

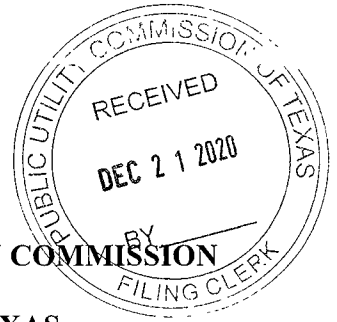


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DOCKET NO. 50961

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

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on the Transaction. In support, Staff shows the following:

I. BACKGROUND

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. Undine, sewer CCN No. 20816, seeks approval to acquire facilities and to transfer all of Nerro’s service area under sewer CCN No. 20366, cancel CCN No. 20366, decertify a portion of Gulf Coast Waste Disposal Authority’s sewer CCN No. 20465, and add additional area to adjust CCN boundaries to properly cover the existing customers. The total area to be added to Undine’s CCN No. 20816 is 344 acres and includes current customers. Applicants filed supplemental information on July 1, July 6, August 19, and August 20, 2020.

On November 23, 2020, the administrative law judge (ALJ) filed Order No. 5, which established a deadline of December 22, 2020 for Staff to request a hearing or file a recommendation on approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum of Patricia Garcia of the Commission’s Infrastructure Division, Staff’s review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code (TWC)

Chapter 13 and under 16 Texas Administrative Code (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.

Therefore, Staff recommends the entry of an order permitting the proposed transaction to proceed. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and customer deposits properly refunded or transferred as required by 16 TAC § 24.239(k) through(n).

III. CONCLUSION

For the reasons discussed above, Staff respectfully that an order be filed allowing the transaction to proceed.

Dated: December 21, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Merritt Lander _____
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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 on December 21, 2020 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander _____
Merritt Lander

Public Utility Commission of Texas

Memorandum

TO: Merritt Lander, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: December 22, 2020

RE: Docket No. 50961 – *Application of Nerro Supply, LLC and Undine Texas Environmental, 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.

Specifically, Undine, sewer certificate of convenience and necessity (CCN) No. 20816, seeks approval to acquire facilities and to transfer the remaining portion of Nerro's sewer CCN No. 20366, cancel CCN No. 20366,¹ and decertify a portion of Gulf Coast Waste Disposal Authority's (Gulf Coast) sewer CCN No. 20465. Undine is also requesting adjustments to the CCN area to adjust borders to properly cover the customers served in the areas. The total area to be transferred from Nerro is approximately 111 acres; 32 of these acres are incorrectly reflected on Nerro's current sewer CCN map and need to be moved to the correct location. The total area to be certificated to Undine is 344 acres. This is comprised of 111 acres transferred from Nerro (including the 32-acre area mentioned above that is incorrectly reflected on Nerro's current sewer CCN map and needs to be moved to the correct location), 218 acres decertified from Gulf Coast, and 47 acres previously uncertificated.

2. Notice

The Applicants provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was November 23, 2020; there were no protests or opt-out requests received.

¹ See *Application of Nerro Supply Investors, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Chamber, Harris, and Walker Counties*, Docket No. 49382, Notice of Approval (Nov. 10, 2020) (transferring a portion of the service area served by the Maple Leaf Gardens and Woodland Acres wastewater discharge permits to Undine).

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 wastewater discharge permits operating in the requested areas. The two systems are registered as Maple Leaf Gardens, Wastewater Discharge Permit No. WQ0012342001, and Woodland Acres, Wastewater Discharge Permit No. WQ0011720001. Maple Leaf Gardens does not have any violations listed in the TCEQ database for the requested area. Woodland Acres has several violations in the TCEQ database for the requested area. Undine has indicated that they will need to undertake improvements to the system and are prepared to mobilize capital funding necessary to implement needed improvements upon acquisition of the facility.

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 Gardens and Woodland Acres to Undine. The customers are currently receiving sewer service from Nerro's sewer systems.

There are currently 407 existing customers in the requested areas; therefore, there is a need for service. No additional service is needed at this time.

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. A portion of Gulf Coast's existing sewer CCN No. 20465 will be decertified, and Gulf Coast has agreed to the decertification.

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 proposed 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 wastewater discharge permits. Undine does not have any violations listed in the TCEQ database. No additional construction is necessary for Undine to serve the requested area.

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 area. 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 would need to be constructed. At a 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 and recommendation for this section.

Undine has demonstrated 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 affiliate² provided its December 31, 2019 financial statement included in confidential attachment FB-1 that report a debt-to-equity ratio of 0.29. Because the ratio is less than 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,

² Confidential – Exhibit E, bates 61, (Jun. 19, 2020).

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 provides 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 sewer service to the existing customers in the area at Nerro's current rates. 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 sewer facilities and the sewer service area under CCN No. 20366 to Undine, amending Undine's sewer CCN No. 20816 to add the service area transferred from Nerro's sewer service area and adjust existing borders to properly cover the customers served, cancelling Nerro's sewer CCN No. 20366, and decertifying a portion of Gulf Coast's sewer CCN No. 20465 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 the customers being served by Maple Leaf Gardens and Woodland Acres. I further recommend that a public hearing is not necessary.