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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
OF TEXAS

PUBLIC UTILITY COMMISSION
CLERK

**ORDER NO. 8
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas Environmental, LLC and Nerro Supply, LLC for the sale, transfer, or merger of facilities and certificate rights in Chambers, Harris, and Liberty counties. The applicants seek approval for Undine to acquire facilities and transfer all of Nerro’s service area under sewer certificate of convenience and necessity (CCN) number 20366 to Undine’s sewer CCN number 20816; to cancel Nerro’s sewer CCN number 20366; to correct sewer CCN mapping for both Nerro and Undine; to decertify a net of 188 acres from Gulf Coast, LLC’s (formerly, Gulf Coast Waste Disposal Authority) sewer CCN number 20465 to Undine’s sewer CCN number 20816; and add additional uncertificated area to adjust the sewer CCN borders to cover existing customers served by the facilities that will be transferred from Nerro. 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. Nerro operates, maintains, and controls facilities for providing retail sewer service in Chambers, Harris, and Liberty counties under sewer CCN number 20366.

3. Nerro owns and operates two sewer systems permitted by the Texas Commission on Environmental Quality (TCEQ) under the following Texas Pollutant Discharge Elimination System (TPDES) permit numbers:

System Name	TPDES Permit Number
Maple Leaf Gardens	WQ0012342001
Woodland Acres	WQ0011720001

4. Undine is a Delaware for-profit corporation registered with the Texas secretary of state under file number 802339329.
5. Undine operates, maintains, and controls facilities for providing retail sewer service in Texas under CCN numbers 20816, 21019, 20832, 21106, 20948.
6. Undine owns and operates 18 sewer systems under CCN number 20816 permitted by the TCEQ under TPDES permit numbers:

System Name	TPDES Permit Number
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

* System subject to the rate jurisdiction of a municipality.

Application

7. On June 19, 2020, the applicants filed the application at issue in this proceeding.
8. The applicants filed supplemental information on July 1 and 6, August 19 and 20, October 8 and 9, and December 7, 8, and 17, 2020.
9. In the application, the applicants seek approval of the following transaction: (1) 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; (2) the cancellation of Nerro's CCN number 20366 ; (3) the adjustment of 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.
10. The City of Old River-Winfree's agreement is included with the application because Nerro's Maple Leaf Gardens sewer system operates within the city limits of the City of Old River-Winfree.
11. In addition to the proposed transaction, the applicants seek approval of the decertification of a net 188 acres of Gulf Coast's sewer CCN number 20465 to be amended to Undine's CCN number 20816. Gulf Coast's agreement to the decertification was included with the application.
12. The total area to be transferred from Nerro is approximately 111 acres, 32 of which 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, comprised of 111 acres transferred from Nerro (including the 32-acre area); 218 acres decertified from Gulf Coast, and 47 acres previously uncertificated.
13. The requested sewer service areas, including the area to be decertified from Gulf Coast's certificated sewer service area to be included in Undine's certificated sewer service area consist of the following areas:
 - (a) The Maple Leaf Gardens requested area is located approximately two 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 requested area includes approximately 124 acres and 188

current customers. The requested area consists of 79 acres being transferred from Nerro and 45 acres being added via sewer CCN amendment.

- (b) The Woodland Acres requested area is located approximately one mile north of downtown Old River-Winfree, Texas, and is generally bounded on the north by Ridgewood Road; on the east by Farm-to-Market Road 1409 and Harmon Estates Road; on the south by Old River; and on the west by a line 1500 feet west of Shady Lane. The requested area includes approximately 252 acres and 219 current customers. The requested area consists of approximately 32 acres to be transferred from Nerro and 220 acres being added via sewer CCN amendment. The 220 acres being added via sewer CCN amendment includes the transferred area of approximately 32 acres that is to be moved to the correct location and 188 acres being decertified from Gulf Coast, net of any overlap with the 32 acres that is to be transferred and moved to the correct location.

14. The requested areas that are subject to the transaction include approximately 344 acres and 407 current customers.
15. In Order No. 3 filed on September 23, 2020, the administrative law judge (ALJ) found the application administratively complete.

Notice

16. 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.
17. On November 17, 2020, the applicants filed a publisher's affidavit attesting that notice was published in the *Houston Business Journal*, a newspaper of general circulation in Harris, Liberty, Chambers, and Montgomery counties, on October 16 and 23, 2020.
18. In Order No. 5 filed on November 23, 2020, the ALJ found the notice sufficient.

Evidentiary Record

19. On January 28, 2021, the parties filed a joint motion to admit evidence.

20. In Order No. 7 filed on February 9, 2021, the ALJ admitted the following evidence into the record: (a) the applicants' application and all attachments filed on June 19, 2020; (b) the applicants' supplement to the application filed on July 1, 2020; (c) the applicants' supplement to the application filed on July 6, 2020; (d) the applicants' supplements to the application filed on August 19 and 20, 2020; (e) Commission Staff's supplemental recommendation on administrative completeness and proposed notice filed on September 18, 2020; (f) Nerro's responses to Commission Staff's first request for information filed on October 8 and 9, 2020; (g) the applicants' affidavits of public notice filed on November 17 and 18, 2020; (h) Commission Staff's recommendation on sufficiency of notice filed on November 23, 2020; (i) Undine's first supplemental response and confidential exhibit to Commission Staff's first request for information filed on December 7 and 8, 2020; (j) Undine's supplement to the application filed on December 17, 2020; and (k) Commission Staff's 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), (I)

21. Undine owns and operates several wastewater systems permitted by the TCEQ and has not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of Health and Human Services, the Office of the Attorney General, or the United States Environmental Protection Agency.
22. Nerro owns and operates the Maple Leaf Gardens sewer system, TPDES permit number WQ0012342001, and the Woodland Acres sewer system, TPDES permit number WQ0011720001.
23. Maple Leaf Gardens does not have any active violations listed in the TCEQ database.
24. Woodland Acres has 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)

25. The requested areas, including the area to be decertified from Gulf Coast, are currently served by Nerro.

26. 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)

27. There are 407 existing sewer customer connections in the requested areas and have an ongoing need for sewer service.

28. No additional sewer service is needed at this time.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.245(c)(3); 16 TAC §§ 24.227(e)(3); 24.239(h)(5)(C)

29. Undine will become the certificated entity for the requested areas and will be required to provide adequate and continuous sewer service to the requested area. Undine already received approval to acquire a portion of Nerro's sewer service area and related facilities under CCN number 20336 in Docket No. 49382² and is seeking to obtain Nerro's remaining sewer service area and facilities through this transaction.

30. For the requested areas subject to this transaction, there will be no effect on landowners as the areas are currently certificated and will remain certificated.

31. Gulf Coast consented to the decertification of the portion of sewer CCN number 20465 that will be added to Undine's CCN number 20816. 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 sewer system.

32. The City of Old River-Winfree consented to overlap of the sewer service area with the city limits of the City of Old River-Winfree.

33. All retail public utilities in the proximate area were provided notice of the transaction and CCN amendment and did not request to intervene.

34. There will be no effect on any other retail public utility servicing the proximate area.

² *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).*

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

35. Undine is capable of meeting the TCEQ's design criteria and the requirements of chapter 13 of the TWC for sewer treatment plants, and will make the improvements to the Woodland Acres sewer system necessary to comply with all applicable TCEQ rules.
36. Undine has a sufficient number TCEQ-licensed sewer operators.
37. No additional construction is necessary for Undine to serve the requested areas.
38. Undine has the managerial and technical ability to provide continuous and adequate service to the requested areas.

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

39. Nerro is currently serving the existing customers in the requested areas with existing facilities that have sufficient capacity.
40. Notice was provided to utilities within a two-mile radius and no protests or requests to opt out were received regarding the proposed transaction.
41. 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.

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(e), (h)(5)(D)

42. 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.
43. Undine demonstrated it has sufficient cash available to cover any projected operations and maintenance shortages in the next five years of operations after completion of the transaction, satisfying the operations test.
44. Undine demonstrated the financial capability and stability to provide continuous and adequate sewer service to the requested areas.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(1), 24.239(f)

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

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

46. The proposed transaction and CCN amendment will not adversely impact environmental integrity or the land because customers will be served using existing infrastructure.

47. Undine's future improvements to the systems, when needed, will only minimally and temporarily affect environmental integrity and the land.

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)

48. Existing customers will be charged the same rates they were charged before the transaction.

49. Current and future customers will realize an improvement in sewer services that are professionally operated and maintained and capable of providing continuous and adequate service.

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

50. Undine will not need to construct a physically separate sewer system to continue providing sewer service to the requested areas; therefore, concerns of regionalization and consolidation do not apply.

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) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Undine demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous sewer services to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
3. Undine and Nerro demonstrated that (a) the sale and transfer of the facilities and service under CCN number 20366 from Nerro to Undine under sewer CCN number 20816; (b) the

cancellation of Nerro's sewer CCN number 20366; (c) relocating a portion of the service area transferred to Undine so it is correctly reflected on Undine's CCN map; (d) amending Undine's sewer CCN number 20816 with additional uncertificated area to adjust the CCN borders to cover existing customers served by the facilities transferred from Nerro; (e) decertifying a portion of Gulf Coast's sewer CCN number 20465; and (f) adding Gulf Coast's decertified area to Undine's CCN number 20816 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 Nerro and Undine 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 sewer CCN number 20366 will 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 applicants 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 customers deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 11th day of February 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'G. R. Siemankowski', written in a cursive style.

**GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE**