



Control Number: 50018



Item Number: 28

Addendum StartPage: 0



DOCKET NO. 50018

APPLICATION OF PURE UTILITIES, §
LC AND UNDINE TEXAS §
ENVIRONMENTAL, LLC FOR SALE, §
TRANSFER, OR MERGER OF SEWER §
FACILITIES AND CERTIFICATE §
RIGHTS AND TO DECERTIFY A §
PORTION OF PURE UTILITIES, LC'S §
CERTIFICATED AREA, AND TO §
AMEND UNCERTIFICATED SEWER §
SERVICE AREA IN POLK COUNTY §

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 Environmental, LLC (Undine) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Polk County. The Applicants seeks approval to transfer all of Pure's sewer service area held under certificate of convenience and necessity (CCN) No. 20557 to Undine, and to amend additional area and decertify a small area in order to clean up the service area boundaries. The total requested area includes approximately 597 acres and 184 connections. The area to be transferred is approximately 333 acres. The additional area to be amended is approximately 288 acres, and the area to be decertified is approximately 24 acres.

On April 13, 2020, Order No. 8 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.

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. 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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/s/ John Harrison
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DOCKET NO. 50018

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

To: John Harrison, Attorney
Legal Division

From: Roshan Pokhrel, Engineering Specialist
Infrastructure Division

Date: April 20, 2020

Subject: **Docket No. 50018**, *Application of Pure Utilities, LC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Sewer Facilities and Certificate Rights and to Decertify a Portion of Pure Utilities, LC's Certificated Area, and to Amend Uncertificated Sewer Service Area in Polk County*

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

Background

The Purchaser seeks approval to transfer all of the service area under the Seller's sewer CCN No. 20557 to its sewer CCN No. 20816, to amend CCN No. 20816 with uncertificated area, and to decertify a small area in order to clean up the service area boundaries. Also, the Applicants are requesting to cancel the Seller's CCN. The total requested area includes approximately 597 acres and 184 connections. The area to be transferred is approximately 333 acres. The additional area to be amended is approximately 288 acres, and the area to be decertified is approximately 24 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 the requested uncertificated area.

Notice

The comment period ended on February 17, 2020, and no protests or opt-out requests were received.

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 wastewater plants which are under water quality discharge permits 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 184 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 CCN is to be decertified to clean up the boundary. The Seller's CCN will be cancelled. The landowners will benefit because they won't have to build individual septic tanks.

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

The Purchaser has executed compliance agreements with TCEQ for some of its wastewater 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 the Seller and the existing infrastructure and sewer transmission 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 criteria 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 wastewater plants under water quality discharge permits 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, including 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.¹

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.² No improvements are needed to provide continuous and adequate service to the requested area. Therefore, the Purchaser meets the operations test.

¹ Confidential – Attachment H – Financial Information Bate Stamp 88-97 at 72.

² Id at 69.

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 septic tanks, thus protecting the environment.

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

Sewer 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 sewer CCN No. 20557 to the Purchaser, amend the Purchaser's CCN No. 20816, and cancel 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.