



Control Number: 50017



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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** §  
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**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE AND ON THE CERTIFICATE OF CONVENIENCE AND NECESSITY AMENDMENT**

**COMES NOW** the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Approval of the Sale and on the Certificate of Convenience and Necessity Amendment. In support thereof, Staff shows the following:

**I. BACKGROUND**

On September 17, 2019, Pure Utilities, LC (Pure) and Undine Texas, LLC (Undine) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Liberty, Polk, San Jacinto and Tyler Counties. The Applicants seek to transfer Pure's water systems and all but 233 acres of the water service area held under certificate of convenience and necessity (CCN) No. 12072 to Undine's CCN No. 13260. The requested transfer includes approximately 4,137 acres and 1,059 current customers. The 233 acres in Pure's existing CCN that are not included in the transaction will be decertified. In addition, Undine is requesting a CCN amendment for uncertificated area that includes 1,190 acres and for dual certification of 95 acres with Tempe Water Supply Corporation.

On April 13, 2020, Order No. 7 was issued establishing a deadline of April 20, 2020, for Staff to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

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## **II. RECOMMENDATION**

As supported by the attached memorandum of Roshan Pokhrel of the Commission's Infrastructure Division, Staff recommends and respectfully requests an entry of an order permitting the proposed transaction to proceed.

Staff recommends that the proposed transaction be found to satisfy the criteria in Texas Water Code § 13.246(c). If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence, within 30 days of the effective date of the transaction, demonstrating that all assets have been transferred to Undine, and that the disposition of any customer deposits have been addressed pursuant to 16 Texas Administrative Code (TAC) §24.239(m) and (n).

The approval of the sale expires 180 days from the date of the Commission's written approval of the sale. In addition, the CCN will remain in the name of the seller until the transfer is completed and approved in accordance with the Commission's rules and regulations as required by 16 TAC §24.239(o).

## **III. RESPONSE TO INTERVENOR COMMENTS**

On February 19, 2020, JC Gafford filed a request for intervention, and on March 6, 2020, the ALJ granted the intervention. Mr. Gafford's intervention request is formatted as a protest letter and indicates he is against the transaction contemplated by this docket, as he believes it will lead to rate increases. Under 16 TAC § 24.239(j), the Commission may require a hearing under certain circumstances. Mr. Gafford's letter does not allege anything that falls within the scope of 16 TAC § 24.239(j). In addition, Undine Texas will be required to continue to charge the rates contained in Pure's current tariff even if this docket is approved and must file an application for authority to change rates with the Commission before it can propose a change in the current rates.<sup>1</sup> Consequently, Staff respectfully recommends that a public hearing should not be required on the grounds that the proposed transaction will increase the rates paid by Pure's existing customers.

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<sup>1</sup> Undine, currently has a rate case pending for the Commission; however, the rate approved in that case will not be applicable to Pure's current customers. Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates, Docket No. 50200 (pending).

**IV. CONCLUSION**

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

**Dated: April 20, 2020**

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 20, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ John Harrison  
John Harrison

## PUC Interoffice Memorandum

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**To:** John Harrison, Attorney  
Legal Division

**From:** Roshan Pokhrel, Engineering Specialist  
Infrastructure Division

**Date:** April 20, 2020

**Subject:** **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*

On September 17, 2019, Undine Texas, LLC (Purchaser or Undine) and Pure Utilities, LC (Seller) (collectively, Applicants) filed with the Public Utility Commission of Texas (Commission) an application for sale, transfer, or merger of facilities and certificate rights in Liberty, Polk, San Jacinto, and Tyler Counties, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code § 24.239.

### **Background**

The Purchaser seeks approval to transfer all of the service area under Seller's water CCN No. 12072 to its water CCN No. 13260, to amend CCN No. 13260 with uncertificated area, and to decertify a small area to clean up the service area boundaries. Also, the Purchaser is requesting dual certification with Tempe Water Supply Corporation, CCN No. 11579. The agreement letter for dual certification was filed with the application. Further, the Applicants are requesting to cancel the seller's CCN. The entire requested area subject to this transaction includes approximately 5,095 acres and 1,059 customers. The area to be transferred is approximately 4,137 acres, the additional area to be amended is approximately 1,190 acres, and the area to be decertified is approximately 233 acres. The area for dual certification is approximately 95 acres. The uncertificated area the Purchaser is seeking to certify as a part of this application is currently being served by the Seller with adequate capacity. No additional construction will be necessary to serve the requested uncertificated area.

### **Notice**

The comment period ended on February 17, 2020, and no opt-out requests were received. On February 19, 2020, JC Gafford filed a request to intervene and on March 6, 2020, the Commission administrative law judge (ALJ) granted the intervention. Based on the nature of the intervention, Staff recommends that the public hearing is not necessary.

### **Criteria Considered**

TWC Chapter 13 and 16 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 requested area is currently served by Pure Utilities, LC, with several public water systems which are registered with Texas Commission on Environmental Quality (TCEQ).

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

There is a need for service as there are approximately 1,059 existing customer connections in the requested area. Also, the uncertificated area the Purchaser is requesting has existing customers and is currently served by the Seller.

***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.***

A small portion of the Seller's existing CCN is to be decertified to clean up the CCN boundaries. The Seller's CCN will be cancelled. Also, the Purchaser is requesting dual certification with Tempe Water Supply Corporation, CCN No. 11579. The agreement letter for dual certification was filed with the application. The landowners will benefit because they won't have to drill individual wells.

***TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.***

The Purchaser is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and has access to an adequate supply of water. The Purchaser has executed compliance agreements with TCEQ for some of its public water systems that were acquired while under a temporary manager. Additional construction is not necessary because the requested additional uncertificated area already includes customers currently being served by Seller and the existing infrastructure and distribution lines used to serve them.

***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.***

This criterion was not considered because no construction was required to provide service to the requested area.

***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 the existing customers with several public water systems registered with TCEQ, 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 include a leverage test and operations test. The Purchaser provided an unaudited consolidated balance sheet to represent its financial position as of December 31, 2018.

The Commission rules identify five leverage tests. The applicant must demonstrate that it meets one of the five tests. The Purchaser meets the first test with a debt to equity ratio of less than one calculated as follows: long term debt of \$ [REDACTED] divided by net position of \$ [REDACTED] equals

0.19 which is less than one.<sup>1</sup>

16 TAC § 24.11(e)(3) refers to the operations test, which requires that 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 in its application and there are no operational shortages to cover.<sup>2</sup> No improvements are needed to provide continuous and adequate service to the requested area. Therefore, the Purchaser meets the operations test.

***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 Purchaser 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 certificate.***

There will be no negative effect on the environment. This transaction also eliminates the need for landowners to use individual wells, thus protecting the environment.

***TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.***

Water rates will not change as a result of the transaction.

Staff recommends that the Purchaser meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Approving this application to transfer the area under water CCN No. 12072 to the Purchaser, amending the Purchaser's CCN No.13260, and cancelling the Seller's CCN is necessary for the service, accommodation, convenience and safety of the public. Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction.

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<sup>1</sup> Confidential – Attachment H – Financial Information Bate Stamp 88-97 at 97.

<sup>2</sup> Id at 94.