

Control Number: 50018



Item Number: 52

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

NOTICE OF APPROVAL

This Notice of Approval addresses the application of Undine Texas Environmental, LLC (Undine) and Pure Utilities, LC (Pure) for approval of the sale, transfer, or merger of sewer facilities and certificate of convenience and necessity (CCN) rights in Polk county. The applicants seek to transfer all of Pure's sewer service area held under CCN number 20557 to Undine's CCN number 20816, to decertify approximately 24 acres of Pure's sewer service area, and to amend Undine's sewer CCN NO. 20816 to add approximately 288 acres of previously uncertificated sewer service area. The Commission approves the sale and transfer of all Pure's sewer facilities and to amend additional uncertificated area and decertify a small area in order to clean up the service area boundaries.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Pure is a Texas 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 Delaware 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.
14. On March 8, 2021, Commission Staff and the applicants filed a supplemental motion to admit evidence.
15. In Order No. 16 filed on March 10, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) the applicants' proof of closing documents, filed on October

21, 2020; (b) Commission Staff's recommendation on sufficiency of the closing documents, filed on November 16, 2020; (c) the applicants' consent forms, filed on February 5, 2021; and (d) the final maps, certificate, and tariff attached to the joint proposed notice of approval, filed on March 8, 2021.

Sale

16. In Order No. 10 filed May 29, 2020, the ALJ approved the transaction to proceed and required Undine and Pure to file proof that the transaction had closed and that customer deposits had been addressed.
17. On October 21, 2020, Undine filed proof of closing documents demonstrating that the sale had closed effective September 30, 2020 and that there were customer deposits to be addressed.
18. In Order No. 11 filed on November 19, 2020, the ALJ found the closing documents sufficient.

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

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.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

20. 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(h)(5)(B)

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

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)

23. Landowners in the area will benefit because they will not have to obtain individual septic systems.

24. No adjacent retail public utilities will be affected by the transaction.

Ability to Serve: Managerial and Technical—TWC § 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), and 24.239(e), (h)(5)(D)

25. 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.

26. Undine is capable of meeting the TCEQ's design criteria and the requirements of Chapter 13 of the TWC for sewer treatment plants.

27. 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(h)(5)(E)

28. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.

29. 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), and 24.239(e), (h)(5)(F)

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

31. 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.

32. 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(f)

33. 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(h)(5)(G)

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

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

35. 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(h)(5)(H)

36. 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.
37. Customers' rates will not change as a result of the proposed transaction.

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

38. Undine does not need to construct a physically separate system to serve the area; therefore, concerns of regionalization or consolidation are not applicable.

Maps, Tariff, and Certificate

39. On January 8, 2021, Commission Staff emailed to Undine and Pure the proposed final maps, certificate, and tariff related to this docket.
40. On February 5, 2021, Undine and Pure filed their consent forms concurring with the proposed final maps, certificate, and tariff.
41. The final maps, certificate, and tariff were attached to the joint supplemental motion to admit evidence filed on March 8, 2021.

Informal Disposition

42. More than 15 days have passed since the completion of notice provided in this docket.
43. No person filed a protest or motion to intervene .
44. Undine, Pure, and Commission Staff are the only parties to this proceeding.
45. No party requested a hearing, and no hearing is needed.
46. Commission Staff recommends approval of the application.
47. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Undine and Pure are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission rules.
5. Undine and Pure complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
6. Undine and Pure completed the sale within the time required by 16 TAC § 24.239(m).
7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Undine demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested areas as required by TWC § 13.301(b) and 16 TAC § 24.239(f).
8. It is not necessary for Undine to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
9. Undine and Pure demonstrated that the sale and transfer of all of Pure's sewer service area held under CCN number 20557 to Undine's sewer CCN number 20816, the cancellation of Pure's sewer CCN number 20557, the decertification of a portion of the sewer service area being transferred, and the amendment of Undine's sewer CCN number 20186 to add uncertificated area will serve the public interest and is necessary for the service accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d).

¹ Tex. Gov't Code §§ 2001.001-903.

10. Undine must record a certified copy of the certificate granted and maps approved by this Notice of Approval, along with a boundary description of its service area, in the real property records of Polk County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC § 13.257(r) and (s).
11. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs


In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the sale and transfer of all of Pure's sewer service area held under certificate of CCN number 20557 to Undine's CCN sewer CCN number 20816, the decertification of a portion of the sewer service area being transferred, and the amendment of Undine's sewer CCN number 20816 to add uncertificated area to the extent provided in this Notice of Approval.
2. The Commission cancels Pure's sewer CCN number 20557.
3. The Commission approves the maps and certificate, attached to this Notice of Approval.
4. The Commission approves the tariff attached to the joint supplemental motion to admit evidence and proposed notice of approval, filed on March 8, 2021.
5. Undine must serve every customer and applicant for service within the approved area under sewer CCN number 20816 that requests sewer service and meets the terms of Undine's sewer service, and such service must be continuous and adequate.
6. Undine must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Polk County affected by the application and must file evidence of recording in this docket no later than 45 days after receipt of this Notice of Approval.
7. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.

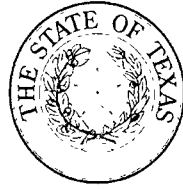
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 12th day of March 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE



Public Utility Commission of Texas

By These Presents Be It Known To All That

Undine Texas Environmental, LLC

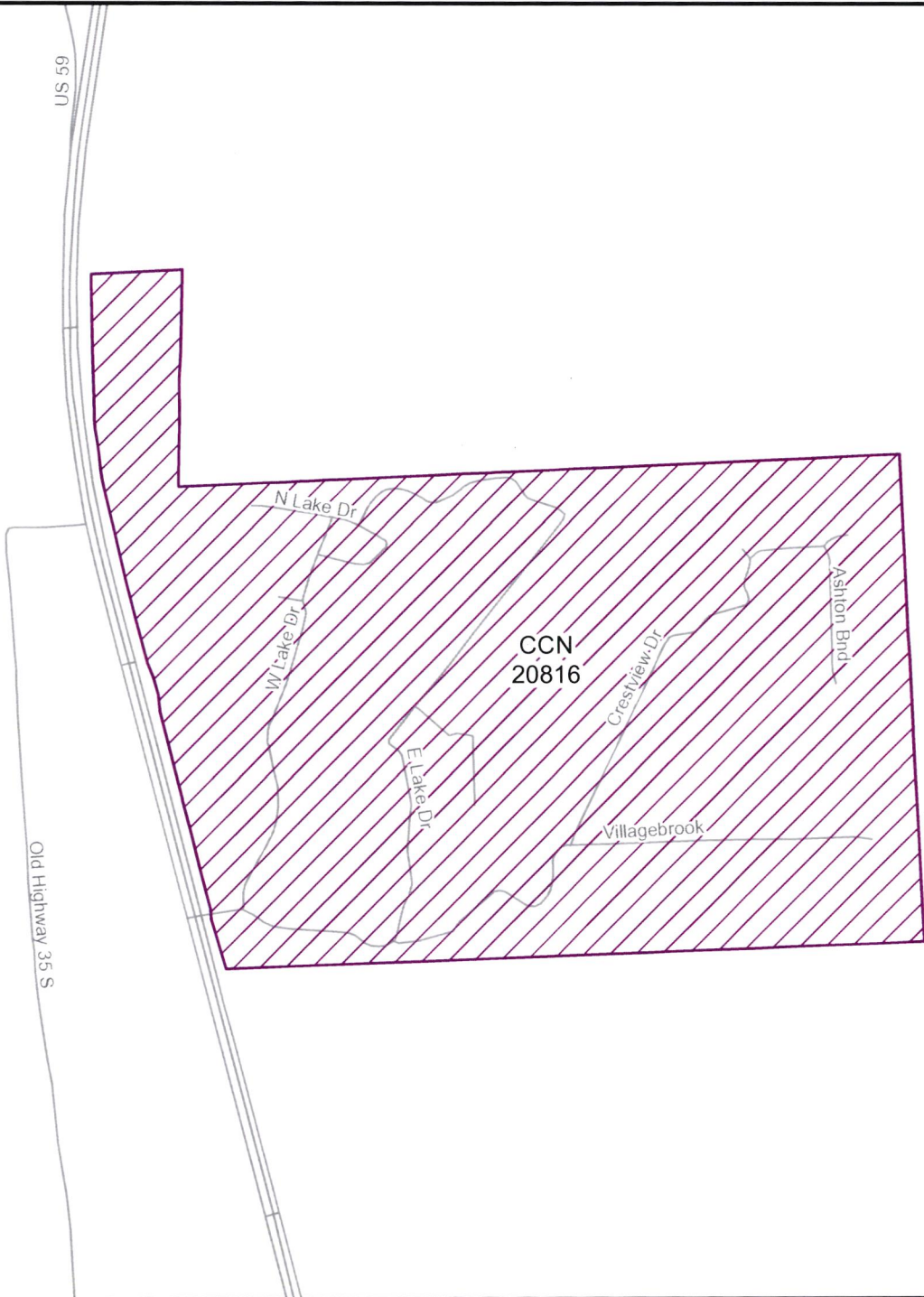
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Undine Texas Environmental, LLC is entitled to this

Certificate of Convenience and Necessity No. 20816

to provide continuous and adequate sewer utility service to that service area or those service areas in Brazoria, Chambers, Harris, Parker, Polk, Tarrant, and Walker Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50018 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Undine Texas Environmental, LLC to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 12th day of March 2021.

Undine Texas Environmental, LLC
Portion of Sewer CCN No. 20816
PUC Docket No. 50018
Amended CCN No. 20816 and Transferred all of Pure Utilities, LC., CCN No. 20557 in Polk County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Sewer CCN

 20816 - Undine Texas Environmental LLC

0 500 1,000
Feet



Map by: Komal Patel
Date created: December 9, 2020
Project Path: n:\finalmapping\
50018UndineTxMap1.mxd



Undine Texas Environmental, LLC
Portion of Sewer CCN No. 20816
PUC Docket No. 50018

Amended CCN No. 20816 and Transferred all of Pure Utilities, LC., CCN No. 20557 in Polk County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Sewer CCN

-  20816 - Undine Texas Environmental LLC
-  21065 - Aqua Texas Inc

0 1,000 2,000
Feet



Map by: Komal Patel
Date created: December 9, 2020
Project Path: n:\finalmapping\
50018UndineTxMap2.mxd