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Filing Date - 2023-09-12 10:49:17 AM

Control Number - 52502

Item Number - 120

DOCKET NO. 52502

APPLICATION OF TEXAS WATER	§	PUBLIC UTILITY COMMISSION
SYSTEMS, INC. AND UNDINE TEXAS,	§	
LLC FOR SALE, TRANSFER, OR	§	OF TEXAS
MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN GREGG,	§	
HENDERSON, SMITH, AND UPSHUR	§	
COUNTIES		

ORDER NO. 28
APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Texas Water Systems, Inc. and Undine Texas, LLC for approval of the sale, transfer, or merger of facilities and certificate rights and for dual certification with Pritchett Water Supply Corporation and Crystal Systems Texas, Inc. in Gregg, Henderson, Smith, and Upshur counties. The applicants seek approval of the following: (1) the sale and transfer of facilities and service area held under Texas Water’s certificate of convenience and necessity (CCN) number 12473 to Undine, (2) the decertification of a portion of Texas Water’s CCN number 12473; (3) the amendment of Undine’s CCN number 13260 to include the facilities, certificated area, and decertified area from Texas Water’s CCN number 12473; and (4) the dual certification of portions of Undine’s service area with portions of Pritchett Water Supply Corporation’s service area held under CCN number 10478 and Crystal Systems Texas’s service area held under CCN number 10804. This Order addresses only the proposed sale and transfer of facilities and certificate rights from Texas Water to Undine. The administrative law judge (ALJ) approves the transaction between Texas Water and Undine and authorizes it to be completed as proposed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Texas Water is a Texas corporation registered with the Texas secretary of state under file number 109227500.

2. Texas Water holds CCN number 12473 which obligates it to provide retail water service in its certificated service area in Gregg, Henderson, Limestone, Smith, and Upshur counties.
3. Texas Water owns several public water systems registered with the Texas Commission on Environmental Quality (TCEQ). The public water systems and subdivisions at issue in the proceeding are:

Public Water System by TCEQ Identification Number	Name of Public Water System	Subdivisions Served
2300015	Brookshires Camp Joy Water	Camp Joy
1070176	Camp Tranquility	Camp Tranquility
2300021	Country Club Estates	Country Club Estates
2300020	Friendship Water	Friendship
0920031	Garden Acres	Garden Acres
2120081	Garden Valley Resort	Garden Valley Resort
2120034	Mount Sylvan Water	Mount Sylvan
2300026	Rosewood	Rosewood/Harmony
2120104	Stallion Lake Ranch	Stallion Lake Ranch

4. Undine is a Texas limited liability company registered with the Texas secretary of state under file number 802339329.
5. Undine holds CCN number 13260 which obligates it to provide retail water service in its certificated services area in Brazoria, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

Application

6. On September 2, 2021, Texas Water and Undine Development, LLC filed the application at issue in this proceeding.
7. In the application Texas Water and Undine Development seek approval of the following:
 - (a) the sale and transfer of facilities and service area held under Texas Water's CCN number 12473 to Undine;
 - (b) the decertification of a portion of Texas Water's CCN number 12473;
 - (c) the amendment of Undine's CCN number 13260 to include the facilities, certificated area, and decertified area from Texas Water's CCN number 12473;

- and (d) the dual certification of portions of Undine's service area with portions of Pritchett Water Supply Corporation's service area held under CCN number 10478 and Crystal Systems Texas, Inc.'s service area held under CCN number 10804.
8. On September 27, November 4 and 5, December 7 and 23, 2021, January 24, April 29, and June 14, 2022, the applicants filed supplements or confidential supplements to the application.
 9. On August 26, 2022, the applicants filed an amended application, which substitutes Undine for Undine Development.
 10. On August 29 and 31, September 7, 16, and 23, 2022, the applicants filed supplements or confidential supplements to the amended application.
 11. The total requested area includes 10,619 acres with 1,116 customers connections comprising: (a) the transfer of 5,669 acres and approximately 930 customers from Texas Water's CCN number 12473 to Undine; (b) the decertification of 12 acres and no customers from Texas Water's CCN number 12473; (c) the addition of 4,921 uncertificated acres and approximately 186 customers; (d) dual certification of eight acres of Pritchett WSC's water service area under CCN number 10478 with two customers; and (e) dual certification of 21 acres of Crystal Systems' water service area under CCN number 10804 with six customers.
 12. The requested service areas include the following:
 - a. Camp Joy. The requested area is approximately 406 acres, serves 119 customer connections, is located within approximately two miles north-northeast of downtown Ore City, Texas, and is generally bounded on the north by a line approximately half mile south of Upshur County Land Road; on the east by Lake O' the Pines; on the south by Upshur/Marion County Line; and on the west by North Front Street in Upshur County.
 - b. Cape Tranquility. The requested area is approximately 81 acres, serves 70 customer connections, is located within approximately two miles north of downtown Coffee City, Texas, and is generally bounded on the north by Jamison Drive; on the east and south by Lake Palestine; and on the west by approximately 200 feet west of County Road 4202 in Henderson County.
 - c. Country Club Estates. The requested area is approximately 23 acres, serves 34 customer connections, is located within approximately two miles south-southwest of downtown Gilmer, Texas, and is generally bounded on the north by State Highway 155; on the east by U.S. Highway 271 South; on the south by Sugar Creek; and on the west by Farm-to-Market Road 2685 in Upshur County.

- d. Friendship. The requested area is approximately 1,091 acres, serves 92 customer connections, is located within approximately 1.3 miles west of downtown Gilmer, Texas, and is generally bounded on the north by Lake Gilmer and Kelsey Creek; on the east by Brooks Creek and North Bradford Street; on the south by State Highway 154; and on the west by Farm-to-Market Road 852 and Kelsey Creek in Upshur County.
 - e. Garden Acres. The requested area is approximately 256 acres, serves 79 customer connections, is located within approximately 4.5 miles west of downtown Longview, Texas, and is generally bounded on the north by Mistletoe Street; on the east by Swinging Bridge Road; on the south by Sabine River; and on the west by Hawkins Creek in Gregg County.
 - f. Rosewood and Harmony. The requested area is approximately 1,807 acres, serves 199 customer connections, is located within approximately 6.2 miles west of downtown Gilmer, Texas, and is generally bounded on the north by Farm-to-Market Road 852; on the east by Farm-to-Market Road 1795 and State Highway 154; on the south by Cedar Road; and on the west by Raintree Lakes and Kelsey Creek in Upshur County.
 - g. Mount Sylvan. The requested area is approximately 4,880 acres (including 12 acres to be decertified), serves 312 customer connections, is located within approximately 4.6 miles southwest of downtown Lindale, Texas, and is generally bounded on the north by Interstate Highway 20; on the east by the intersection of State Highway 110 and County Road 412; on the south by Neches River and County Road 49; and on the west by Mill Break Creek and Neches River in Smith County.
 - h. Stallion Lake and Garden Valley Resort. The requested area is approximately 2,087 acres, serves 211 customer connections, is located within approximately 3.5 miles east-southeast of downtown Van, Texas, and is generally bounded on the north by the intersection of County Road 424 and State Highway 110; and east by State Highway 110; on the south by Neches River and Mill Break Creek; and on the west by County Road 426 in Smith County.
13. In Order No. 15 filed on October 3, 2022, the ALJ found the application, as supplemented, administratively complete.

Notice

14. On March 10, 2022, the applicants filed the affidavit of Carey A. Thomas, senior vice president of Undine, attesting that notice, along with maps, was mailed to current customers, landowners, neighboring utilities, and affected parties on February 18, 2022.
15. On March 10, 2022, the applicants filed publishers' affidavits attesting to publication of notice in the *Longview News-Journal*, a newspaper of general circulation in Gregg County, on February 11 and 18, 2022; the *Athens Daily Review*, a newspaper of general circulation

- in Henderson County, on February 19 and 26, 2022; the *Tyler Morning Telegraph*, a newspaper of general circulation in Smith County, on February 11 and 18, 2022; and *The Gilmer Mirror*, a newspaper of general circulation in Upshur County, on February 17 and 24, 2022.
16. In Order No. 7 filed on March 25, 2022, the ALJ found the notice sufficient.
 17. In Order No. 16 filed on December 28, 2022, the ALJ withdrew Order No. 7's finding that notice was sufficient and required revised notice of the application.
 18. On February 22, 2023, the applicants filed the affidavit of Mr. Thomas attesting that notice was provided to all current customers of Texas Water, landowners, neighboring utilities, and affected parties on February 15, 2023. Attached to the affidavit were copies of the notice and maps provided by the applicants, and a confidential list of recipients for the notice.
 19. On March 17, 2023, the applicants filed publishers' affidavits attesting to publication of notice in the *Longview News-Journal*, a newspaper of general circulation in Gregg County, on February 10 and 17, 2023; the *Athens Daily Review*, a newspaper of general circulation in Henderson County, on February 19 and 26, 2023; the *Tyler Morning Telegraph*, a newspaper of general circulation in Smith County, on February 10 and 17, 2023; and *The Gilmer Mirror*, a newspaper of general circulation in Upshur County, on February 16 and 23, 2023.
 20. On June 15, 2023, the applicants filed the affidavit of Vance Tillman attesting that there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area.
 21. In Order No. 25 filed on July 24, 2023, the ALJ found the supplemental notice sufficient.

Evidentiary Record

22. In Order No. 26 filed on August 1, 2023, the ALJ admitted the following evidence into the record of the proceeding:
 - a. The applicants' application and all attachments filed on September 2, 2021;
 - b. The applicants' response to Order No. 1 filed on September 14, 2021;

- c. The applicants' supplement to application filed on September 27, 2021;
- d. The applicants' supplement and confidential supplement to the application filed on November 4 and 5, 2021;
- e. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on November 8, 2021;
- f. Undine's response to Order No. 3 filed on December 7, 2021;
- g. The applicants' supplement to the application filed on December 23, 2021;
- h. The applicants' response to Commission Staff's first request for information filed on January 24, 2022;
- i. The applicants' supplemental response to Commission Staff's first request for information filed on February 1, 2022;
- j. Commission Staff's supplemental recommendation on administrative completeness and notice and proposed procedural schedule filed on February 7, 2022;
- k. The applicants' proof of notice filed on March 10, 2022;
- l. Commission Staff's recommendation on sufficiency of notice filed on March 23, 2022;
- m. The applicants' supplement to the application filed on April 29, 2022;
- n. The applicants' confidential supplement to the application filed on June 14, 2022;
- o. The applicants' and Commission Staff's joint request for abatement filed on June 23, 2022;
- p. The applicants' response to Order No. 11 filed on August 1, 2022;
- q. The applicants' amended application filed on August 26, 2022;
- r. The applicants' confidential attachments to the amended application filed on August 29, 2022;
- s. The applicants' supplement to the amended application filed on August 31, 2022;

- t. The applicants' supplement to the amended application filed on September 7, 2022;
- u. The applicants' supplement to the amended application filed on September 16, 2022;
- v. The applicants' supplement to the amended application filed on September 23, 2022;
- w. Commission Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule, filed on September 29, 2022;
- x. Commission Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule filed on October 31, 2022;
- y. The applicants' response to Commission Staff's recommendation filed on October 31, 2022;
- z. Commission Staff's recommendation on the transaction and confidential attachments filed on November 17, 2022;
- aa. Commission Staff's clarification filed on February 21, 2023;
- bb. Undine's clarification and confidential attachment filed on February 21, 2023;
- cc. Undine's response to Order No. 19 and confidential attachment filed on February 22, 2023;
- dd. Undine's supplemental response to Order No. 19 filed on March 17, 2023;
- ee. Commission Staff's supplemental recommendations on Undine's clarification and revised notice filed on April 4, 2023;
- ff. Commission Staff's revised recommendation on the transaction and all attachments, including confidential attachments, filed on May 4, 2023;
- gg. Undine's response to Commission Staff's revised recommendation on the transaction filed on May 5, 2023;
- hh. Undine's supplemental response to Order No. 19 filed on May 19, 2023;
- ii. The applicants' response and confidential attachments to Order No. 24 filed on June 15, 2023;

- jj. The applicants' supplemental response to Order No. 24 filed on June 28, 2023; and
- kk. Commission Staff's revised response and confidential attachment to Order No. 24 filed on June 30, 2023.

Purchaser's Compliance History

- 23. The Commission's complaint records, which date back to 2017, show 133 informal complaints against Undine. The Commission's Customer Protection Division has evaluated and closed 130 complaints at this time. The three open complaints were received in April 2023.
- 24. Undine has been subject to enforcement actions by the Commission and the TCEQ for non-compliance with rules, orders, or statutes.
- 25. Undine is actively working on resolving the violations that have been identified by the TCEQ at each of their water and sewer systems.
- 26. Undine does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 27. Undine has demonstrated a compliance status that is adequate for approval of the transaction to proceed.

Adequacy of Existing Service

- 28. Texas Water has nine TCEQ-registered public water systems that are the subject of this application.
- 29. Some of the public water systems at issue in this proceeding have violations listed in the TCEQ database. Applicants submitted documentation indicating compliance has been achieved for some of the public water systems and that there are plans in place to resolve a capacity issue of the Cape Tranquility public water system.
- 30. The Commission's complaint records, which date back to 2017, show 10 complaints against Texas Water, all of which have been closed.
- 31. There is no evidence in the record that Texas Water has failed to comply with any Commission or TCEQ order.

Need for Additional Service

32. There are 1,116 customer connections in the requested areas that are receiving service from Texas Water and have an ongoing need for service.
33. There is no evidence in the record indicating a need for additional service in the requested area.

Effect of Approving the Transaction and Granting the Amendments

34. Approving the sale and transfer to proceed and granting the CCN amendments will obligate Undine to provide continuous and adequate water service to current and future customers in the requested area.
35. There will be no effect on landowners as requested area is currently certificated or receiving service from Texas Water.
36. All retail public utilities in the proximate area were provided notice of the transaction proposed in this application, and no protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility.
37. The application included letters, signed by Pritchett WSC and Crystal Systems, consenting to dual certification with Undine.
38. Landowners in the currently uncertificated areas will have a water service provider available once the transaction is approved.
39. In the dually certificated areas, customers will have an option to select their provider.
40. The quality of service is expected to improve, because Undine has substantial experience as a retail public utility and because Undine will be able to make various upgrades and improvements to the water systems, as needed.

Ability to Serve: Managerial and Technical

41. Undine owns and operates numerous TCEQ-approved public water systems in Texas.
42. Undine employs TCEQ-licensed operators who will be responsible for operating the public water systems being transferred.
43. Undine has the technical and managerial capability to provide adequate and continuous services to the requested area.

Regionalization or Consolidation

44. It will not be necessary for Undine to construct a physically separate water system to serve the requested area.
45. Because the requested area will not require construction of a physically separate public water system, consideration of regionalization or consolidation with another retail public utility is not required.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

46. Texas Water is currently serving customers in the requested area and has sufficient capacity for all systems, except the Cape Tranquility system. Texas Water will be submitting a request to TCEQ for an alternate capacity requirement exception as there is no potential for growth in the area service by that system.
47. 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 to connect to a neighboring retail public utility.
48. It is not feasible to obtain service from an adjacent retail public utility.

Ability to Serve: Financial Ability and Stability

49. Undine Group, LLC, an affiliate of Undine, is capable, available, and willing to cover temporary cash shortages and has a debt-to-equity ratio that is less than one. Therefore, Undine has satisfied the leverage test.
50. Undine Group provided a written guarantee of coverage of temporary cash shortages and has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction. Therefore, Undine has satisfied the operations test.
51. Undine is proposing to make capital improvements in excess of \$100,000 to the Mount Sylvans water system.
52. Undine submitted documents indicating funds are available for the purchase of the public water systems plus planned capital improvements to keep up with TCEQ capacity requirements due to growth in the area.

53. Undine has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

54. 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

55. The effects on environmental integrity and the land will be temporary as capital improvements are made for Undine to continue providing service to the requested area.

Improvement of Service or Lowering Cost to Consumers

56. Service is expected to improve and costs to customers will be lower as a result of the proposed 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(a), 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).¹
2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated 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. The applicants demonstrated that the sale and the transfer of Texas Water's facilities and service area to Undine will serve the public interest and is necessary for the continued service, accommodation, convenience, or safety of the public as required by TWC §§ 13.246(b) and 13.301(d) and (e).

¹ After this application was filed, 16 TAC § 24.239 was amended, effective March 29, 2023. Accordingly, all references and citations to 16 TAC § 24.239 in this Order are made to the version in effect at the time the application was filed.

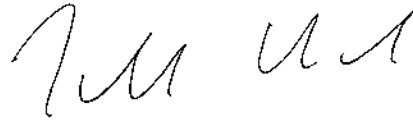
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the transaction between Texas Water and Undine in this proceeding and authorizes it to be completed as proposed.
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 completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension is granted, this approval is void and the applicants must reapply for approval.
5. This Order does not transfer CCN number 12473 and the associated service area from Texas Water or authorize Undine to provide service in Texas Water's certificated service area. Texas Water must provide continuous and adequate service in its certificated service area until a final order or notice of approval issued by the Commission cancels or transfers Texas Water's CCN.
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 completed.
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 procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 12th day of September 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "J. Huhn", is written over a horizontal line.

JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE