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DOCKET NO. 52502

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

**COMMISSION STAFF’S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS, RATES, NOTICE, AND PROPOSED PROCEDURAL SCHEDULE**

On September 2, 2021, Texas Water Systems, Inc. (TWS) and Undine Development, LLC filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Gregg, Henderson, Smith, and Upshur Counties. On August 26, 2022, the application was amended to replace Undine Development, LLC with Undine Texas, LLC (Undine Texas) as the applicant. Supplemental information was filed on August 29 and 31, 2022.

On August 29, 2022, the administrative law judge (ALJ) filed Order No. 14 requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation, another status report, or a request for hearing by September 29, 2022. Therefore, this pleading is timely filed.

I. ADMINISTRATIVE COMPLETENESS

Staff has reviewed the application and, as detailed in the attached memoranda from Patricia Garcia of the Infrastructure Division and Jorge Ordonez of the Rate Regulation Division, recommends that the application be found administratively complete. Staff’s recommendation on administrative completeness is not a comment on the merits of the application.

II. PHASE-IN RATES

As a result of negotiations between Undine and Staff, Undine has agreed to amend the application and apply the water rates approved for docket no. 50200,¹ instead of the rates it included in its application.² This new tariff includes a phase-in of water rates over three years, and Staff contends this complies with TWC § 13.3011. This statute allows a person who files a sale, transfer, merger application to request authorization to charge initial rates that are different from the rates the system-to-be-acquired is currently using. In order to do so, the proposed, new rates must be “shown in a tariff filed with the regulatory authority” by the person making the request and must already be in force on the date the application is filed.³ Neither of these requirements preclude the use of phase-in rates nor do they specifically prescribe what kind of rates can be used. In this instance, the agreed-upon tariff is in force in dozens of subdivisions and systems throughout the Houston area⁴ and was previously approved in docket no. 50200.⁵ Finally, after considering both the originally proposed tariff and the phase-in tariff approved in docket no. 50200, Staff has concluded that the latter tariff is the more just and reasonable tariff for consumers, since it contains lower rates that are phased in over three years. Thus, Staff maintains that the proposed, phase-in water tariff not only meets the requirements of TWC § 13.3011(a) but also serves the public interest as it is more protective of consumers than the originally proposed tariff. Accordingly, Staff respectfully requests that the ALJ approve the transaction with this new tariff.

¹ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Memo with Water and Undine Sewer Tariffs at 3-34 (Nov. 11, 2020). (Undine Rate Change Application).

² The attached memoranda recommending approval of the proposed transaction are unaffected by the proposed amendment.

³ TWC § 13.3011(a).

⁴ Undine Rate Change Application at 4-6.

⁵ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

III. NOTICE

As Undine states in its application amendment, Staff and Undine contend there is no need to re-notify TWS ratepayers. The notice Undine previously issued contained sufficient information to inform ratepayers of the transaction and the change in water rates and was found sufficient by the ALJ.⁶ In its previously-issued notice, Undine did not reference specific rates and only provided a link for ratepayers to view the new proposed rate.⁷ If Undine had to re-notify ratepayers, Staff would recommend using the same notice forms, and Undine would issue notice that was practically identical to the notice it originally issued. Thus, re-notification would not have any practical effect for ratepayers, as the information would be the same and would only serve to confuse ratepayers. Thus, to save the time and expense of re-notification and to save the ratepayers from further confusion, Staff does not recommend requiring Undine to re-notify TWS ratepayers.

IV. PROCEDURAL SCHEDULE

Staff recommends that the application be found administratively complete; therefore, Staff proposes the following procedural schedule:

Event	Date
Deadline for Staff to request a hearing or file a recommendation on approval of the sale and on the CCN amendment	October 31, 2022
Deadline for parties to file a response to Staff's recommendation on approval of the sale	November 3, 2022
Deadline for parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed.	November 8, 2022

⁶ Order No. 7. Finding Notice Sufficient and Establishing Procedural Schedule (Mar. 25, 2022).

⁷ See Undine Response to Order No. 6 Regarding Proof of Notice at 6 (Mar. 10, 2022).

V. CONCLUSION

For the reasons stated above, Staff respectfully requests an order allowing the proposed transaction to proceed with the phase-in tariff and not requiring Undine to re-notice ratepayers.

Dated: September 29, 2022

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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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 September 29, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: September 28, 2022

RE: Docket No. 52502 - *Application of Texas Water Systems, Inc. and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Gregg, Henderson, Smith, and Upshur Counties*

On September 2, 2021, Undine Development, LLC (Undine Development) and Texas Water Systems, Inc. (TWS) filed an application for the sale of facilities and certificate rights and dual certification with Pritchett Water Supply Corporation (Pritchett WSC) and Crystal Systems Texas, Inc. (Crystal Systems) in Gregg, Henderson, Smith, and Upshur Counties, Texas. The application is subject to Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237 and § 24.239. The application will be amended to substitute Undine Texas, LLC (Undine Texas) as the applicant. As a result, my evaluation assumes that Undine Texas will be the acquiring entity. Collectively, I refer to Undine Texas and TWS as the Applicants.

Undine Texas, certificate of convenience and necessity (CCN) No. 13260, seeks approval to acquire facilities and transfer portions of water service areas from TWS under water CCN No. 12473. Additionally, Undine Texas requests to amend the CCN to add uncertificated areas and for dual certification with portion of Pritchett WSC, CCN No. 10478, and portion of Crystal Systems, CCN No. 10804.

Based on the mapping review by Tracy Montes, Infrastructure Division, the digital mapping data submitted on September 2, 2021 (Item 1) and December 23, 2021 (Item 18), in addition to the revised maps submitted on September 23, 2022 (Item 70) are sufficient. In addition, the approximate total acreage for the requested area includes 10,619 acres (sum of 10,631 acres minus 12 acres to be decertified) with approximately 1,116 total customer connections to Undine Texas, CCN No. 13260, as follows:

- Transfer portions from TWS (CCN 12473) that includes 5,669 acres and approximately 930 customers;
- Decertify portions from TWS (CCN 12473) that include 12 acres with no customers;

- Add uncertificated areas that include 4,921 acres and approximately 186 customers;
- Obtain dual certification with portions of Pritchett WSC (CCN 10478) that include 8 acres and 2 customers; and
- Obtain dual certification with portions of Crystal Systems (CCN 10804) that include 21 acres and 6 customers.

Based on the mapping review and my technical and managerial review of the revised application filed on August 26, 2022, and revised maps filed on September 23, 2022, I recommend that the application be deemed administratively complete. Undine Texas has requested a good cause exception to the notice as notice was previously published and provided to current customers, landowners, neighboring systems, and cities. Undine Development provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was March 28, 2022; there were no motions to intervene, protests, or opt-out requests received. I recommend not requiring renote under 16 TAC § 24.239(c) of the amended application that will substitute Undine Texas as the purchasing utility.

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz
Legal Division

FROM: Jorge Ordonez
Rate Regulation Division

DATE: September 09, 2022

RE: Docket No. 52502 – *Application of Texas Water Systems, Inc. and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Gregg, Henderson, Smith, and Upshur Counties*

On September 2, 2021, Texas Water Systems, Inc. (TWS), CCN No. 12473 (water), and Undine Development, LLC (Undine Development), CCN No. 12407 (water), filed an application for the sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, and Upshur Counties under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

On August 26, 2022, TWS and Undine Development filed an amended application requesting the substitution of Undine Texas, LLC (Undine Texas), CCN No. 13260 (water), as the acquiring utility in place of Undine Development.

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 Texas 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 Texas filed a guaranty stating that Undine Group, LLC is capable, available, and willing to cover any temporary cash shortages or operating expense shortfalls.¹

My analysis is based on financial statements ending December 31, 2020. These financial statements contain an unqualified auditor's opinion from Plante & Moran, PLLC stating that the financial statements present fairly, in all material respects, the financial position of Undine Group, LLC as of December 31, 2020.²

Undine Texas provided the financial statements of Undine Group, LLC, which demonstrates debt-to-equity ratio of 0.06.³ Based upon my review of the financial statements of Undine Group, LLC, I

¹ Application, 52502 Highly Sensitive Exhibit A to Application at 36 of 38 (Aug. 31, 2022).

² Application, 52502 Highly Sensitive Exhibit A to Application at 6 of 38 (Apr. 29, 2022).

³ *Id.*, at 7 of 38. The calculations for which can be found in Confidential Attachment JO-1.

recommend a finding that Undine Group, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through its affiliate—Undine Texas meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

Operation Test

An affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Undine Group, LLC provided a written guaranty and also satisfied the leverage test. Therefore, I recommend a finding that Undine Texas meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

The applicant has filed documentation demonstrating adequate cash funding of the purchase price and planned system improvements for the TWS water system.⁴ Therefore, I recommend a finding that Undine Texas satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

Recommendation

Because Undine Texas meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Undine Texas demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Undine Texas before the date of this memorandum and may not reflect any changes in Undine Texas's status after this review.

⁴ Supplement Response to Staff RFI 1-1 (Feb. 1, 2022).