



Control Number: 50961



Item Number: 36

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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

2021 JAN 28 PM 2:15  
PUBLIC UTILITY COMMISSION  
OFFICE OF THE CLERK

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

COME NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and Undine Texas Environmental, LLC (Undine), and with the agreement of Nerro Supply, LLC (Nerro) (collectively, Parties), file this Joint Motion to Admit Evidence and Proposed Order Approving Sale and Allowing Transaction to Proceed. In support thereof, the Parties show the following:

**I. BACKGROUND**

On June 19, 2020, Nerro and Undine (collectively, Applicants) filed an application for sale, transfer, or merger 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 seeks approval to acquire facilities and to transfer all of Nerro’s service area under sewer certificate of convenience and necessity (CCN) number 20366 to Undine’s CCN number 20816, cancel CCN number 20366, and decertify a portion of Gulf Coast Waste Disposal Authority’s (Gulf Coast) sewer CCN number 20465 to be added to Undine’s CCN. 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 added to Undine’s CCN number 20816 is 344 acres and includes 407 current customers

On January 22, 2021, the administrative law judge (ALJ) filed Order No. 6, requiring the Parties to submit a Joint Motion to Admit Evidence and Proposed Order Approving Sale and Allowing Transaction to Proceed by January 29, 2021. Therefore, this pleading is timely filed.

**II. MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- A. Applicants' application for sale, transfer or merger of facilities, filed on June 19, 2020 (Interchange Item Nos. 1-7);
- B. Applicants' First Amendment to Application, filed on July 6, 2020 (Interchange Item No. 10);
- C. Applicants' Response to Order No. 2, filed on August 19, 2020 and August 20, 2020 (Interchange Item Nos. 13-15);
- D. Staff's Supplemental Recommendation on Administrative Completeness and Proposed Notice, filed on September 18, 2020 (Interchange Item No. 16);
- E. Nerro's Response to Staff's First Request for Information, filed on October 8, 2020 and October 9, 2020 (Interchange Item Nos. 19 and 20);
- F. Affidavits of public notice, filed on November 17, 2020 and November 18, 2020 (Interchange Item Nos. 23 and 24);
- G. Staff's Recommendation on Sufficiency of Notice, filed on November 23, 2020 (Interchange Item No. 25);
- H. Undine's First Supplemental Response to Staff's First Request for Information, filed on December 7, 2020 and December 8, 2020 (Interchange Item Nos. 27 and 28);
- I. Undine's supplemental information, filed on December 17, 2020 (Interchange Item No. 30); and
- J. Staff's Amended Recommendation on the Transaction, filed on December 21, 2020 (Interchange Item Nos. 31 and 32).

### **III. PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

The attached Agreed Proposed Order Approving Sale and Allowing Transaction to Proceed would authorize Undine to acquire Nerro's facilities and to transfer all of Nerro's service area under sewer CCN number 20366 to Undine's CCN number 20816; decertify a portion of Gulf Coast's sewer CCN No. 20465; authorize Undine's adjustments to the CCN area to adjust borders to properly cover the customers served in the areas; and authorize the relocation of 32 of the 111 acres to be transferred from Nerro that are incorrectly reflected on Nerro's current sewer CCN map. The Parties note that this is a complicated transaction in terms of calculating how much additional acreage will ultimately be added to Undine's sewer service area due to the fact that there is overlap between the area that will be transferred from Nerro and remapped to reflect its correct

location and the portion of Gulf Coast's CCN that will be decertified. To address these intricacies, the Parties provide the following clarification to inform the findings of fact in the proposed order.

The area that will be decertified from Gulf Coast's CCN and added to Undine's CCN is an area that is served by Nerro's Woodland Acres public water system. The notice provided to customers states that the total requested area affecting Woodland Acres is 252 acres: 32 acres transferred from Nerro and 220 acres of newly certificated area.<sup>1</sup> The 32 acres to be transferred from Nerro is also being relocated because it is incorrectly shown on existing CCN maps; therefore, these 32 acres are included in the 220 acres of newly certificated area. Of that 220 acres, 218 acres overlap with Gulf Coast's existing CCN. In addition, 30 of the 32 acres to be transferred from Nerro and relocated overlap with the portion of Gulf Coast's CCN that will be decertified. Accordingly, the net amount to be decertified from Gulf Coast is 188 acres or 218 minus 30.

Staff's Recommendation on the Transaction indicates that 218 acres will be decertified from Gulf Coast, and the notice provided to customers states that 198 acres will be decertified. Staff does not recommend that a new notice is required because the notice sent to customers includes a larger amount of acreage than will actually be decertified, and the map included with the notice accurately represents the area to be decertified. Consequently, the 10-acre discrepancy did not deprive customers of meaningful notice of the transaction and CCN amendment proposed in the application.

As clarified above, the customer notice also provides the correct acreage that will ultimately be certificated to Undine as a result of the transaction—344 acres. This acreage is comprised of 111 acres transferred from Nerro, which includes the 32 acres that need to be relocated, and 265 newly-certificated acres, for a total of 376 acres. However, because the 32 improperly-located acres being transferred from Nerro are properly located within the newly-certificated area, the net total number of acres being certificated to Undine is 344.

The Parties request that the Commission approve the attached Proposed Order, which includes the proper acreages being transferred from Nerro, certificated to Undine, and decertified from Gulf Coast.

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<sup>1</sup> The notice describes these 220 acres "newly certificated" because they will be newly certificated to Nerro. This descriptor is not intended to reflect that all 220 acres is currently uncertificated.

**IV. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Order proposed by the Parties be adopted.

Dated: January 28, 2021

Respectfully submitted,

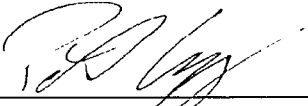
**PUBLIC UTILITY COMMISSION OF TEXAS  
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**DOCKET NO. 50961**

<b>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</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

This Order addresses the June 19, 2020 application of Undine Texas Environmental, LLC (Undine) and Nerro Supply, LLC (Nerro) for the sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Liberty Counties, Texas. Undine seeks approval to acquire facilities and to transfer all of Nerro's service area under sewer Certificate of Convenience and Necessity (CCN) number 20366 to Undine's sewer CCN number 20816, and to cancel CCN number 20366. The total area to be transferred is 111; 32 of these acres are incorrectly mapped and will be moved to the correct location as a result of the transaction. Undine is also requesting to decertify a net of 188 acres from Gulf Coast Waste Disposal Authority's (Gulf Coast) sewer CCN number 20465 to be amended to Undine's CCN number 20816 and to amend its CCN with additional uncertificated area to adjust the CCN borders to cover existing customers served by the facilities that will be transferred from Nerro. The total area to be added to Undine's CCN is approximately 344 acres. On December 21, 2020, Commission Staff recommended that the transaction in this docket be allowed to proceed. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Nerro is a Texas for-profit corporation registered with the Texas secretary of state under file number 801380548.

2. Undine is a Delaware for-profit corporation registered with the Texas secretary of state under file number 802339329.
3. Nerro provides sewer service in Texas under CCN number 20366 and owns two wastewater systems permitted by the Texas Commission on Environmental Quality (TCEQ) under wastewater discharge permit numbers:

<b>System Name</b>	<b>TPDES Permit No.</b>
Maple Leaf Gardens	WQ0012342001
Woodland Acres	WQ0011720001

4. Undine provides sewer service in Texas under CCN numbers 20816, 21019, 20832, 21106, 20948. Undine owns and operates 18 wastewater systems under CCN number 20816 registered with the TCEQ under wastewater discharge permit numbers:

<b>System Name</b>	<b>TPDES Permit No.</b>
Cold River Ranch	WQ0012780001
Country Vista WWTP	WQ0013769001
Crystal Palace WWTP	WQ0012936001
Grand Ranch	WQ0013846001
Laguna WWTP	WQ0014452001
Mayfair	WQ0013518001
Mayfair South	WQ0013518001
Mayfair West	WQ0013518001
Sugartree*	WQ0014163001
Angle Acres WWTP	WQ0012420001
Beechwood WWTP	WQ0012113001
Southwood Estates	WQ0012780001
Spring Crossing/288 Business Park*	WQ0012780001
Bayridge Subdivision*	WQ0013643001
Greens Bayou Fabrication Yard*	WQ0003792000
Oaks at Houston Point*	WQ0013643001
Sunflower Subdivision*	WQ0013643001
Wildwood Shores	WQ0014154001

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\* Denotes a system that is subject to the rate jurisdiction of a municipality.

Application

5. On June 19, 2020, the applicants filed an application for approval of the sale of facilities and the transfer of all of Nerro's sewer service area under CCN number 20366 to Undine's CCN number 20816. Nerro's CCN number 20366 will be cancelled as a result of the transaction. The application also seeks to adjust the borders of the service area to be transferred to cover existing customers and to relocate 32 of the 111 acres to be transferred that are currently incorrectly mapped.
6. In addition to the proposed transaction, the application seeks approval of the decertification of 188 acres of Gulf Coast's sewer CCN number 20465 to be amended to Undine's CCN number 20816.
7. The applicants filed supplemental information on July 6, 2020, August 19 and 20, 2020, October 8, 2020, December 7, 2020 and December 17, 2020.
8. The total requested service area, including the area to be decertified from Gulf Coast's CCN and added to Undine's, area consists of:

The Maple Leaf Gardens requested area, which is located approximately 2 miles northeast of downtown Jersey Village, Texas, and is generally bounded on the north by Fox Road and Windfern Road; on the east by Windfern Road; on the south by Camelia Crest Lane; and on the west by Houston Oaks Drive. The total requested area includes approximately 124 acres and 188 current customers. The area to be transferred from Nerro is approximately 79 acres. The area to be amended/added is approximately 45 acres.

The Woodland Acres requested area, which is located approximately 1 mile north of downtown Old River-Winfree, Texas, and is generally bounded on the north by Ridgewood Road; on the east by FM 1409 and Harmon Estates Road; on the south by Old River; and on the west by a line 1500' west of Shady Lane. The total requested area includes approximately 252 acres and 219 current customers. The area to be transferred from Nerro LLC is approximately 32 acres. The area to be amended/added is approximately 220 acres. This includes the transferred area of approximately 32 acres that is to be moved to the correct location. The total area to be decertified from Gulf Coast, net of any overlap with the 32 acres that is to be transferred and moved to the correct location, is 188 acres.
9. The portion of the requested area that is subject to the transaction includes approximately 344 acres and 407 current customers.
10. In Order No. 3 filed on September 23, 2020, the ALJ deemed the application administratively complete.



**Notice**

11. On November 17, 2020, the applicants 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.
12. On November 17, 2020, the applicants filed the affidavit of Bob Charlet, Publisher of the *Houston Business Journal*, attesting that notice was published on October 16, 2020 and October 23, 2020 in the *Houston Business Journal*, a newspaper of general circulation in Harris, Liberty, Chambers, and Montgomery Counties.
13. In Order No. 5 filed on November 23, 2020, the ALJ deemed the notice sufficient.

**Evidentiary Record**

14. On January 28, 2021, the parties filed a joint motion to admit evidence.
15. In Order No. 7 filed on \_\_\_\_\_, 2021, the ALJ admitted the following evidence into the record: (a) the application, filed on June 19, 2020; (b) the first amendment to the application, filed on July 6, 2020; (c) the applicants' response to Order No. 2, filed on August 19 and 20, 2020; (d) Commission Staff's supplemental recommendation on administrative completeness and proposed notice, filed on September 18, 2020; (e) Nerro's response to Commission Staff's first request for information, filed on October 8 and 9, 2020; (f) affidavits of public notice, filed on November 17, 2020 and November 18, 2020; (g) Commission Staff's recommendation on sufficiency of notice, filed on November 23, 2020; (h) Undine's first supplemental response to Commission Staff's first request for information, filed on December 7, 2020 and December 8, 2020; (i) Undine's supplemental information, filed on December 17, 2020; and (j) Commission Staff's amended recommendation on the transaction, filed on December 21, 2020.

**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)(A)**

16. Undine owns and operates several wastewater systems under wastewater discharge permits issued by the TCEQ and has not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of Health, the Office of the Attorney General, or the United States Environmental Protection Agency.

17. Nerro owns and operates the Maple Leaf Gardens wastewater system permitted by the TCEQ under wastewater discharge permit number WQ0012342001 and the Woodland Acres wastewater system permitted by the TCEQ under wastewater discharge permit number WQ0011720001 in the requested area.
18. Maple Leaf Gardens does not have any active violations listed in the TCEQ database.
19. Woodland Acres has several violations listed in the TCEQ database, and Undine has indicated that it is prepared to mobilize the capital funding necessary to implement improvements needed to achieve compliance upon acquisition of the facility.

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

20. The requested area, including the area to be decertified from Guld Coast, is currently served by Nerro, with two wastewater plants, which are under water quality discharge permits registered with TCEQ.
21. No additional construction is necessary for Undine to serve the requested area.

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

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

**Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(j)(5)(C)**

23. Undine will become the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area. Undine already received approval to acquire a portion of the serviced area and the related facilities under CCN number 20336 from Nerro in Docket No. 49382<sup>2</sup> and is seeking to obtain the rest of Nerro's sewer service area through this transaction.

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<sup>2</sup> Application of Nerro Supply, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Chambers, Harris and Walker Counties, Docket No. 49382, Notice of Approval (Nov. 10, 2020).

24. For the requested area subject to the transaction, there will be no effect on landowners as the area is currently certificated and will remain certificated and all customers will be charged the same rates as they were charged before the transaction.
25. Gulf Coast has consented to the decertification of the portion of sewer CCN number 20465 that will be added to Undine's CCN. There will be no effect on landowners as the area is currently certificated and will remain certificated and service to this area is currently provided by Nerro's Woodland Acres wastewater system
26. 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 and CCN amendment proposed in this application and did not request to intervene.

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

27. Undine is capable of meeting the TCEQ's design criteria and the requirements of Chapter 13 of the TWC for sewer treatment plants, which will allow it to make the improvements to the Woodland Acres wastewater system necessary to comply with all applicable TCEQ rules.
28. Undine has a sufficient number TCEQ licensed operators and an experience management team.
29. Undine has the managerial and technical ability to provide continuous and adequate service to the requested area.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(c)(5), 24.239(h)(5)(E)**

30. Nerro is currently serving the existing customers in the requested area with existing facilities and has sufficient capacity.
31. Utilities within a 2-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.
32. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will 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.

**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), and 24.239(h)(5)(F)**

33. Undine's affiliate has a debt to equity ratio of less than one, meeting the leverage test.
34. Undine submitted projected financial statements with the application and reported sufficient operating income and cash on hand to cover any operations and maintenance shortages in the next 5 years of operations and to pay for any future improvements needed to provide continuous and adequate service to the requested area. Therefore, Undine meets the operations test.
35. Undine has demonstrated the financial ability and financial stability necessary to provide continuous and adequate service to the requested area.

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

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

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

37. The proposed transaction and CCN amendment will not adversely impact the environmental integrity of the land because customers will be served using existing infrastructure.
38. Because the requested areas will be served with existing infrastructure, the proposed transaction and CCN amendment will have minimal effect on the land.

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

39. The proposed transaction will improve service because the customers will benefit from public wastewater systems that are professionally operated and maintained and capable of providing continuous and adequate service.

40. The rates charged to customers in the requested area subject to the transaction will not change as a result of the transaction.

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

41. Concerns of regionalization or consolidation do not apply because construction of a physically separate wastewater system is not needed to serve the requested area.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law:

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested area. TWC § 13.301(b).
3. Undine and Nerro have demonstrated that the sale and transfer of the facilities and service under CCN No. 20366 from Nerro to Undine under sewer CCN number 20816, relocating a portion of the service area transferred from Undine so it is correctly reflected on Undine's CCN map, amending Undine's sewer CCN No. 20816 with additional uncertificated area to adjust the CCN borders to cover existing customers served by the facilities that will be transferred from Nerro, and decertifying a portion of Gulf Coast's sewer CCN No. 20465 and adding the decertified area to Undine's CCN is necessary for the service, accommodation, convenience and safety of the public. 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, the applicants must file proof that the transaction has been consummated and customer deposits, if any, 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 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that the service area under CCN number 20366, and the corresponding facilities, will be held by Nerro until the sale and transfer transaction is complete in accordance with Commission rules.
6. The applicants are advised that the service area under CCN number 20465 will be held by Gulf Coast until the decertification and amendment to Undine's CCN number 20816 receives final approval.
7. In an effort to finalize this case as soon as possible, the applicants must file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
8. 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, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**