



## Filing Receipt

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**DOCKET NO. 50960**

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

**COMMISSION STAFF’S RECOMMENDATION ON SUFFICIENCY OF THE  
MODIFIED APPLICATION AND RECOMMENDATION ON THE TRANSACTION**

On June 19, 2020, Nerro Supply, LLC (Nerro) and Undine Texas Environmental, LLC (Undine) (collectively, Applicants) filed an application for approval of the sale and transfer of facilities and certificate of convenience and necessity (CCN) rights in Chambers, Harris, and Liberty Counties. Specifically, Undine, CCN No. 13260, seeks approval to acquire facilities and to transfer a portion of Nerro’s water CCN No. 12252 in Chambers and Liberty Counties. The requested area includes 407 customer connections and approximately 513 acres. The application proposes the addition of approximately 481 acres to CCN No. 13260. This includes the transfer of approximately 263 acres from CCN No. 12252 to CCN No. 13260, 32 acres of which is to be moved to the correct location. as well as the addition of approximately 218 acres that were previously uncertificated. On December 1, 2021, Applicants amended their application to remove two water system, Maple Leaf Mobile Home Subdivision system and Oakland Village Mobile Home Community system, which are located in Harris County, from the requested transfer area. The Riverwood Estates system and the Woodland Acres Subdivision system, the remaining requested systems, are located in Chambers and Liberty counties.

On December 2, 2021, the administrative law judge (ALJ) issued Order No. 12, which established a deadline of December 13, 2021 for Staff to file a recommendation on the sufficiency of the modified application. For purposes of efficiency, Staff has also included its recommendation on allowing the transaction to proceed, the deadline for which is December 22, 2021. Therefore, this pleading is timely filed.

## **I. RECOMMENDATION ON SUFFICIENCY OF MODIFIED APPLICATION**

As detailed in the attached memorandum of Patricia Garcia of the Commission's Infrastructure Division, Staff has reviewed the modified application, along with the supplemental information provided, and recommends that it be found sufficient.

## **II. RECOMMENDATION ON SUFFICIENCY OF NOTICE**

The Commission's notice requirements for sale, transfer, merger applications are provided by 16 Texas Administrative Code (TAC) § 24.239. Because applicants have not requested any additional service area, Staff recommends that no additional notice is necessary and that notice remains sufficient.

## **III. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED**

As further detailed in the attached memorandum of Patricia Garcia of the Commission's Infrastructure Division, Staff's review indicates that the proposed transaction, as modified by Applicants' December 1, 2021 filing, satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code (TWC) Chapter 13 and under 16 TAC Chapter 24. Additionally, based upon its review, Staff recommends that Undine has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Staff therefore respectfully requests that an order be issued allowing the proposed transaction to proceed

## **IV. REQUEST TO RESTYLE DOCKET**

Staff respectfully requests that the docket be restyled to "*Application of Nerro Supply, LLC and Undine Texas Environmental, LLC for Sale, Transfer or Merger of Facilities and Certificate Rights in Chambers and Liberty Counties.*" This change properly reflects the counties in which the transaction contemplated in this docket will take place.

## **V. CONCLUSION**

For the reasons discussed above, Staff respectfully requests that the modified application be deemed sufficient and further requests the issuance of an order allowing the transaction, as modified, to proceed. Staff and Applicants will work together to file a joint motion to admit

evidence and proposed order approving sale and allowing the transaction to proceed no later than January 28, 2022, as required by Order No. 12.

Dated: December 13, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

/s/ Kourtnee Jinks

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**DOCKET NO. 50960**

**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 on December 13, 2021 in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Kourtnee Jinks

Kourtnee Jinks

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Kourtnee Jinks, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** December 13, 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*

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### **1. Application**

On June 19, 2020, Undine Texas, LLC (Undine) and Nerro Supply, LLC (Nerro) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in 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 to water Certificate of Convenience and Necessity (CCN) No. 11952 in Chambers, Harris, and Liberty Counties, Texas under TWC §§ 13.242 through 13.250 and 16 TAC §§ 24.225 through 24.237.

On December 1, 2021, Undine and Nerro submitted revised mapping to remove two of the public water systems and subdivisions, Maple Leaf Gardens and Oakland Village in Harris County, that were originally requested. These public water systems and subdivisions will not be transferred in this docket. The application content has not changed, other than the removal of the Maple Leaf Gardens and Oakland Village public water systems and subdivisions, therefore the application remains sufficient for the technical and managerial review of the items filed in the docket.

Specifically, Undine, CCN No. 13260, seeks approval to acquire facilities and to transfer a portion of Nerro's water CCN No. 12252 in Chambers and Liberty Counties. The requested area includes 407 customer connections and approximately 513 acres. The application proposes the addition of approximately 481 acres to CCN No. 13260. This includes the transfer of approximately 263 acres from CCN No. 12252 to CCN No. 13260, 32 acres of which is to be moved to the correct location, as well as the addition of approximately 218 acres that were previously uncertificated.

## **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. Because the revised mapping provided on December 1, 2021 did not add additional area notice does not need to be reissued.

## **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 two Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) in the requested areas. The two systems are registered as 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 Riverwood Estates, and Woodland Acres Subdivision to Undine. The customers are currently receiving water service from Nerro's public water systems.

There are currently 407 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 Group, LLC and Subsidiaries' (Undine Group), financial statements ending December 31, 2019. Undine Group's financial statements, provided in confidential Attachment FB-1, report a debt-to-equity ratio of 0.29. Because the ratio is less than 1.0, Undine Group meets the test specified in 16 TAC § 24.11(e)(2)(A). Undine Group 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 show that there are no projected shortages to cover. No capital improvements are needed to provide continuous and adequate service to the requested area. 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 amending Nerro's water CCN No. 12252 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 Riverwood Estates and Woodland Acres Subdivision. I further recommend that a public hearing is not necessary.