



Control Number: 50962



Item Number: 32

Addendum StartPage: 0

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DOCKET NO. 50962

2020 DEC 28 AM 10:49

APPLICATION OF NERRO SUPPLY	§	PUBLIC UTILITY COMMISSION
INVESTORS, LLC AND UNDINE	§	OF TEXAS
TEXAS, LLC FOR SALE, TRANSFER	§	
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN	§	
MONTGOMERY COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 5, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On June 19, 2020, Nerro Supply Investors, LLC (Nerro) and Undine Texas, LLC (Undine) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Montgomery County. Applicants seek to sell and transfer all of Nerro’s water service area and assets under Certificate of Convenience and Necessity (CCN) number 10336 to Undine. The requested area includes approximately 282 acres and 240 connections. In addition, Undine seeks to amend its water service area under CCN number 13260 with 9 acres of uncertificated land.

On November 30, 2020, the administrative law judge (ALJ) filed Order No. 5, which required Staff to file a recommendation on the approval of the sale by December 23, 2020. Therefore, this pleading is timely filed.¹

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the proposed transaction, and as detailed in the attached memorandum of Alicia Maloy of the Commission’s Infrastructure Division, Staff recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including the 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,

¹ The Commission was not open for business on December 23–27, 2020; therefore, the deadline is December 28, 2020 under 16 Tex. Admin. Code (TAC) § 22.4(a).

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 under 16 TAC § 24.239(l). Finally, Staff notes that under 16 TAC § 24.239(k), Applicants must, within 30 days of the transaction's effective date, return or transfer the 84 customer deposits held by Nerro.

III. ASSIGNMENT OF THE SAN JACINTO RIVER AUTHORITY CONTRACT

On December 2, 2020, the ALJ filed Order No. 6, which granted San Jacinto River Authority's (SJRA) motion to intervene. Attached to SJRA's motion to intervene was a copy of a contract between SJRA and Northwest Water Systems, Inc. that was later assigned to Nerro.² The contract requires the written consent of the parties for any proposed assignment.³ Therefore, SJRA has intervened because it believes that Nerro must obtain SJRA's consent to proceed with the sale and transfer to Undine.⁴ Applicants did not respond to the assertions made by SJRA, and Staff acknowledges that it is not a party to the contract. However, the contract plainly states that the provision against assignment does not apply when there is an assignment by operation of law resulting from an acquisition.⁵ That is what would happen here, if the transaction is approved, and SJRA has not shown why the proposed transaction is not the type of merger, acquisition, or consolidation contemplated in Section 13.06. Thus, Staff does not read the contract to require Nerro to obtain SJRA's approval.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully requests the entry of an order allowing the proposed transaction to proceed.

² San Jacinto River Authority's Motion to Intervene at ¶ 2 (Nov. 12, 2020).

³ *Id.*, Attachment A, § 13.06.

⁴ *Id.* at ¶ 4.

⁵ *Id.*, Attachment A, § 13.06.

Dated: December 28, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Daniel Moore

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DOCKET NO. 50962

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 via electronic mail on December 28, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Daniel Moore

Daniel Moore

Public Utility Commission of Texas

Memorandum

TO: Daniel Moore, Attorney
Legal Division

FROM: Alicia Maloy, Senior Infrastructure Analyst
Infrastructure Division

DATE: December 28, 2020

RE: Docket No. 50962 – *Application of Nerro Supply Investors, LLC and Undine Texas, LLC for Sale, Transfer or Merger of Facilities and Certificate Rights in Montgomery County*

1. Application

Undine Texas, LLC (Undine) and Nerro Supply Investors, LLC (Nerro) (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Montgomery County, Texas, under Texas Water Code (TWC) §§ 13.242 to 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Undine seeks approval to acquire facilities and to transfer water service area from Nerro under water certificate of convenience and necessity (CCN) No. 10336. Undine will cancel Nerro's water CCN and merge it with Undine's existing water CCN No. 13260. The requested transfer area includes approximately 282 acres and 240 connections. In addition, Undine seeks to amend its water CCN to add approximately nine acres of uncertificated land.

2. Notice

Undine provided notice consistent with 16 TAC §§ 24.235 and 24.239(c). The San Jacinto River Authority intervened in the docket.

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)(D)).***

Nerro has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as White Oak Valley Estates PWS ID No. TX1700036. Nerro does not have any active violations listed in the TCEQ database.

No additional construction is necessary for Undine to serve the requested area.

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)).***

There are currently 240 existing customer connections in the requested area; 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 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 service area under CCN number 10336 from Nerro in Docket No. 49739¹ and is seeking to obtain the rest of Nerro's water service area through this transaction.

For the requested transfer area, there will be no effect on landowners as the area is currently certificated and will remain certificated. For the additional nine acres requested, landowners were noticed and will be able to request service from Undine.

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 only the San Jacinto River Authority intervened. The San Jacinto River Authority did not express any opposition to the sale of the requested area but asserted that Nerro must obtain consent from San Jacinto River Authority before it may complete the transaction.

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 PWSes and does not have any violations listed in the TCEQ database. No additional construction is necessary for Undine to serve the requested area.

¹ *Application of Nerro Supply Investors, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*, Docket No. 49379, Notice of Approval (Dec. 7, 2020).

3.5. *The applicants 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 water system is not necessary for Undine to serve the requested area. Therefore, concerns of regionalization or consolidation 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 the existing customers in the requested area with existing facilities and has sufficient capacity. 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.

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, Rate Regulation Division, prepared the analysis and recommendation for this section.

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 the operations test under 16 TAC § 24.11(e)(3).

Leverage test

Undine's affiliate² has provided its December 31, 2019 financial statement in confidential attachment FB-1 that reports 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, 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

² Confidential – Exhibit E, at bates 63. (Jun. 19, 2020).

income are available to cover possible future shortages, which 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, 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), (c)(9); and 16 TAC §§ 24.227(e)(7) and (e)(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 water 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 statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer the water facilities and the water service area under CCN No. 10336 to Undine and to amend water CCN No. 13260 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 84 deposits held by Nerro for the customers being served by White Oak Valley Estates. I further recommend that a public hearing is not necessary.