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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 AND LIBERTY COUNTIES</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**JOINT MOTION TO ADMIT ADDITIONAL EVIDENCE AND  
PROPOSED ORDER ALLOWING SALE TO PROCEED**

On June 19, 2020, Nerro Supply, LLC and Undine Texas Environmental, LLC (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 a portion of Nerro’s service area under sewer certificate of convenience and necessity (CCN) number 20366 to Undine’s CCN number 20816 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 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. Applicants filed Supplemental Information to the Modified Application on December 8 and 9, 2021.

On December 2, 2021, the administrative law judge (ALJ) filed Order No. 12, requiring the Parties to submit a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed by January 28, 2022. Therefore, this pleading is timely filed.

## **I. SUPPLEMENTAL MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following additional items into the record of this proceeding:

- A. Applicants' Request for Application Modification and Submittal Mapping Information filed on November 29, 2021 (Interchange Item Nos. 50 and 51);
- B. Applicants' Supplemental Information to the Modified Application filed on December 8 and 9, 2021 (Interchange Item Nos. 54-56);
- C. Commission Staff's Recommendation on Sufficiency of the Modified Application and Recommendation on the Transaction filed on December 13, 2021 (Interchange Item Nos. 58 and 59); and
- D. Applicants' Response to Commission Staff's Recommendation on Sufficiency of the Modified Application and Recommendation on the Transaction filed on December 13, 2021 (Interchange Item No. 60).

## **II. 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 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.

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.

### III. 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: December 22, 2021

Respectfully submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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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 AND LIBERTY COUNTIES</b>	<b>§ § § § § §</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 and Nerro Supply, LLC for the sale, transfer, or merger of facilities and certificate rights in Chambers and Liberty Counties, Texas. The applicants seek approval for Undine to acquire facilities and to transfer a portion of Nerro’s service area under sewer certificate of convenience and necessity (CCN) number 20366 to Undine’s CCN number 20816; to correct sewer mapping for both Nerro and Undine; to decertify a net of 188 acres of Gulf Coast LLC’s (formerly Gulf Coast Waste Disposal Authority) sewer CCN number 20465 to Undine’s sewer CCN number 20816; and to 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:

<b>System Name</b>	<b>TPDES Permit Number</b>
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:

<b>System Name</b>	<b>TPDES Permit Number</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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\* 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. On November 29, 2021, the applicants filed a request for application modification and submittal of supplemental mapping information.
10. On December 8 and 9, 2021, the applicants filed supplemental information to the modified application.
11. In the modified application, the applicants seek approval of the following transaction: (1) the sale of facilities and the transfer of 32 acres of Nerro's sewer service area under CCN number 20366 to Undine's CCN number 20816; and (2) the adjustment of the borders of the service area to be transferred to cover existing customers. The total area to be added to Undine's CCN No. 20816 is 252 acres and includes 219 current customers.
12. 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.
13. The total area to be transferred from Nerro is approximately 32 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 253 acres, comprised of 32 acres transferred from Nerro (including the 32-acre area); 220 acres decertified from Gulf Coast, and 1 acres previously uncertificated.
14. 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 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.

15. The requested areas that are subject to the transaction include approximately 252 acres and 219 current customers.
16. In Order No. 13 filed on December 14, 2021, the administrative law judge (ALJ) found the modified application administratively complete.

**Notice**

17. 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.
18. 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.
19. In Order No. 5 filed on November 23, 2020, the ALJ found the notice sufficient.

**Evidentiary Record**

20. On January 28, 2021, the parties filed a joint motion to admit evidence.
21. 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 Staffs 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.

22. On December \_\_, 2021, the parties filed a joint motion to admit additional evidence.
23. In Order No. 14 filed on \_\_\_\_\_, 2021, the ALJ admitted the following into the record: (a) the applicants' request for application modification and submittal mapping information filed on November 29, 2021; (b) the applicants' supplemental information to the modified application filed on December 8 and 9, 2021; (c) Commission Staff's recommendation on sufficiency of the modified application and recommendation on the transaction filed on December 13, 2021; and (d) the applicants' response to commission staff's recommendation on sufficiency of the modified application and recommendation on the transaction, filed on December 13, 2021.

### **System Compliance**

24. 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.
25. Nerro owns and operates the Maple Leaf Gardens sewer system, TPDES permit number WQ0012342001, and the Woodland Acres sewer system, TPDES permit number WQ0011720001.
26. Maple Leaf Gardens does not have any active violations listed in the TCEQ database.
27. 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**

28. The requested areas, including the area to be decertified from Gulf Coast, are currently served by Nerro.
29. No additional construction is necessary for Undine to serve the requested area.

**Need for Additional Service**

30. There are 219 existing sewer customer connections in the requested areas and there is an ongoing need for sewer service.
31. No additional sewer service is needed at this time.

**Effect of Approving the Transaction and Granting the Amendment**

32. 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. 49382<sup>1</sup> and is seeking to obtain additional sewer service area and facilities from Nerro through this transaction.
33. 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.
34. 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.
35. All retail public utilities in the proximate area were provided notice of the transaction and CCN amendment and did not request to intervene.
36. There will be no effect on any other retail public utility servicing the proximate area.

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<sup>1</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).*

**Ability to Serve; Managerial and Technical**

37. 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.
38. Undine has a sufficient number TCEQ-licensed sewer operators.
39. No additional construction is necessary for Undine to serve the requested areas.
40. Undine has the managerial and technical ability to provide continuous and adequate service to the requested areas.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

41. Nerro is currently serving the existing customers in the requested areas with existing facilities that have sufficient capacity.
42. Notice was provided to utilities within a two-mile radius and no protests or requests to opt out were received regarding the proposed transaction.
43. 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**

44. 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.
45. 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.
46. Undine demonstrated the financial capability and stability to provide continuous and adequate sewer service to the requested areas.

**Financial Assurance**

47. 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**

48. The proposed transaction and CCN amendment will not adversely impact environmental integrity or the land because customers will be served using existing infrastructure.
49. 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 Cost to Consumers**

50. Existing customers will be charged the same rates they were charged before the transaction.
51. 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**

52. 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 requested portion of the facilities and service under CCN number 20366 from Nerro to Undine under sewer CCN number 20816; (b) relocating a portion of the service area transferred to Undine so it is correctly reflected on Undine's CCN map; (c) 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; (d) decertifying a

portion of Gulf Coast's sewer CCN number 20465; and (e) 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 the requested service area and facilities currently served by Nerro under 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, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**