



Control Number: 50200



Item Number: 1826

Addendum StartPage: 0

DOCKET NO. 50200

APPLICATION OF UNDINE TEXAS, LLC §
FOR AUTHORITY TO CHANGE RATES §
§

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PUBLIC UTILITY COMMISSION
OF TEXAS
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COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS OF THE APPLICATION AND NOTICE AND REQUEST FOR
REFERRAL

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on Administrative Completeness of the Application and Notice and Request for Referral and would show the following:

I. BACKGROUND

On November 1, 2019, Undine Texas, LLC (UT) filed a Class B application for a water and sewer rate increase pursuant to Texas Water Code (TWC) § 13.1871 and 16 Texas Administrative Code (TAC) §§ 24.25-.44. Along with its affiliate, Undine Texas Environmental, LLC (UTE),¹ UT serves approximately 6,034 water connections and 2,011 wastewater connections in 10 counties. UT is requesting an increase in annual water revenues of approximately \$2.63 million and an increase in annual sewer revenues of approximately \$1.82 million.² In addition, UT proposes a consolidated water rate³ and consolidated sewer rate⁴ to correspond to the combined operations and management for the systems. The proposed effective date for the increase is January 24, 2020.

¹ UT owns all membership units of UTE. Statement of Intent to Change Rates for Water and Wastewater Service at 001 (Nov. 19, 2019).

² *Id.* at 002.

³ The customers subject to the Commission's original jurisdiction that UT serves under water Certificate of Convenience and Necessity (CCN) No. 13260 are currently on nine different rate schedules.

⁴ The customers subject to the Commission's original jurisdiction that UTE serves under sewer CCN Nos. 20816, 20832, 21019, and 21026, are currently on six different rate schedules.

1524

Order No. 1, issued January 7, 2020, directed Staff to file comments on the administrative completeness of the application and notice by February 4, 2020. The order also established February 4, 2020, as the deadline for Staff and UT to propose a procedural schedule, if appropriate. Therefore, this pleading is timely filed.

II. COMMENTS ON THE APPLICATION

Staff has reviewed the application and, as detailed in the attached memoranda from Roshan Pokhrel in the Commission's Infrastructure Division and Spencer English in the Commission's Rate Regulation Division, recommends that it be found administratively complete and accepted for filing. Staff's recommendation does not address the merits of the proposed rate increase.

III. COMMENTS ON NOTICE

Staff has also reviewed the notices and proof of notice submitted with the application as Attachment 2 and recommends that UT's notice be deemed sufficient. The affidavit of Carey A. Thomas, Vice President of UT, affirms that notice was sent to customers and other affected parties via United States mail on December 20, 2019, which is 35 days before the proposed effective date of January 24, 2020.⁵ In addition, the notice was provided on the Commission-approved form.⁶

Staff notes that the Commission-approved form requires the applicant to provide the number of ratepayers that is equal to 10 percent of the applicant's customers whose rates are subject to the Commission's original jurisdiction. This number was omitted from the notices included in Attachment 2. Nevertheless, Staff recommends that UT's notice satisfies the requirements of TWC § 13.1871(b) and 16 TAC § 24.27(d)(1) because the Commission has already received protests from more than 10 percent of the ratepayers. Thus, UT's omission has not deprived its ratepayers of information that could materially impact the procedural trajectory of this case, i.e., the number of protests that must be received to require referral to the State Office of

⁵ 16 TAC § 24.27(d)(1).

⁶ 16 TAC § 24.27(d)(1)(B).

Administrative Hearings (SOAH).⁷ In other words, Staff believes that requiring UT to re-notice customers would not serve a practical purpose because the Commission has already received the number of protests necessary for contested case status despite failing to include this number in the notice.

If the Administrative Law Judge (ALJ) deems UT's notice sufficient, then Staff recommends suspension of the January 24, 2020 effective date for 265 days under 16 TAC § 24.33(a)(2). If the ALJ deems UT's notice deficient, then Staff recommends suspension of the effective date under 16 TAC § 24.33(b)(1) to allow UT time to re-notice customers and other affected parties.

IV. REQUEST TO RESTYLE THE DOCKET

Staff requests that this docket be restyled as *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*. UT's application lists six CCN numbers—water CCN No. 13260 and sewer CCN Nos. 20816, 20832, 21019, 21026,⁸ and 21106⁹—that will be affected by the proposed rate change. All of the sewer CCNs are held by UTE, which is not currently listed as a co-applicant with UT. Accordingly, Staff recommends restyling the docket to reflect the fact that UTE holds the sewer CCNs that will be affected by the proposed rate change. Staff has conferred with counsel for UT who indicated that UT is unopposed to this request.

⁷ 16 TAC § 24.35(c)(2).

⁸ Bolivar Utility Services currently holds sewer CCN No. 21026. Upon Commission approval of Docket No. 48151, sewer CCN No. 21026 will transfer to Undine Texas Environmental, LLC. *Application of Bolivar Utility Services, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Certificate Rights in Galveston County*, Docket No. 48151 (pending).

⁹ After the application was filed, the Commission approved Docket No. 49169, which transferred all of the sewer service area under CCN No. 21106 to CCN No. 20816 and cancelled CCN No. 21106. *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Brazoria County*, Docket No. 49169, Notice of Approval at Ordering Paragraph No. 1 (Jan. 28, 2020).

V. REQUEST FOR REFERRAL

Pursuant to TWC § 13.1871(i) and 16 TAC § 24.35(c)(2), the Commission must set an application filed under TWC § 13.1871 for hearing if it receives protests from the lesser of 1,000 or ten percent of the affected ratepayers during the first 90 days after the effective date of the rate change. To date, more than 1,650 protests have been filed in this proceeding. After reviewing the protests and accounting for duplicates, Staff has determined that more than ten percent the ratepayers that are subject to the Commission's original jurisdiction and affected by the proposed rate increase have timely filed protests. Therefore, Staff requests that the Commission refer this matter to SOAH for an evidentiary hearing pursuant to 16 TAC § 24.35(c)(2).

VI. PROPOSED PROCEDURAL SCHEDULE

Because Staff has requested referral of this docket to SOAH, Staff does not propose a procedural schedule at this time. Instead, Staff recommends that the parties wait until a prehearing conference is scheduled to discuss a procedural schedule to ensure that any additional intervenors can participate in the discussion. Staff further recommends that discovery should begin immediately. Staff has conferred with counsel for UT and OPUC who indicated that both parties are unopposed to Staff's recommendations regarding the procedural schedule and discovery.

VII. CONCLUSION

For the reasons set forth above, Staff respectfully recommends that the application be deemed administratively complete, that UT's notice be found sufficient, and that the proposed effective date of January 24, 2020, be suspended. Additionally, Staff requests that this docket be restyled and referred to SOAH and that the parties be permitted to begin discovery immediately.


Dated: February 4, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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**DOCKET NO. 50200
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 4, 2020, in accordance with 16 TAC § 22.74.


Eleanor D'Ambrosio

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Attorney
Legal Division

From: Roshan Pokhrel, Engineering Specialist
Infrastructure Division

Date: February 4, 2020

Subject: **Docket No. 50200:** *Application of Undine Texas, LLC for Authority to Change Rates*

On December 20, 2019, Undine Texas, LLC filed an application with the Public Utility Commission of Texas for a rate/tariff change under water Certificate of Convenience and Necessity (CCN) No. 13260 and sewer CCN Nos. 20816, 20832, 21019, 21026, and 21106 in Brazoria, Chambers, Fort Bend, Galveston, Harris, Johnson, Matagorda, Montgomery, Parker, and Tarrant Counties. An administrative review of the application has been made pursuant to Texas Water Code § 13.1871 and 16 Texas Administrative Code §§ 24.25 to 24.33.

Staff has reviewed the application and recommends that the application be deemed sufficient for filing and administratively complete.

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Attorney
Legal Division

From: Spencer English, Financial Analyst
Rate Regulation Division

Subject: **Docket No. 50200** - *Application of Undine Texas, LLC for Authority to Change Rates*

Date: February 4, 2020

On December 20, 2019, Undine Texas, LLC, (Applicant) filed a Class B utility application with the Public Utility Commission of Texas (Commission) for authority to change rates under water Certificate of Convenience and Necessity (CCN) No. 13260 and sewer CCN Nos. 20816, 20832, 21019, 21026, and 21106. An administrative review of the application and notice has been made pursuant to Texas Water Code (TWC) § 13.1871 and 16 Texas Administrative Code (TAC) §§ 24.25 through 24.33.

Rate Regulation Staff has reviewed the application and recommends that the Commission find the application sufficient for filing.