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DOCKET NO. 50962

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

**ORDER NO. 17
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas, LLC and Nerro Supply Investors, LLC for the sale, transfer, or merger of facilities and certificate rights in Montgomery County. The applicants seek approval of the sale and transfer all of Nerro’s facilities and service area under certificate of convenience and necessity (CCN) number 10336 to Undine, the cancellation of Nerro’s CCN number 10336, and the amendment of Undine’s CCN number 13260 to include the area previously included in Nerro’s CCN number 10336 and add nine acres of uncertificated land to Undine’s service area. The administrative law judge (ALJ) approves the sale and authorizes the transaction between Nerro and Undine to proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro is a Texas limited liability company registered with the Texas secretary of state under filing number 802143247.
2. Nerro operates, maintains, and controls facilities for providing retail water service in Montgomery County under CCN number 10336.
3. Nerro owns and operates a public water system, the White Oak Valley Estates, that is registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1700036.
4. Undine is a Delaware limited liability company registered with the Texas secretary of state under filing number 802339329.

5. Undine operates, maintains, and controls facilities for providing retail water service in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties under CCN number 13260.

Application

6. On June 19, 2020, Undine and Nerro filed the application at issue in this proceeding.
7. The applicants filed supplemental information on July 7 and August 19 and 20, 2020.
8. In the application, as supplemented, the applicants seek approval of the following transaction: (1) to sell and transfer all of Nerro's facilities and service area under CCN number 10336 to Undine; (2) the cancelation of Nerro's CCN number 10336; and (3) the amendment of Undine's CCN number 13260 to include the area previously included in Nerro's CCN number 10336 and add nine acres of uncertificated land to Undine's service area.
9. The requested area to be sold and transferred (requested area) includes approximately 282 acres and 240 customers.
10. The requested area is located approximately 6.5 miles south-southeast of downtown Cut and Shoot, Texas, and is generally bounded on the north by Farm-to-Market Road 2090; on the east by Farm-to-Market Road 1485; on the south by Farm-to-Market Road 3083; and on the west by Farm-to-Market Road 3083.
11. In Order No. 3 filed on September 22, 2020, the ALJ found the application, as supplemented, administratively complete.

Notice

12. On November 18, 2020, applicants filed the affidavit of Carey A. Thomas, senior vice president of Undine, attesting that notice of the application was mailed to current customers, neighboring utilities, and affected parties on October 12, 2020.
13. On November 18, 2020, the applicants filed a publisher's affidavit attesting that notice of the application was published in the *Houston Business Journal*, a newspaper of general circulation in Montgomery County, on October 16 and 23, 2020.
14. In Order No. 5 filed on November 30, 2020, the ALJ found the notice sufficient.

Intervention

15. On November 12, 2020, San Jacinto River Authority filed a motion to intervene in this proceeding.
16. In Order No. 6 filed on December 2, 2020, the ALJ granted San Jacinto River Authority's motion to intervene.
17. On August 20, 2021, San Jacinto River Authority filed a motion to withdraw from this proceeding.
18. In Order No. 14 filed on August 23, 2021, the ALJ granted San Jacinto River Authority's motion to withdraw.

Evidentiary Record

19. On September 14, 2021, the parties jointly moved to admit evidence.
20. In Order No. 16 filed on September 22, 2021, the ALJ admitted the following evidence into the record: (a) the application and all attachments filed on June 19, 2020; (b) applicants' first amendment to application filed on July 7, 2020; (c) applicants' response to Order No. 2 filed on August 19 and 20, 2020; (d) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule filed on September 18, 2020; (e) applicants' response to Commission Staff's first request for information filed on October 9, 2020; (f) applicants' proof of notice filed on November 18, 2020; (g) Commission Staff's recommendation on sufficiency of notice filed on November 30, 2020; (h) Undine's first supplemental response to Commission Staff's first request for information filed on December 7 and 8, 2020; (i) Commission Staff's recommendation on the transaction filed on December 28, 2020; and (j) Commission Staff's response to Order No. 15 filed on September 3, 2021.

System Compliance

21. Nerro does not have any active violations listed in the TCEQ database.
22. Undine has not been subject to any enforcement action by the Commission, TCEQ, Texas Department of Health and Human Services, the Office of the Attorney General of Texas, or the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.

23. Undine has demonstrated a compliance status that is adequate for approval of the sale to proceed.

Adequacy of Existing Service

24. Nerro currently provides retail water service to 240 existing customers in the requested area through its public water system, number 1700036, and such service has been continuous and adequate.
25. No additional construction is necessary for Undine to provide service to the requested area.

Need for Additional Service

26. There are currently 240 existing customers in the requested area that are receiving service and have an ongoing need for service.
27. There is no evidence of specific requests for additional service within the requested area.

Effect of Approving the Transaction and Granting the Amendments

28. Approving the transaction to proceed and granting the CCN amendment will obligate Undine to provide adequate and continuous service to existing and future customers in the requested area and nine acres of uncertificated land.
29. There will be no effect on landowners in the requested area because the requested area is currently certificated.
30. Landowners in the nine acres of uncertificated land were provided proper notice of the application; no protests, adverse comments, or motions to intervene were filed by any landowner in the nine acres of uncertificated land.
31. All retail public utilities in the proximate area were provided notice of the transaction and only San Jacinto River Authority intervened. San Jacinto River Authority subsequently withdrew from this proceeding.
32. There will be no effect on any retail public utility serving the proximate area.

Ability to Serve: Managerial and Technical

33. Undine employs TCEQ-licensed operators and an experienced management team who will be responsible for the testing and operation of the public water system being transferred.
34. No additional construction is necessary for Undine to provide service to the requested area.

35. Undine has the managerial and technical ability to provide continuous and adequate service to the requested area.

Ability to Serve: Financial Ability and Stability

36. Undine's affiliate has a debt-to-equity ratio that is less than one, satisfying the leverage test.
37. Undine demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, satisfying the operations test.
38. Undine demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

39. 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.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

40. Nerro is currently serving the existing customers in the requested area with existing facilities and has sufficient capacity.
41. Utilities within a two-mile radius were properly noticed and no protests were filed in this docket.
42. San Jacinto River Authority intervened and subsequently withdrew from this proceeding.
43. 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.
44. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

45. Because the requested area will not require the construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

Environmental Integrity and Effect on the Land

46. There will be no effect on the land or environmental integrity as a result of the proposed transaction because customers will continue to be served using existing infrastructure and no additional construction is necessary.

Improvement in Service or Lowering Cost to Consumers

47. There will be no change in the quality of service or cost of service to consumers as a result of the transaction.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).
2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
3. Undine demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. Undine and Nerro demonstrated that the sale and transfer of Nerro's facilities and water service area under CCN number 10336 to Undine will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC §§ 13.246(b) and 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. Undine and Nerro have 180 days to complete the transaction.
4. Under 16 TAC § 29.239(m), if the transaction is not consummated within this period, or an extension has not been granted, this approval is void and Undine and Nerro will have to reapply for approval.
5. Undine and Nerro are advised that the requested area will be held by Nerro until the sale and transfer transaction is completed 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 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 the 23rd day of September 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**