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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

**ORDER NO. 9
ORDER APPROVING SALE AND TRANFER TO PROCEED**

This Order addresses the September 17, 2019 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. The applicants seek approval to transfer Pure's water systems and all but 233 acres of the water service area held by Pure under certificate of convenience and necessity (CCN) number 12072 to Undine's CCN number 13260. The applicants request that Pure's existing CCN area that is not included in the transaction be decertified and to cancel Pure's CCN number 12072. In addition, Undine requests a CCN amendment to add uncertificated area to its CCN and for dual certification of 95 acres with Tempe Water Supply Corporation, CCN number 11579. This Order addresses only the proposed sale and transfer. Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction proposed in this application to proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Pure is a domestic limited liability company registered with the Texas secretary of state under file number 702652722.

2. Pure owns, operates, and controls facilities for providing water service in Liberty, Polk, San Jacinto and Tyler counties under CCN number 12072.
3. Undine is a foreign limited liability company registered with the Texas secretary of state under filing number 802339329.
4. Undine owns, operates, maintains, and controls facilities for providing water services in Liberty, Polk, San Jacinto and Tyler counties, under CCN number 13260.

Application

5. On September 17, 2019, the applicants filed an application for approval of the sale, transfer, or merger of certificate rights in Liberty, Polk, San Jacinto, and Tyler counties.
6. The applicants supplemented the application on November 18, 2019.
7. 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 applicants request that 233 acres in Pure's existing CCN that are not included in the transaction be decertified and that Pure's CCN be cancelled. In addition, Undine requests a CCN amendment to add uncertificated area that includes approximately 1,190 acres to its CCN and for dual certification of 95 acres with Tempe Water Supply Corporation, CCN number 11579.
8. The requested areas subject to the proposed transaction are located as follows:

Bar D Ranchettes

The requested area subject to this transaction is located approximately 12 miles east and southeast of downtown Shepherd, Texas, and is generally bounded on the north by a line one mile north of and parallel to Burlington Northern Santa Fe (BNSF) Railway; on the east by Cherry Creek; on the south by BNSF Railway; and on the west by a line 1,650 feet west of and parallel to 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 and southeast of Kenefick, Texas, and is generally bounded on the north by Farm-to-Market Road 2797; on the east by the Trinity River; on the south by a line 590 feet south of and parallel to River Boat Bend; and on the west by a line 700 feet west of and parallel to 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; and on the south by a line 1,000 feet south of and parallel to 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 Road; and on the south and west by Baird Branch and 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; and 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 the intersection of US Highway 190 and Farm-to-Market Road 3126; on the east by Hidden Valley Road; on the south by Nelson Drive; and on the west by Farm-to-Market Road 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 the Trinity River; and on the east by Farm-to-Market Road 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 two 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 Farm-to-Market Road 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 a line 550 feet

north of and parallel to 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 the Neches River; on the east and south by County Road 4400; and on the west by Farm-to-Market Road 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 the Neches River; on the south by a line 250 feet south of and parallel to Mock Drive; and on the west by a line 250 feet west of and parallel to 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 a line 200 feet north of and parallel to Noble Road; on the east by a line 300 feet east of and parallel to Farm-to-Market Road 2200; on the south by a line 200 feet south of and parallel to 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.

9. In Order No. 3 filed on December 30, 2019, the ALJ found the application administratively complete.

Notice

10. On February 18, 2020, Undine filed the affidavit Carey Thomas, senior vice president, 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 the publication of notice in *The Vindicator*, a newspaper of general circulation in Liberty County, on January 16 and 23, 2020.
12. On February 18, 2020, Undine filed a publisher's affidavit attesting to the publication of notice in the *Polk County Enterprise*, a newspaper of general circulation in Polk County, on January 23 and 30, 2020.
13. On February 18, 2020, Undine filed a publisher's affidavit attesting to the publication of notice in the *San Jacinto News Times*, a newspaper of general circulation in San Jacinto County, on January 23 and 30, 2020.
14. On February 18, 2020, Undine filed a publisher's affidavit attesting to the publication of notice in the *Tyler County Booster*, a newspaper of general circulation in Tyler County, on February 6 and 13, 2020.
15. In Order No. 5 filed on March 13, 2020, the ALJ found the notice sufficient.

Evidentiary Record.

16. On May 11, 2020, Commission Staff and applicants filed a joint motion to admit evidence and proposed order approving sale and transfer to proceed.
17. In Order No. 6 filed on May 27, 2020, the ALJ admitted the following evidence into the record of this proceeding: (a) the 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) the 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—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

18. Undine has executed compliance agreements with TCEQ for some of its public water systems that were acquired while under a temporary manager.

19. Undine has not been subject to any 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.
20. The applicants have demonstrated a compliance history adequate for the approval of the proposed sale and transfer.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), (j)(5)(B)

21. The requested area to be sold and transferred is currently served by Pure with several public water systems which are registered with TCEQ with no violations.

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

22. There are approximately 1,059 customers being served in the area requested to be sold and transferred; therefore, there is a continuing need for service.

Effect of Approving the Transaction—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(j)(5)(D)

23. Landowners in the requested area will benefit because they will not have to drill individual wells.
24. Utilities within a two-mile radius were notified and none filed a protest or adverse comments; therefore, neighboring utilities will not be affected.

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

25. Undine is capable of providing drinking water that meets the requirements of chapter 341 Health and Safety Code, TWC chapter 13, and the TCEQ's rules, has a sufficient number of licensed operators, and has access to an adequate supply of water.
26. Undine has executed compliance agreements with TCEQ for some of its public water systems that were acquired while under temporary manager.
27. Additional construction is not necessary for Undine to serve the requested area.
28. Undine has the managerial and technical capability to provide continuous and adequate service to the area being transferred.

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(g), (j)(5)(G)

29. Undine has a debt-to-equity ratio of less than one, satisfying the leverage test.

30. Undine has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations following the proposed transaction, satisfying the operations test.
31. Undine has the financial ability 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(f), 24.239(h)

32. 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.
33. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(j)(5)(F)

34. The requested area has existing facilities and is currently being served by Pure.
35. Utilities within a two-mile radius were noticed and no protests or adverse comments were received from any utility regarding the proposed transaction.
36. It is not feasible for an adjacent utility to provide service to the requested area.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(e)(7), 24.239(l)(5)(H)

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

Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(e)(9)

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

Improvement in Service or Lowering Cost to Consumer—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8,) 24.239(j)(5)(I)

39. The proposed transaction will improve customer service to existing customers because the water systems will be integrated in the systems of Undine.
40. Rates will not change as a result of the proposed transaction.

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

41. Because Undine will not need to construct a physically separate water system to serve the requested area, concerns of regionalization or consolidation are not applicable.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC § 13.301(b).
3. Pure and Undine have demonstrated that the proposed sale and transfer 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 the applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are notified that the requested area will remain under CCN number 12072 and held by Pure until final approval of the application in accordance with Commission rules.

6. This Order addresses only the proposed sale and transfer and does not address the requested CCN amendments or request for dual certification.
7. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
8. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customers deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 23rd day of July 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



**STEVEN LEARY
ADMINISTRATIVE LAW JUDGE**