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Isabel Herrera

From: Isabel Herrera
Sent: Monday, December 13, 2021 12:04 PM
To: Isabel Herrera
Subject: CORRECTION MEMO ON FILING 50961 - Item 57

I am filing a correction of this filing – the filing was filed in an incorrect order – the pleading should have been first followed by the memo.

From: NoReply <NoReply@puc.texas.gov>
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Control Number APPLICATION OF NERRO SUPPLY, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, 50961 TRANSFER OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN CHAMBERS, HARRIS, AND LIBERTY COUNTIES

Filing Party PUC LEGAL

Filing Type PLEADINGS

Description COMMISSION STAFF'S RECOMMENDATION ON SUFFICIENCY OF THE MODIFIED APPLICATION AND RECOMMENDATION ON THE TRANSACTION

Documents 50961 rec on modified application and allowing transaction to proceed memo AIS Final.docx
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Addendum Included No

Submitted By Isabel Herrera
1701 N Congress Avenue
Austin, TX 78701
5129367205
isabel.herrera@puc.texas.gov

Please contact Central Records if you have any questions. Thanks!

Central Records
Public Utility Commission of Texas
centralrecords@puc.texas.gov | 512-936-7180

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
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**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. Undine, CCN No. 20816, seeks approval to acquire facilities and to transfer all of Nerro’s 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 252 acres and includes 219 current customers. Applicants filed supplemental information on July 1, July 6, August 19, and August 20, 2020. On December 1, 2021, Applicants amended their application to remove one water system, Maple Leaf Gardens, which is located in Harris County, from the requested transfer area. Woodland Acres, the remaining requested system, is located in Harris 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' November 29, 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/ Merritt Lander
Merritt Lander
State Bar No. 24106183
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7290
(512) 936-7268 (facsimile)
Merritt.Lander@puc.texas.gov

DOCKET NO. 50961

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/ 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 13, 2021

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

On June 19, 2020, Undine Texas Environmental, LLC (Undine or Purchaser) and Nerro Supply, LLC (Nerro or Seller) (collectively, Applicants) filed an application for 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. Additionally, Undine is seeking to add additional area and decertify a portion of Gulf Coast Waste Disposal Authority's sewer certificate of convenience and necessity (CCN) No. 20465 in Chambers and Harris Counties, Texas pursuant to TWC §§ 13.242 through 13.250 and the 16 TAC §§ 24.225 through 24.237.

On November 30, 2021, Undine and Nerro submitted revised mapping to remove one of the subdivisions, Maple Leaf Gardens in Harris County, that was originally requested. The Maple Leaf Gardens subdivision will remain with Nerro. Therefore, Nerro's CCN number will not be decertified in this docket; it will be revised to leave only the Maple Leaf Gardens subdivision certificated to Nerro. The application remains sufficient for the technical and managerial review of the items filed in the docket.

Specifically, Undine, sewer CCN No. 20816, seeks approval to acquire facilities and to transfer a portion of Nerro's sewer CCN No. 20366 and to decertify a portion of Gulf Coast Waste Disposal Authority's (Gulf Coast) sewer CCN No. 20465 in Chambers and Liberty Counties. The requested area includes 219 customer connections and approximately 252 acres. The application proposes the addition of approximately 220 acres to CCN No. 20816. This includes the transfer of approximately 32 acres from CCN No. 20366 to CCN No. 20816 that is to be moved to the correct location, as well as the addition of approximately 2 acres that were previously uncertificated. The area of Gulf Coast Waste Disposal Authority to be decertified is approximately 198 acres.

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. Because the revised mapping provided on November 30, 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 one Texas Commission on Environmental Quality (TCEQ) approved wastewater discharge permit operating in the requested area registered as Woodland Acres, Wastewater Discharge Permit No. WQ0011720001. Woodland Acres has several TCEQ issued violations in the TCEQ database for the requested area. Undine has indicated it recognizes that it 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 Woodland Acres to Undine. The customers are currently receiving sewer service from the Nerro's sewer systems.

There are currently 219 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.

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 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 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, provides the following analysis for the Commission's review and decisions.

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's affiliate provided their 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 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, 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. 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 sewer 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 a portion of Nerro's sewer facilities and sewer service area of 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 adjusting borders to properly cover the customers served, and decertifying a portion of Gulf Coast Waste Disposal Authority's (Gulf Coast) 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 Woodland Acres. I further recommend that a public hearing is not necessary.