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APPLICATION OF NERRO SUPPLY,	§	PUBLIC UTILITY COMMISSION
LLC AND UNDINE TEXAS, LLC FOR	§	REGULATORY
SALE, TRANSFER OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN CHAMBERS, HARRIS,	§	
AND LIBERTY COUNTIES	§	

ORDER NO. 9
APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Nerro Supply, LLC and Undine Texas, LLC for the sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Liberty counties. Nerro and Undine seek approval of the sale and transfer of a portion of the facilities and service areas held under Nerro's water certificate of convenience and necessity (CCN) number 12252 to Undine, the amendment of Nerro and Undine's respective CCNs to reflect the sale and transfer, the amendment of Undine's water CCN number 13260 to decertify a portion of the water service area being sold and transferred from Nerro, the amendment of Undine's water CCN number 13260 to add previously uncertificated water service area, and dual certification of a portion of the water service area under H C M U D, Inc.'s (HCMUD) water CCN number 11952. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Nerro and Undine may proceed and be consummated.¹

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro is a Texas limited liability company registered with the Texas secretary of state under file number 801380548.
2. Nerro operates, maintains, and controls facilities for providing retail water service in Chambers, Harris, and Liberty counties under water CCN number 12252.

¹ This Order only addresses the proposed sale and transfer of facilities and certificate rights from Nerro to Undine. At this time, the Commission takes no action on Undine's request to add uncertificated area, to decertify a portion of the certificated area being transferred, and for dual certification of a portion of the water service area under HCMUD'S water CCN number 11952.

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3. Nerro owns four public water systems that are registered with the Texas Commission on Environmental Quality (TCEQ) as follows: (1) the Maple Leaf Mobile Home Subdivision public water system, TCEQ identification number 1011493; (2) the Oakland Village Mobile Home Community public water system, TCEQ identification number 1011049; (3) the Riverwood Estates public water system, TCEQ identification number 1460146; and (4) the Woodland Acres Subdivision public water system, TCEQ identification number 0360027.
4. Undine is a Delaware limited liability company registered with the Texas secretary of state under file number 802339329.
5. Undine operates, maintains, and controls 68 public water systems, registered with the TCEQ, for providing retail water service under water CCN number 13260.

Application

6. On June 19, 2020, the applicants filed the application at issue in this proceeding.
7. The applicants filed supplemental information on July 7, August 20 and 21, September 15, October 27 and 28, November 18, and December 7 and 8, 2020.
8. The requested service area subject to this transaction that includes the Maple Leaf Mobile Home Subdivision public water system and the Oakland Village Mobile Home Community public water system is located approximately two miles northeast of Jersey Village and is generally bounded on the north by Fox Road and Wind Fern Road; on the east by Wind Fern Road; on the south by West Road; and on the west by Houston Oaks Drive.
9. The requested service area subject to this transaction that includes the Riverwood Estates Subdivision public water system and the Woodland Acres Subdivision public water system is located approximately one mile north of downtown Old River-Winfree and is generally bounded on the north by Champion Road and Little Caney Creek; on the east by Farm to Market Road 1409 and Harrison Estates Road; on the south by Old River Road; and on the west by a line 3,000 feet west and parallel to County Road 4021.
10. The requested service areas collectively comprise 671 acres and consist of the following: (1) 384 acres of water service area transferred from Nerro; (2) 328 acres of water service area to be added (five acres of which are to be dually certificated with HCMUD); and (3) 41

acres of water service area to be decertified and removed (32 acres of which are incorrectly reflected on Nerro's water CCN map and nine acres of which do not have customers) (collectively, the requested areas). The requested areas have 730 existing connections.

11. In Order No. 3 filed on September 24, 2020, the ALJ found the application administratively complete.

Notice

12. On November 18, 2020, Undine filed the affidavit of Carey A. Thomas, senior vice president of Undine, attesting that notice was provided to current customers, neighboring utilities, and affected parties on October 12, 2020.
13. On November 18, 2020, Undine filed a publisher's affidavit attesting that notice was published in the *Houston Business Journal*, a newspaper of general circulation in Chambers, Harris, and Liberty counties, on October 16 and 23, 2020.
14. In Order No. 5 filed on January 21, 2021, the ALJ found the notice sufficient.

Evidentiary Record

15. On March 18, 2021, the parties filed a joint motion to admit evidence.
16. In Order No. 8 filed on April 8, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) the applicants' application filed on June 19, 2020; (b) the applicants' first amendment to the application filed on July 7, 2020; (c) the applicants' response to Order No. 2 filed on August 20 and 21, 2020; (d) the applicants' supplemental response to Order No. 2 filed on September 15, 2020; (e) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule filed on September 21, 2020; (f) Nerro's response to Commission Staff's first request for information filed on October 27, 2020; (g) affidavits attesting to public notice filed on November 18, 2020; (h) Commission Staff's recommendation on sufficiency of notice filed on November 30, 2020; (i) Undine's first supplemental response to Commission Staff's first request for information filed on December 7 and 8, 2020; and (j) Commission Staff's recommendation on the transaction filed on February 5, 2021.

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)

17. Nerro's four public water systems are registered with the TCEQ and Nerro does not have any active violations associated with the four public water systems listed in the TCEQ database.
18. Undine owns and operates 68 public water systems and does not have any unaddressed violations listed in the TCEQ database.
19. Undine has not been subject to any enforcement action by the Commission, the TCEQ, the Texas Department of State Health Services, the Office of the Attorney General of Texas, or the Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
20. There is no evidence that Undine has a history of continuing mismanagement or misuse of revenues as utility service provider.
21. Undine demonstrated a compliance status that is adequate for approval of the application.

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

22. Nerro's four public water systems are currently providing continuous and adequate service to the requested areas and no additional construction will be necessary for Undine to serve the requested areas.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

23. There are currently 730 existing customer connections in the requested areas that are receiving water service from Nerro's four public water systems and have an ongoing need for service.
24. There is no evidence of specific requests for additional service within the requested areas.

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

25. Undine and Nerro are the only entities affected by the sale and transfer.
26. All retail public utilities in the proximate area were provided notice of the transaction. No protests or requests to intervene were filed in this docket; therefore, there will be no effect on any retail public utility serving the proximate area.

27. There will be no effect on landowners as the requested areas are currently being served by Nerro's four public water systems.
28. Undine will be obligated to provide continuous and adequate service to current and future customers in the requested areas.

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

29. Undine owns and operates 68 public water systems registered with the TCEQ.
30. Undine does not have any violations issued by TCEQ associated with its public water systems that have not been addressed.
31. Undine employs a sufficient number of TCEQ-licensed operators who will be responsible for operating the four public water systems being transferred.
32. Undine has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
33. Undine has the managerial and technical capability to provide continuous and adequate service to the requested areas.

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(e), (h)(5)(F)

34. Undine's affiliate is capable, available, and willing to cover temporary cash shortages, and has a debt-to-equity ratio of less than one, satisfying the leverage test.
35. Undine demonstrated it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, satisfying the operations test.
36. Undine demonstrated the financial capability and stability to provide continuous and adequate service to the requested areas.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)

37. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

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)

38. Nerro is currently serving the existing customers in the requested areas with existing facilities and has sufficient capacity.
39. Utilities within a two-mile radius of the requested areas were provided notice of the transaction and no protests or requests to intervene were filed in this docket regarding the proposed transaction.
40. 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 to connect to a neighboring retail public utility.
41. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land—TWC §§ 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

42. The requested areas will continue to be served with existing infrastructure and no additional construction is needed to provide service to the requested areas.
43. There will be no effect on environmental integrity and on the land as a result of the transaction because customers will continue to be served using existing infrastructure.

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

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

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

45. Because the requested areas will not require construction of a physically separate water system to continue serving the existing 730 connections in the requested areas, consideration of regionalization or consolidation is not required.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Undine and Nerro provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239(a) through (c).

2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested areas as required by TWC § 13.301(b).
3. Undine and Nerro have demonstrated that the sale and transfer of Nerro's facilities and service area held under water CCN number 12252 to Undine will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (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 Undine and Nerro 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, Nerro and Undine must file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and Nerro and Undine will have to reapply for approval.
5. Nerro and Undine are advised that the requested areas will remain under water CCN number 12252 and be held by Nerro until the sale and transfer transaction is complete, in accordance with the Commission's rules.
6. In an effort to finalize this case as soon as possible, the Nerro and Undine 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 customer deposits, if any, have been addressed, Commission Staff must

file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

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

PUBLIC UTILITY COMMISSION OF TEXAS

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

**ISAAC TA
ADMINISTRATIVE LAW JUDGE**