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DOCKET NO. 50960

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**PUBLIC UTILITY COMMISSION
FOR TEXAS**

**APPLICATION OF NERRO SUPPLY, §
LLC AND UNDINE TEXAS, LLC FOR §
SALE, TRANSFER OF FACILITIES §
AND CERTIFICATE RIGHTS IN §
CHAMBERS, HARRIS, AND LIBERTY §
COUNTIES §**

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

On June 19, 2020, Nerro Supply, LLC (Nerro) and Undine Texas, LLC (Undine) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Liberty Counties. Specifically, Undine seeks approval to acquire facilities and to transfer a portion of Nerro's water Certificate of Convenience and Necessity (CCN) No. 12252. In addition, Undine seeks to amend its water CCN with additional area not currently certificated to Nerro. The total area Undine seeks to add to its CCN through the application is 680 acres and includes existing connections. On January 21, 2021, Order No. 5 ordered Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on approval of the sale and CCN amendment by February 5, 2021. Therefore, this pleading is timely filed.

I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum of Patricia Garcia, Infrastructure Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Staff's review of the application indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to Texas Water Code § 13.246(c). Additionally, Staff recommends that Undine has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction and that a public hearing is not necessary. The approval of the sale expires six months from the date of the Commission's written approval of the sale. If the sale is not effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

Finally, Staff also recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required pursuant to 16 Texas Administrative Code §§ 24.109(m)- (n). The CCN remains in the name of the Seller until the transfer is complete and approved in accordance with the Commission's rules and regulations.

II. CONCLUSION

Staff respectfully requests that the ALJ issue an order permitting the proposed transaction to proceed.

Dated: February 5, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 February 5, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kourtnee Jinks
Kourtnee Jinks

Public Utility Commission of Texas

Memorandum

TO: Kourtnee Jinks, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: February 5, 2021

RE: Docket No. 50960 – *Application of Nerro Supply, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Chambers, Harris, and Liberty Counties*

1. Application

Undine Texas Environmental, LLC (Undine) and Nerro Supply, LLC (Nerro) (collectively Applicants) filed an application for a sale, transfer, or merger (STM) of facilities and certificate rights in Chambers, Harris, and Liberty Counties, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Additionally, Undine is seeking to add additional area and decertify a portion of H C M U D, Inc's (H C M U D) water Certificate of Convenience and Necessity (CCN) No. 11952 in Chambers, Harris, and Liberty Counties, Texas under TWC §§ 13.242 to 13.250 and 16 TAC §§ 24.225 to 24.237.

Specifically, Undine, CCN No. 13260, seeks approval to acquire facilities and to transfer a portion of Nerro's water CCN No. 12252. Undine is also requesting adjustments to the CCN area to decertify a portion of the area currently certificated to Nerro's water CCN No. 12252 that is served by another entity and adjust borders to properly cover the customers served in the areas. The total area to be transferred from Nerro is approximately 384 acres; 32 of these acres are incorrectly reflected on Nerro's current water CCN map and need to be moved to the correct location. An additional 9 acres currently certificated to Nerro will be decertified. The total area to be amended or added to Undine's CCN is approximately 671 acres. This is comprised of approximately 384 acres transferred from Nerro, plus approximately 328 acres to be newly certificated (5 acres of which are to be dually certificated with H C M U D), minus approximately 41 acres to be decertified (32 acres of which had been incorrectly placed under CCN No. 12252 plus 9 acres of which do not have customers). CCN No. 11952 for H C M U D shows as inactive on the Commission's website and Undine has been unable to locate any contact information for H C M U D in order to obtain consent for decertification. Therefore, Undine is requesting dual certification with H C M U D for the 5 acres that overlap with this entity.

2. Notice

The Applicants provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was November 22, 2020; there were no protests or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a), (e)(1), 24.239(h)(3)(A), (h)(5)(A), (h)(5)(I)).*

Nerro has four Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) in the requested areas. The four systems are registered as Maple Leaf Mobile Home Subdivision, PWS ID: 1011493, Oakland Village Mobile Home Community, PWS ID: 1011049, Riverwood Estates, PWS ID: 1460146, and Woodland Acres Subdivision, PWS ID: 0360027. The systems do not have any active TCEQ issued violations listed in the TCEQ database for the requested areas.

No additional construction is needed to provide service to the requested areas.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2), 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)).*

The purpose of the transaction is to transfer Maple Leaf Mobile Home Subdivision, Oakland Village Mobile Home Community, Riverwood Estates, and Woodland Acres Subdivision to Undine. The customers are currently receiving water service from Nerro's public water systems.

There are currently 730 existing customers in the requested areas, therefore, there is a need for service. No additional construction is needed at this time to serve the requested areas.

3.3. *Consideration of 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 (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Undine will be the certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

3.4. *Consideration of the ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(f), (h)(5)(D)).*

Undine has several TCEQ approved public water systems. Undine has minor violations issued by TCEQ for some of the public water systems they operate. Many of the systems with violations were transferred from another utility. Undine has a compliance agreement in place with the TCEQ to allow them time to resolve these violations.

No additional construction is necessary for Undine to serve the requested areas.

3.5. *The applicant's demonstration 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. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Undine to serve the requested areas. Therefore, concerns of regionalization or consolidation with another entity do not apply.

3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(h)(5)(E)).*

Nerro is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6), 13.301(b); 16 TAC §§ 24.227(a), (e)(6), 24.11(e), 24.239(f),(h)(5)(F)).*

Fred Bednarski, III, Financial Analyst in the Rate Regulation Division, provided the following analysis.

Undine demonstrates adequate financial and managerial capability to provide continuous and adequate service to the areas subject to this application. These conclusions are based on information provided by Undine before the date of this memorandum and may not reflect any changes in Undine's status after this review.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC § 24.11. Undine must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as an operations test under 16 TAC § 24.11(e)(3).

Leverage test

Undine's affiliate provided their December 31, 2019 financial statements in confidential attachment FB-1. The financial statement reports a debt to equity ratio of 0.29. Because the ratio is less 1.0, Undine meets the test specified in 16 TAC § 24.11(e)(2)(A). A debt-to-equity ratio of less than one indicates financial stability and financial and managerial capability. The affiliate is also capable, available, and willing to cover temporary cash shortages. Therefore, Undine meets the test specified in 16 TAC § 24.11(e)(2)(E).

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3). Undine's financial projections in confidential Attachment FB-1 show that there are no projected shortages to cover. Additionally, the historical financial statement included in confidential Attachment FB-1 shows significant cash reserves for Undine's affiliate. No capital improvements are needed to provide continuous and adequate service to the requested areas. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

3.8. *Requirement of the 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 (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

Based on the financial and managerial review of the application and the recommendation of Fred Bednarski, III, Undine meets the financial tests. Therefore, no additional financial assurance is needed.

3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7), (9); and 16 TAC §§ 24.227(e)(7) and (9), 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

Undine will continue to provide water service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer Nerro's water facilities and the water service area of CCN No. 12252 to Undine, amending Undine's water CCN No. 13260 to add the service area transferred from Nerro's water service area and adjusting borders to properly cover the customers served, amending Nerro's water CCN No. 12252, and allowing for dual certification of the 5 acres of the requested area that overlap with a portion of H C M U D's water CCN No. 11952 is necessary for the service, accommodation, convenience and safety of the public.

4. Recommendation

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Nerro for some of the customers being served by Maple Leaf Mobile Home Subdivision, Oakland Village Mobile Home Community, Riverwood

Estates, and Woodland Acres Subdivision. I further recommend that a public hearing is not necessary.