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DOCKET NO. 50017



APPLICATION OF PURE UTILITIES, §
LC AND UNDINE TEXAS, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
WATER FACILITIES AND §
CERTIFICATE RIGHTS IN LIBERTY, §
POLK, SAN JACINTO, AND TYLER §
COUNTIES, AND TO DECERTIFY A §
PORTION OF PURE UTILITIES, LC'S §
CERTIFICATED AREA AND TO §
AMEND UNCERTIFICATED WATER §
SERVICE AREA IN LIBERTY AND §
POLK COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

**UNDINE TEXAS, LLC'S RESPONSE TO
ORDER NO. 7**

COMES NOW, Undine Texas, LLC ("Undine") and files this Response to Order No. 7 (Docket ID No. 50017-26). Order No. 7 established a procedural schedule requiring, in part, that Commission Staff request a hearing or file a recommendation on the approval of the sale and on the CCN amendment not later than April 20, 2020. Undine submits this response to assert that the proper course in this matter, legally and procedurally, is for the sale to be approved without a hearing. In support, Undine provides the following discussion.

Order No. 4 (Docket ID No. 50017-24) granted the motion to intervene of a single individual, JC Gafford. By letter received by the Commission on February 19, 2020 (Docket Id. No. 50017-18), Mr. Gafford raises a single issue in objection to the application—a speculative concern that Undine will increase the customer cost for water service. As Mr. Gafford states it, he is "totally against not only Undine Texas purchasing the above captioned water company but any water company who intends in any way increasing (sic) the amount it's (sic) customers pay for water . . ." (Docket Id. No. 50017-18, p. 1). Mr. Gafford asserts in his letter that "the proposal of Undine Texas will raise the base rates from \$30.23 to \$58.30 or 92.85% increase." (Docket Id. No. 50017-18, p. 2).

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This is an STM application pursuant to 16 Tex. Admin Code § 24.239. Section 24.239(j) provides that the Commission may require a hearing in the event that one of following five conditions is satisfied:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;

(3) the transferee has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or

(5) there are concerns that the transaction does not serve the public interest.

16 Tex. Admin. Code 24.239(j).

Nowhere in Mr. Gafford's protest does he identify an issue that speaks to any of the five conditions necessary to provide the Commission discretion to require a hearing. As indicated, his protest identifies a single issue—a concern that Undine may raise rates for its customers. That single concern does not suggest the application or the public notice was improper (24.239(j)(1)). That issue does not suggest any concern about the adequacy of Undine's (as the transferee) financial, managerial, or technical capability (24.239(j)(2)). It does not question whether Undine has a history of noncompliance or mismanagement or misuse of revenues (24.239(j)(3)). It does not allege or call into question Undine's financial ability to provide the necessary capital investment (24.239(j)(4)).

Nor does his protest suggest any concerns that the transaction does not serve the public interest. The Commission's rules specify that it is in the public interest to investigate the following factors:

(A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order.

(B) the adequacy of service currently provided to the requested area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;

(E) the ability of the transferee to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.

16 Tex. Admin. Code 24.239(j)(5)(A-I).

It is evident on its face that the Mr. Gafford's concern that Undine could raise rates does not speak to the issues identified in 24.239(j)(5)(A-H). Mr. Gafford's concern also does not speak to the issue identified in 24.239(j)(5)(I)—the "probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction." His concern does not raise any question about the quality of service Undine will provide. Nor does it raise a

question about “lowering of cost to consumers.” A speculative concern that Undine could raise rates, particularly without any basis for the concern, is not relevant to the inquiry.

Further, Mr. Gafford bases his concern on a false assumption that “the proposal of Undine Texas will raise the base rates from \$30.23 to \$58.30 or 92.85% increase.” (Docket Id. No. 50017-18, p. 2). That is not the case. It cannot be the case in this STM application, since any rate change for the system would require a separate adjudication of the rates. Further, Undine states in its application that it will not be increasing rates pursuant to the application. Mr. Gafford’s single concern about the potential increase in rates is a concern that is relevant to a rate proceeding—if and when the utility determines a need to revise the rates for the system. It is not a concern that is relevant to an STM application. It is not a concern as reflected in the standards set out in 24.239(j).

Importantly, the standards set out in 24.239(j) establish when the Commission may require a hearing. To the extent the Commission finds that Mr. Gafford’s protest does somehow speak to one of the standards (which Undine insists it does not), the Commission should apply its discretion under 24.239 to properly defer Mr. Gafford’s concerns to a rate case if and when rates are put into issue for this system. Such speculative rate concerns as voiced by Mr. Gafford are not relevant to an STM application and should therefore not be allowed to delay an STM application or the underlying transaction.

Undine respectfully requests that a hearing not be required on this application, consistent with the Commission’s rules.

Respectfully submitted,

DuBois, Bryant & Campbell, LLP

By: /s/ Peter T. Gregg
Peter T. Gregg
State Bar No. 00784174
303 Colorado, Suite 2300
Austin, Texas 78701
pgregg@dbcllp.com
(512) 457-8000
(512) 457-8008 (fax)

Attorneys for Undine Texas, LLC

CERTIFICATE OF SERVICE

I certify by my signature above that a true and correct copy of the foregoing document was served on the persons as indicated below on this the 14th day of April, 2020:

John Harrison
Public Utility Commission of Texas
Legal Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
john.harrison@puc.texas.gov

John D. Stover
Skelton, Slusher, Barnhill,
Watkins, Wells PLLC
1616 S. Chestnut Ave.
Lufkin, Texas 75901
jstover@skeltonslusher.com

JC Gafford
423 Lakeshore Dr.
Cleveland, TX 77327
First Class Mail