



Control Number: 50018



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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** §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 10
ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas Environmental, LLC and Pure Utilities, LC for sale, transfer, or merger of sewer facilities and certificate rights in Polk County, Texas. Specifically, the 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, to amend CCN number 20816 to add approximately 288 acres of previously uncertificated area, and to decertify approximately 24 acres. This order addresses only the proposed sale and transfer. 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 liability company registered with the Texas secretary of state under file number 702652722.
2. Pure operates owns, operates, and controls facilities for providing sewer service in Polk County, Texas under CCN number 20557.
3. Undine is a foreign limited liability company registered with the Texas secretary of state under filing number 802339329.

4. Undine operates, maintains, controls facilities for providing for providing sewer service in Polk County, Texas under CCN number 20816.

Application

5. On September 17, 2019, the applicants filed an application for approval of the sale, transfer, or merger of Pure's sewer facilities and certificate rights to Undine, to decertify a portion of Pure's certificated area, and to add previously uncertificated sewer service area in Polk County, Texas to Undine's CCN number 20816. The 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, to acquire additional area, and to decertify a small area in order to clean up the service area boundaries, and to cancel Pure's sewer CCN number 20557. The total requested area includes approximately 597 acres and 184 connections. The area to be transferred is approximately 333 acres. The additional uncertificated area to be acquired by Undine is approximately 288 acres and the area to be decertified is approximately 24 acres.
7. The areas to be transferred in the proposed transaction are located as follows:

Indian Hills Harbor

The requested area is located approximately four miles south of downtown Onalaska, Texas, and is generally bounded on the north, east, and west by Livingston Reservoir, and on the south by Farm-to-Market Road 2457. The requested area includes approximately 260 total acres and 49 current customers.

Kalita Point

The requested area is located approximately five miles southeast of Onalaska, Texas, and is generally bounded on the north, east, and west by Livingston Reservoir; and on the south by Farm-to-Market Road 2457. The requested area includes approximately 21 total acres and 39 current customers.

Lakeside Village

The requested area is located approximately three miles south of downtown Livingston, Texas, 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 United States Highway 59. The requested area includes approximately 316 total acres and 96 current customers.

8. In Order No. 4 filed 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 and 30, 2020.
11. In Order No. 6 filed on March 13, 2020, the ALJ found the notice sufficient.

Evidentiary Record.

12. On May 11, 2020, Commission Staff and the applicants filed a joint motion to admit evidence.
13. In Order No. 9 filed on May 26, 2020, the ALJ admitted the following evidence into the record of this proceeding: (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 materials, 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)

14. 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(e)(1), (j)(5)(B)

15. 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(e)(2), 24.239(j)(5)(C)

16. There is a need for service as there are approximately 184 existing customer connections in the requested area.
17. The uncertificated area Undine is requesting has existing customers and is currently served by Pure.

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

18. Landowners in the area will benefit because they will not have to obtain individual septic systems.
19. No adjacent retail public utilities will be affected by the transaction.

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

20. Undine has sufficient qualified personnel and will serve the area with wastewater plants that have sufficient capacity and are under discharge permits registered with the TCEQ.
21. Undine is capable of meeting the TCEQ's design criteria and the requirements of Chapter 13 of the TWC for sewer treatment plants.
22. Undine has the managerial and technical capability to provide continuous and adequate service to the area being transferred.

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)

23. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
24. 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), (e)(6), 24.239(g), (j)(5)(G)

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

26. 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.
27. 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(f), 24.239(h)

28. 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(e)(7), 24.239(1)(5)(H)

29. The proposed transaction will not adversely impact the environmental integrity of the land because no construction is needed to serve the area.

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

30. Because no additional construction is needed to serve the area, 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)

31. The proposed transaction will improve customer service to existing customers because the sewer system will be integrated in the system of Undine, a larger sewer provider.
32. Customers' rates will not change as a result of the proposed transaction.

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

33. Undine does not need to construct a physically separate system to serve the area; therefore, 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 to be transferred will remain under sewer CCN number 20557 and held by Pure until final approval of the application, in accordance with Commission rules.
6. 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.
7. 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 29th day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'S. Leary', written over a horizontal line.

**STEVEN LEARY
ADMINISTRATIVE LAW JUDGE**

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