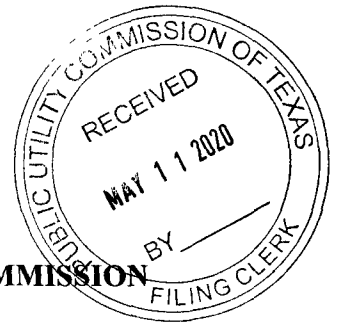


Control Number: 50017



Item Number: 33

Addendum StartPage: 0



**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**

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING  
SALE/TRANSFER TO PROCEED**

COME NOW, Undine Texas, LLC (Undine), for itself and on behalf of and Pure Utilities, LC (Pure) (collectively, Applicants) together with the Staff of the Public Utility Commission of Texas (Staff), (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. In support thereof, the Parties show the following:

**I. BACKGROUND**

On September 17, 2019, Applicants filed an application for sale, transfer, or merger of water facilities and certificate rights in Liberty, Polk, San Jacinto and Tyler Counties, Texas. On November 18, 2019, Applicants filed supplemental information. Specifically, 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 an uncertificated area that includes 1,190 acres and for dual certification of 95 acres with Tempe Water Supply Corporation, CCN 11579.

On April 20, 2020, Staff filed a recommendation requesting the entry of an order permitting the proposed transaction to proceed. Order No. 6, issued on April 6, 2020, required that the Parties submit a motion to admit evidence and a proposed order approving the sale/transfer to proceed by May 11, 2020. This pleading is therefore timely filed.

## **II. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following into the record evidence of this proceeding:

- (a) Applicants' application, including confidential materials, filed on September 17, 2019 (AIS Item Nos. 1-7) and as supplemented on November 18, 2019 (AIS Item No. 11);
- (b) Commission Staff's recommendation on administrative completeness and proposed procedural schedule, filed on December 18, 2019 (AIS Item No. 12);
- (c) Applicants' proof of notice and supporting documentation, including confidential material, filed on February 18, 2020 (AIS Item Nos. 16, 17);
- (d) Commission Staff's recommendation on notice, filed on March 12, 2020 (AIS Item No. 20); and
- (e) Commission Staff's recommendation on approval of the sale and on the CCN amendment, filed on April 20, 2020 (AIS Item Nos. 29 and 30).

## **III. JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

The attached Joint Proposed Order Approving Sale/Transfer to Proceed would approve the sale and authorize the transaction proposed in the application to proceed.

## **IV. CONCLUSION**

The Parties respectfully request that the Commission grant the Motion to Admit Evidence, and adopt the attached Joint Proposed Order Approving Sale/Transfer to Proceed.

Respectfully Submitted,

**DuBois, Bryant & Campbell, LLP**

By: \_\_\_\_\_

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**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 11th day of May, 2020:

John Harrison  
Public Utility Commission of Texas  
Legal Division  
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**DOCKET NO. 50017**

<b>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</b>	<b>§ § § § § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas, LLC (Undine) and Pure Utilities, LC (Pure) (collectively, Applicants) for sale, transfer, or merger of water facilities and certificate rights in Liberty, Polk, San Jacinto and Tyler Counties, Texas, to transfer Pure's water systems held under certificate of convenience and necessity (CCN) No. 12072 to Undine's CCN No. 13260. The Commission approves the sale and authorizes the transaction proposed in this application to proceed.

**I. Findings of Fact**

The Commission makes the following findings of fact:

**Applicants**

1. Pure is a domestic limited company registered with the Texas secretary of state under file number 702652722.
2. Pure operates, maintains, and controls facilities for providing water service in Liberty, Polk, San Jacinto and Tyler Counties, Texas under CCN number 12072.
3. Undine is a Delaware limited liability company registered with the Texas secretary of state under file number 802339329.
4. Undine operates, maintains, and controls facilities for providing water service in Liberty, Polk, San Jacinto and Tyler Counties, Texas under CCN number 13260.

**Application**

5. On September 17, 2019, Applicants filed an application for approval of the sale, transfer, or merger of water facilities and certificate rights in Liberty, Polk, San Jacinto, and Tyler Counties, Texas. Applicants supplemented the application on November 18, 2019.
6. Undine seeks approval to transfer Pure's water systems and all but 233 acres of the water service area held under CCN number 12072 to Undine's CCN number 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 an uncertificated area that includes 1,190 acres and for dual certification of 95 acres with Tempe Water Supply Corporation, CCN number 11579.
7. The following requested areas subject to this transaction are located as follows:

**Bar D Ranchettes**

The requested area subject to this transaction is located approximately 12 miles east/southeast of downtown Shepherd, Texas, and is generally bounded on the north by 1 mile north of Burlington Northern Santa Fe (BNSF) Railway; on the east by Cherry Creek; on the south by BNSF Railway; and on the west by 1,650 feet west of Laddis Road in Liberty County. The total area being requested includes approximately 307 acres and 41 current customers.

**Riverboat Bend**

The requested area subject to this transaction is located approximately 1.3 miles east/southeast of Kenefick, Texas, and is generally bounded on the north by FM 2797; on the east by Trinity River; and on the south by 590 feet south of River Boat Bend, and on the west by 700 feet west of River Boat Bend in Liberty County. The total area being requested includes approximately 157 acres and 42 current customers.

**Six Lakes**

The requested area subject to this transaction is located approximately 9.5 miles east of downtown Shepherd, Texas, and is generally bounded on the north and west by Menard Creek; on the east by Williams Creek; on the south by 1000 feet south of Barrett Drive in Liberty and Polk Counties. The total area being requested includes approximately 271 acres and 60 current customers.

### **Bentwood Bend**

The requested area subject to this transaction is located approximately 3.9 miles northeast of downtown Onalaska, Texas, and is generally bounded on the north and east by Rocky Creek Rd; on the south and west by Baird Branch/Kickapoo Creek in Polk County. The total area being requested includes approximately 69 acres and 23 current customers.

### **Commodore Cape**

The requested area subject to this transaction is located approximately 5.6 miles south of downtown Onalaska, Texas, and is generally bounded on the north and west by Lake Livingston; on the east by Scenic Loop; on the south by Inlet Drive in Polk County. The total area being requested includes approximately 145 acres and 105 current customers.

### **Forest Springs**

The requested area subject to this transaction is located approximately 4.6 miles east of downtown Goodrich, Texas, and is generally bounded on the north by Myrow Road; on the east by Sam Randolph Road; on the south by Bird Road; and on the west by Eagle Pass Road in Polk County. The total area being requested includes approximately 393 acres and 156 current customers.

### **Lakeside Village**

The requested area subject to this transaction is located approximately 2.6 miles south of downtown Livingston, Texas, and is generally bounded on the north by Old Highway 35; on the east by Lodia Brock Road; on the south by Stallion Station Road; and on the west by US Highway 59 in Polk County. The total area being requested includes approximately 318 acres and 130 current customers.

### **Spring Creek**

The requested area subject to this transaction is located approximately 5.3 miles southeast of downtown Onalaska, Texas, and is generally bounded on the north by Intersection of US Highway 190 and FM 3126; on the east by Hidden Valley Road; on the south by Nelson Drive; and on the west by FM 3126 in Polk County. The total area being requested includes approximately 912 acres and 135 current customers.

### **Taylor Lake Estates**

The requested area subject to this transaction is located approximately 7.7 miles east of downtown Shepherd, Texas, and is generally bounded on the north, west and south by

Trinity River; on the east by FM 2610 in Polk County. The total area being requested includes approximately 482 acres and 151 current customers.

**Texas Water Supply**

The requested area subject to this transaction is located approximately 2 miles southwest of downtown Seven Oaks, Texas, and is generally bounded on the north by Ravin Road; on the east by Long King Creek; on the south by FM 942; and on the west by Barnett Creek in Polk County. The total area being requested includes approximately 564 acres and 69 current customers.

**Tanglewood Forest**

The requested area subject to this transaction is located approximately 6.5 miles west of downtown Point Blank, Texas, and is generally bounded on the north by 550 feet north of Pecan Lane; on the east by Cleveland Road; on the south by Old Dodge Road; and on the west by Mann Road in San Jacinto County. The total area being requested includes approximately 191 acres and 25 current customers.

**Town Bluff (Mont Neches)**

The requested area subject to this transaction is located approximately 14 miles east of downtown Woodville, Texas, and is generally bounded on the north by Neches River; on the east and south by County Road 4400; and on the west by FM 92 in Tyler County. The total area being requested includes approximately 352 acres and 34 current customers.

**Barlow Lake Estates**

The requested area subject to this transaction is located approximately 16 miles east of downtown Woodville, Texas, and is generally bounded on the north and east by Neches River; on the south by 250 feet south of Mock Drive; and on the west by 250 feet of Mock Drive in Tyler County. The total area being requested includes approximately 395 acres and 15 current customers.

**Whitetail Ridge**

The requested area subject to this transaction is located approximately 8.9 miles west of downtown Woodville, Texas, and is generally bounded on the north by 200 feet north of Noble Road; on the east by 300 feet east of FM 2200; on the south by 200 feet south of Neely Road; and on the west by Horsepen Creek in Tyler County. The total area being requested includes approximately 539 acres and 73 current customers.



8. The total requested area subject to this transaction includes approximately 5,095 acres and 1,059 customers.
9. In Order No. 3 issued on December 30, 2019, the administrative law judge (ALJ) found the application administratively complete.

**Notice**

10. On February 18, 2020, Carey Thomas filed an affidavit on behalf of Undine, attesting that notice was provided to all current customers, landowners, neighboring utilities, and affected parties on January 17, 2020.
11. On February 18, 2020, Undine filed a publisher's affidavit attesting to publication of notice in *The Vindicator*, a newspaper of general circulation in Liberty County, on January 16, 2020 and January 23, 2020.
12. On February 18, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Polk County Enterprise*, a newspaper of general circulation in Polk County, on January 23, 2020 and January 30, 2020.
13. On February 18, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *San Jacinto News Times*, a newspaper of general circulation in San Jacinto County, on January 23, 2020 and January 30, 2020.
14. On February 18, 2020, Undine filed a publisher's affidavit attesting to publication of notice in the *Tyler County Booster*, a newspaper of general circulation in Tyler County, on February 6, 2020 and February 13, 2020.
15. In Order No. 5, issued on March 13, 2020, the ALJ deemed the notice sufficient.

**Evidentiary Record**

16. On May 11, 2020, the Parties filed a joint motion to admit evidence.
17. In Order No. \_\_\_\_ issued on \_\_\_\_\_, 2020, the ALJ admitted the following evidence into the record: (a) Applicants' application, including confidential materials, filed on September 17, 2019, and as supplemented on November 18, 2019; (b) Commission Staff's recommendation on administrative completeness and proposed procedural schedule, filed on December 18, 2019; (c) Applicants' proof of notice and supporting documentation, including confidential material, filed on February 18, 2020; (d) Commission Staff's recommendation on notice, filed on March 12, 2020; and (e) Commission Staff's

recommendation on approval of the sale and on the CCN amendment, filed on April 20, 2020.

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

18. Undine's facilities are currently in compliance with the Texas Commission on Environmental Quality (TCEQ) design criteria and operation requirements and have no reported violations.
19. Undine has not been subject to any enforcement action by the Commission, TCEQ, the Texas Department of Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.

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

20. There is a need for service as there are approximately 1,059 existing customer connections in the requested area.
21. The uncertificated area Undine is requesting has existing customers and is currently serviced by Pure.

**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)**

22. A small portion of Pure's existing CCN is to be decertified to clean up the CCN boundaries.
23. Pure's CCN number 12072 will be cancelled.
24. Undine is requesting dual certification with Tempe Water Supplement Corporation, CCN number 11579. The agreement letter for dual certification was filed with the application.
25. The landowners will benefit because they will not have to drill individual wells.

**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)**

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

29. Undine has the managerial and technical capability to provide continuous and adequate service to the area being transferred.

**The 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)**

30. The requested area has existing facilities and is currently being served by Pure.
31. Utilities within a 2 mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
32. It is not feasible for an adjacent utility to provide 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)**

33. Undine's long term debt, divided by equity, produces a debt to equity ratio of less than one.
34. Undine demonstrated that it has the available cash levels to serve the requested service area.
35. Undine has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

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

36. Undine's projected operating revenues are sufficient to cover projected operations and maintenance expense for the first 5 years after the completion of the proposed sale and transfer.
37. There is no need to require Undine 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)**

38. The proposed transaction will not adversely impact the environmental integrity of the land because the requested area is currently receiving service.

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

39. The requested area will continue to be served by existing systems and facilities and no additional construction is needed; therefore the effect on the land should be minimal.

**Improvement in Service or Lowering Cost to Consumers — TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(i)(5)(I)**

40. The proposed transaction will improve customer service to existing customers because the water system will be integrated in the system of Undine, and the rates will not change.

**Regionalization or Consolidation – TWC § 13.241(d); 16 TAC § 24.227(b)**

41. Undine is not required to provide a bond or other financial assurance to ensure continuous and adequate service.

**II. Conclusions of Law**

1. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. TWC § 13.301(b).
2. Pure and Undine have demonstrated that the transfer of Pure’s water systems and all but 233 acres of the water service area held under CCN number 12072 to Undine’s CCN number. 13260; the 233 acres in Pure’s existing CCN that are not included in the transaction will be decertified; and Undine’s request for a CCN amendment for an uncertificated area that includes 1,190 acres and for dual certification of 95 acres with Tempe Water Supply Corporation (CCN number 11579) 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 Applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transactions, but not later than 30 days after the effective date, Applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. Applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and Applicants will have to reapply for approval.
5. Applicants are advised Bar D Ranchettes, Riverboat Bend, Six Lakes, Bentwood Bend, Commodore Cape, Forest Springs, Lakeside Village, Spring Creek, Taylor Lake Estates, Texas Water Supply, Tanglewood Forest, Town Bluff (Mont Neches); Barlow Lake Estates, and Whitetail Ridge and the corresponding service area will remain under CCN

number 12072 and held by Pure until the sale and transfer transaction is complete in accordance with Commission rules.

6. The 233 acres in Pure's existing CCN that are not included in the transaction will not be decertified until final Commission approval of the application.
7. Undine's CCN number 13260 will not be amended with the uncertificated area that includes 1,190 acres and will not be dually certified with Tempe Water Supply Corporation's CCN number 11579 until final Commission approval of the application..
8. In an effort to finalize this case as soon as possible, Applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
9. 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 shall file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_ day of \_\_\_\_\_, 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**