

Control Number: 50018



Item Number: 31

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**

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

COME NOW, Undine Texas Environmental, LLC (Undine), for itself and on behalf of 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 facilities and certificate rights in Polk County, Texas. On October 8, 2019 and November 4, 2019, Applicants filed supplemental information to the application. Specifically, Applicants seek approval to transfer all of Pure's sewer service area held under certificate convenience and necessity (CCN) No. 20557 to Undine's CCN No. 20816, 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 24 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 288 acres.

On April 20, 2020, Staff filed a recommendation requesting the entry of an order permitting the proposed transaction to proceed. Order No. 7, issued on March 30, 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 October 8, 2019 (AIS Item No. 9), and November 18, 2019 (AIS Item No. 15);
- (b) Commission Staff's supplemental recommendation on administrative completeness, proposed notice, and proposed procedural schedule, filed on December 19, 2019 (AIS Item No. 16);
- (c) Applicants' proof of notice and supporting documentation, including confidential material, filed on February 18, 2020 (AIS Item Nos. 20, 21);
- (d) Commission Staff's recommendation on notice, filed on March 12, 2020 (AIS Item No. 22); and
- (e) Commission Staff's recommendation on approval of the sale and the CCN amendment, including confidential material, filed on April 20, 2020 (AIS Item Nos. 28, 29).

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

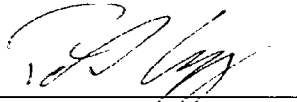
The attached Joint Proposed Order Approving Sale/Transfer to Proceed would approve the sale and authorize the transaction proposed in the application to proceed.

## **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: 

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

**Attorneys for Undine Texas  
Environmental, 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  
1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
[john.harrison@puc.texas.gov](mailto:john.harrison@puc.texas.gov)

**DOCKET NO. 50018**

<b>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</b>	<b>§ § § § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
---	--	--

**JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas Environmental, LLC (Undine) and Pure Utilities, LC (Pure) (collectively, Applicants) for sale, transfer, or merger of sewer facilities and certificate rights in Polk County, Texas. Specifically, Applicants seek approval to transfer all of Pure's sewer service area held under certificate of convenience and necessity (CCN) number 20557 to Undine's CCN number 20816, and to amend additional uncertificated area and decertify a small area in order to clean up the service area boundaries. 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 sewer service in Polk County, Texas under CCN number 20557.
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 sewer service in Polk County, Texas under CCN number 20816.

**Application**

5. On September 17, 2019, Applicants filed an application for approval of the sale, transfer, or merger of sewer facilities and certificate rights, to decertify a portion of Pure's certificated area, and to amend uncertificated sewer service area in Polk County, Texas. Applicants supplemented the application on October 8, 2019 and November 18, 2019.
6. Undine seeks approval to transfer Pure's sewer service area held under certificate CCN number 20557 to Undine's CCN number 20816, 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..
7. The following requested areas subject to this transaction are located as follows:

**Indian Hills Harbor**

The requested area is located approximately 4 miles south of downtown Onalaska, TX, and is generally bounded on the north, east, and west by Livingston Reservoir; on the south by FM 2457. The total area being requested includes approximately 260 total acres and 49 current customers.

**Kalita Point**

The requested area is located approximately 5 miles southeast of Onalaska, TX, and is generally bounded on the north, east, and west by Livingston Reservoir; and on the south by FM 2457. The total area being requested includes approximately 21 total acres and 39 current customers.

**Lakeside Village**

The requested area is located approximately 3 miles south of downtown Livingston, TX, and is generally bounded on the north by Lima Branch; on the east by Lodia Brock Road; on the south by Preacher Coker Road/Stallion Station; and on the west by US 59. The total area being requested includes approximately 316 total acres and 96 current customers.

8. In Order No. 4 issued on December 19, 2019, the administrative law judge (ALJ) found the application administratively complete.

**Notice**

9. 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.
10. 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.
11. In Order No. 6, issued on March 13, 2020, the ALJ deemed the notice sufficient.

**Evidentiary Record**

12. On May 11, 2020, the Parties filed a joint motion to admit evidence.
13. 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 October 8, 2019 and November 18, 2019; (b) Commission Staff's supplemental recommendation on administrative completeness, proposed notice, and proposed procedural schedule, filed on December 19, 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 the approval of the sale and on the CCN amendment, including confidential material, 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)**

14. 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.
15. 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.

**Adequacy of Existing Service – TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239 (J)(5)(B)**

16. The requested area is currently served by Pure, with several wastewater plants, which are under water quality discharge permits registered with TCEQ.

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

17. There is a need for service as there are approximately 184 existing customer connections in the requested area.
18. 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)**

19. A small portion of Pure's CCN is to be decertified to clean up the CCN boundary.
20. Pure's CCN number 20557 will be cancelled.
21. The landowners will benefit because they will not have to build individual septic tanks.

**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)**

22. Undine has executed compliance agreements with TCEQ for some of its wastewater systems that were acquired while under temporary manager.
23. Additional construction is not necessary because the requested uncertificated area already includes customers currently being served by Pure and the existing infrastructure and sewer transmission lines used to serve them.
24. 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)**

25. Pure 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.
26. Utilities within a 2 mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
27. 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)**

28. Undine's long term debt, divided by equity, produces a debt to equity ratio of less than one.



29. Undine demonstrated that it has the available cash levels to serve the requested service area.
30. 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)**

31. 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.
32. 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(i)(5)(H)**

33. 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)**

34. 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)**

35. The proposed transaction will improve customer service to existing customers because the sewer system will be integrated into the system of Undine, and the rates will not change.

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

36. 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 all of Pure's sewer service area and all but 24 acres held under CCN number 20557 to Undine's CCN number 20816; the 24 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 area that includes 288 acres in order to clean up the service area boundary 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 transaction, 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 Indian Hills Harbor, Kalita Point and Lakeside Village and the corresponding service area will remain under CCN number 20557 and held by Pure until the sale and transfer transaction is complete in accordance with Commission rules.
6. Undine's CCN number 20816 will not be amended with the uncertificated area that includes approximately 288 acres, and the approximately 24 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. 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.
8. 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**

---

**ADMINISTRATIVE LAW JUDGE**