¹ In the STM Application, Undine requested approval for its acquisition of all of the water systems under the Consumers Certificate of Convenience and Necessity (CCN) No. 10347. The transaction was approved by the Commission on December 4, 2017, and the transaction closed on July 2, 2018.² The Commission has not issued a final Notice of Approval on the STM Application—over a year after closing.

The Commission also approved the purchase by Undine of two additional systems owned by Consumer’s owners: Community Utility Company (Community STM)³ and Suburban Utility Company (Suburban STM).⁴ On September 22, 2017, the Commission adopted an Emergency

¹ *Application of Undine Texas, LLC and Consumers Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*, Docket No. 47477, Application for Sale, Transfer, or Merger of a Retail Public Utility (Aug. 7, 2017).

² Docket No. 47477, Order No. 6, Approving Transaction to Proceed (Dec. 4, 2017).

³ *Application of Community Utility Company and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*, Docket No. 47441, Order No. 4, Approving Sale/Transfer to Proceed (Nov. 27, 2017).

⁴ *Application of Undine Texas, LLC and Suburban Utility Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*, Docket No. 47396, Order No. 6, Approving Sale and Transfer Transaction to Proceed (Oct. 13, 2017).

4

Order appointing Undine as Temporary Manager of Suburban Utility Company (Suburban).⁵ Thereafter, Undine acted as Temporary Manager of Suburban until December 21, 2018, when the Commission issued its Notice of Approval in the Suburban STM docket.⁶ The tariff approved in the Suburban STM includes the CCN for not only the Suburban systems, but also the Consumers and Community Utility Company (Community) systems.⁷

The Commission approved the sales of all three STMs in late 2017.⁸ Undine closed on Suburban, Consumers, and Community on July 2, 2018 and has been the legal owner of the all three systems since that time, but the Commission has only issued a Notice of Approval in the Suburban STM. All necessary pleadings, notice, and evidence have been admitted into the record in both the Community and Consumers STMs, and Undine has been waiting on the issuance of a Notice of Approval in both dockets for months.⁹

Undine filed the immediate application for approval of pass through rate changes for subdivisions in the former Consumers CCN, because Undine has owned and operated these systems for over a year, has been issued a tariff including the former Consumers systems, and is losing significant sums of money each day on increased pass through fees and line losses.

II. INTRODUCTION

The Commission should deny Staff's Recommendation on the Application and Motion to Dismiss. The outcome prejudices Undine by requiring it to continue charging rates that result in a shortfall in revenues to be paid to groundwater districts and water suppliers, on a system that it

⁵ *Commission Staff's Application for an Emergency Order Appointing a Temporary Manager to Suburban Utility Company Under Texas Water Code § 13.4132*, Docket No. 47638, Order Affirming Emergency Order (Oct. 26, 2017).

⁶ Docket No. 47396, Notice of Approval (Dec. 21, 2018).

⁷ *Id.*

⁸ Docket No. 47396, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018); Docket No. 47441, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018); Docket No. 47477, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018).

⁹ Docket No. 47477, Order No. 11 Admitting Evidence (Jan. 3, 2019); Docket No. 47477, Order No. 13 Admitting Additional Evidence (Jun. 11, 2019); Docket No. 47441, Order No. 9 Admitting Evidence (Jan. 3, 2019).

legally owns and operates. The Commission's rules instruct that for pass-through rate filings, line loss will be considered on a case-by-case basis. Undine is currently unable to rectify the increased pass through fees and actual line losses suffered by these systems, yet it will be required to make up the revenue shortfall between the amounts billed by the groundwater districts and water suppliers and the amounts Undine is able to recover from the customers of the system. The resulting shortfall works an inequitable hardship on Undine, and is not required by the Commission's rules. Undine should not suffer economic hardship due to the Commission's delay in issuing a Notice of Approval in the Consumers STM docket.

III. ARGUMENT

Undine is the legal owner of the systems serving the subdivisions at issue in this application. When the Commission approved the Suburban STM in Docket No. 47396, it approved a tariff that includes the Consumers CCN.¹⁰ Undine has diligently served these customers as the owner and operator of the former Consumers systems for over a year. If the Commission grants the Motion to Dismiss, Undine will forever be unable to recoup money lost due to increased pass through fees from water suppliers or groundwater districts or grossing up for line losses. While Undine was only appointed Temporary Manager of the Suburban systems, the Consumers and Community systems were in similarly distressed conditions. Undine has committed to improving all three systems owned by the owners of Consumers, and has already invested significant amount of capital on improvements in order to improve line losses and better serve its customers.¹¹ Undine cannot recover the costs spent undertaking the large number of repairs and improvements across the Consumers and Community systems until the Commission issues a Notice of Approval in both dockets, even though it owns and operates both systems.

¹⁰ Docket No. 47396, Notice of Approval (Dec. 21, 2018).

¹¹ *Petition for an Order Appointing a Temporary Manager to Suburban Utility Company Pursuant to Tex. Water Code Ann. § 13.4132 and 16 TAC § 24.142*, Docket No. 47638, Commission Staff's Application for an Emergency Order Appointing a Temporary Manager to Suburban Utility Company Without a Hearing at Attachment 2 (Sep. 22, 2017). Undine has committed to making significant capital improvements as part of its role as Temporary Manager and purchase of the Suburban system, but its commitment extends to all three systems owned by the Martin Brothers.

Staff argues in its recommendation that Undine lacks standing to request pass through rate changes. Staff states that the Commission must file a Notice of Approval in Docket No. 47477 in order to grant Undine the CCN rights over the subdivisions included in this application. Undine's Tariff under CCN No. 13260 includes the former Consumers CCN No 10347. Therefore, Undine's tariff includes the CCN rights over the subdivisions included in this application. Additionally, Staff misstates that Undine does not own these subdivisions.¹² Undine does own the systems serving these subdivisions,¹³ and is merely waiting for approval of the CCN transfer. Undine has owned and operated these systems for over a year while waiting for the Commission to issue its Notice of Approval.

The Commission considers line loss applications on a case-by-case basis.¹⁴ Undine urges the Commission to consider this application as a unique instance where the utility owns and operates the systems but is prevented from recovering increased pass through fees due to the significant delay in approving the pending STM application.

Granting Staff's Motion to Dismiss will result in a continued shortfall in revenues to be paid to the water supplier or groundwater district that Undine cannot charge its customers. If Undine cannot recover the increased pass through fees at the same rate as in 2018, Undine will face a shortfall of over \$114,000 per year, with no source of revenue to meet the shortfall other than its own funds. Undine will not be able to recover these revenues from the customers of the subdivisions they serve; it is unreasonable to require Undine's shareholders to cover the shortfall when the delay in the ability to recover is caused by the Commission's inaction.

¹² Commission Staff's Recommendation on the Application and Motion to Dismiss, Memorandum from Roshan Pokhrel (Jul. 1, 2019).

¹³ Docket No. 47396, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018); Docket No. 47441, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018); Docket No. 47477, Notice of Proof that Transaction has been Consummated and Customer Deposits have been Properly Addressed (Jul. 16, 2018).

¹⁴ Tex. Admin. Code § 24.25(b)(2)(E).

Alternately, Undine urges the Commission to issue a Notice of Approval in Docket No. 47477 (and in Docket No. 47441), rendering Staff's Motion to Dismiss moot.

IV. CONCLUSION

Undine respectfully request the Commission deny Staff's Recommendation on the Application and Motion to Dismiss, and requests that the Commission issue a Notice of Approval in Docket No. 47477, as requested herein. Undine further asks for all other relief in law or equity to which it is entitled.

Respectfully submitted,

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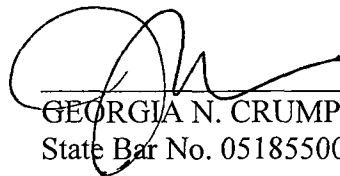
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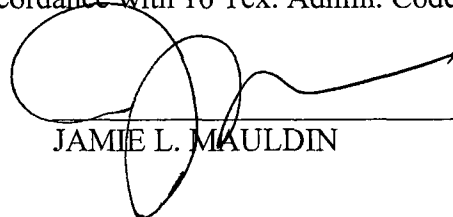
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ATTORNEYS FOR UNDINE TEXAS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, true and correct copy of the foregoing document has been served on all parties of record in accordance with 16 Tex. Admin. Code § 22.74.



JAMIE L. MAULDIN