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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	§	

**JOINT MOTION TO ADMIT EVIDENCE AND
PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED**

COME NOW Texas Water Systems, Inc., and Undine Texas, LLC (collectively, the Applicants), together with the staff of the Public Utility Commission of Texas (Staff) (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed. In support thereof, the Parties show the following:

I.

BACKGROUND

On September 2, 2021, Texas Water Systems, Inc. (TWS) and Undine Development, LLC (Undine Development) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, and Upshur Counties. On August 26, 2022, the application was amended to replace Undine Development with Undine Texas, LLC (Undine Texas or Undine) as the applicant. Supplemental information was filed on August 29 and 31, and September 7, 16 and 23, 2022.

Applicants seek approval to acquire facilities and to transfer a portion of TWS's water service area under water CCN No. 12473 to Undine Texas. The application reflects a requested area of 10,619 acres and 1,116 total customer connections.

On September 29, 2022, Staff filed recommendations that Applicants' application was administratively complete, consistent with the applicable Commission rules.

On October 3, 2022, the administrative law judge (ALJ) filed Order No. 15, finding the application and amended application, as supplemented, administratively complete and notice sufficient, and establishing a deadline of November 8, 2022, for the Parties to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

II.

JOINT MOTION TO ADMIT EVIDENCE

The Parties move to admit the following evidence into the record of this proceeding:

- A. The application for sale, transfer, or merger of facilities and certificate rights, filed on September 2, 2021 (AIS Item Nos. 1-7);
- B. Applicants' response to Order No. 1, filed on September 14, 2021 (AIS Item No. 9);
- C. Undine Development's first supplement to application, filed on September 27, 2021 (AIS Item No. 10);
- D. Undine Development's second supplement to application, filed on November 4 and 5, 2021 (AIS Item Nos. 13-14);
- E. Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on November 8, 2021 (AIS Item No. 15);
- F. Undine Development's response to Order No. 3, filed on December 7, 2021 (AIS Item No. 17);
- G. Cover letter with revised maps, written descriptions, and digital maps, filed on December 23, 2021 (AIS Item No. 18);
- H. Applicant's response to Staff's first request for information, filed on January 24, 2022 (AIS Item Nos. 22-23);
- I. Applicant's supplemental response to Staff's first request for information, filed on February 1, 2022 (AIS Item Nos. 27-28);
- J. Staff's supplemental recommendation on administrative completeness and notice and proposed procedural schedule, filed on February 7, 2022 (AIS Item No. 29);
- K. Undine's response to Order No. 6 regarding proof of notice, filed on March 10, 2022 (AIS Item Nos. 31-32);
- L. Staff's recommendation on sufficiency of notice, filed on March 23, 2022 (AIS Item No. 33);
- M. Applicants' supplement to the application, filed on April 29, 2022 (AIS Item Nos. 35-36);
- N. Applicant's supplemental information submittal, filed on June 14, 2022 (AIS Item Nos. 41-42);
- O. Joint request for abatement, filed on June 23, 2022 (AIS Item No. 44);

- P. Applicants' response to Order No. 11, filed on August 1, 2022 (AIS Item No. 51);
- Q. Applicants' application amendment, filed on August 26 and 29, 2022 (AIS Item Nos. 55, 57-63);
- R. Applicants' third supplement to application, filed on August 31, 2022 (AIS Item Nos. 65-66);
- S. Applicants' application supplement, filed on September 7, 2022 (AIS Item Nos. 67-68);
- T. Applicants' application supplement, filed on September 16, 2022 (AIS Item No. 69);
- U. Applicants' application supplement, filed on September 23, 2022 (AIS Item No. 70);
- V. Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule, filed on September 29, 2022 (AIS Item No. 71);
- W. Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule, filed on October 31, 2022 (AIS Item Nos. 73-75); and
- X. Applicants' response to recommendation; filed on October 31, 2022 (AIS Item No. 76).

III.

JOINT PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED

The parties move for the adoption of the attached Proposed Order Approving the Sale and Transfer to Proceed. The undersigned counsel for Undine represents that TWS has authorized them to file this Joint Motion to Admit Evidence on TWS's behalf.

IV.

CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Order Approving the Sale and Transfer to Proceed.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

John Harrison
Managing Attorney

/s/ Ian Groetsch
Ian Groetsch
State Bar No. 24078599
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
Phone: (512) 936-7465
Fax: (512) 936-7268
ian.groetsch@puc.texas.gov

GREGG LAW PC



Peter T. Gregg
State Bar No. 00784174
910 West Ave., No. 3
Austin, Texas 78701
Phone: 512-522-0702
Fax: 512-727-6070
pgregg@gregglawpc.com

Attorneys for Undine Texas, LLC

CERTIFICATE OF SERVICE

As indicated by my signature above, I, Peter Gregg, 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 November 17, 2022 in accordance with the Order Suspending Rules, issued in Project No. 50664.

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APPLICATION OF TEXAS WATER	§	PUBLIC UTILITY COMMISSION
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JOINT PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Texas Water Systems, Inc. (TWS) and Undine Texas, LLC (Undine Texas or Undine) (collectively, the Applicants), for the sale, transfer, or merger of facilities and certificate rights in Gregg, Henderson, Smith, and Upshur Counties. Applicants seek approval to acquire facilities and to transfer a portion of TWC's water service area under its certificate of convenience and necessity (CCN) No. 12473 to Undine Texas. The administrative law judge (ALJ) grants that this sale is approved and the transaction between Applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. TWS is a for-profit corporation registered with the Texas secretary of state under file number 109227500.
2. Undine Texas is a for-profit corporation registered with the Texas secretary of state under file number 802339329.
3. Undine Texas operates, maintains, and controls facilities for providing water service under CCN No. 13260 in Brazoria , Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker Counties.

Application

4. On September 2, 2021, TWS Resort and Undine Development, LLC (Undine Development), filed an application for the approval of the sale, transfer or merger of

facilities and certificate rights in Montgomery County. On August 26, 2022, the application was amended to replace Undine Development with Undine Texas as the applicant.

5. The sale and transfer affect approximately 10,619 acres and 1,116 total customer connections in Gregg, Henderson, Smith, and Upshur Counties, Texas. The requested areas subject to this transaction are as follows:
 - a. Camp Joy: the requested area subject to this transaction is located within approximately 2 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 Landing 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. The total area being requested includes approximately 406 acres and serves 119 customer connections.
 - b. Cape Tranquility: the requested area subject to this transaction is located within approximately 2 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. The total area being requested includes approximately 81 acres and serves 70 customer connections.
 - c. Country Club: the requested area subject to this transaction is located within approximately 2 miles south-southwest of downtown Gilmer, Texas, and is generally bounded on the north by State Highway 155; on the east by US Highway 271 South; on the south by Sugar Creek; and on the west by FM 2685 in Upshur County. The total area being requested includes approximately 23 acres and serves 34 customer connections.
 - d. Friendship: the requested area subject to this transaction 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 FM 852 and Kelsey Creek in Upshur County. The total area being requested includes approximately 1,091 acres and serves 92 customer connections.
 - e. Garden Acres: the requested area subject to this transaction 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. The total area being requested includes approximately 256 acres and serves 79 customer connections.
- f. Harmony and Rosewood: the requested area subject to this transaction is located within approximately 6.2 miles west of downtown Gilmer, Texas, and is generally bounded on the north by FM 852; on the east by FM 1795 and State Highway 154; on the south by Cedar Road and on the west by Raintree Lakes and Kelsey Creek in Upshur County. The total area being requested includes approximately 1,807 acres and serves 199 customer connections.
- g. Mt. Sylvan: the requested area subject to this transaction 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 & Neches River in Smith County. The total area being requested includes approximately 4,880 acres (includes 12 acres to be decertified) and serves 312 customer connections.
- h. Stallion Lake and Garden Valley Resort: the requested area subject to this transaction is located within approximately 3.5 miles east-southeast of downtown Van, Texas, and is generally bounded on the north by the intersection of Country Road 424 and State Highway 110; on the 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. The total area being requested includes approximately 2,087 acres and serves 211 customer connections.
6. Applicants agreed to the sale and transfer of a portion of TWS's water service area under water CCN number 12473, which includes 5,669 acres of transferred water service area amended to Undine Texas's water CCN number 13260 to incorporate the water service area previously under water CCN number 12473.
7. The application proposes the amendment of 4,921 acres of uncertificated service area to Undine Texas's water CCN number 13260, 8 acres of dual certification with Pritchett Water Supply Corporation's water service area under water CCN number 10478, 21 acres

of dual certification with Crystal Systems Texas's water service area under water CCN number 10804, and the decertification of 12 acres from TWS's water CCN number 12473.

8. In Order No. 15 issued on October 3, 2022, the administrative law judge (ALJ) found the application and amended application, as supplemented, administratively complete.

Notice

9. On March 10, 2022, Carey A. Thomas, Senior Vice President, filed an affidavit on behalf of Undine Development attesting that notice was provided to all current customers, neighboring systems, and cities on February 18, 2022.
10. In Order No. 7, issued on March 25, 2022, the ALJ found the notice of the application sufficient.
11. In Order No. 15, issued on October 3, 2022, the ALJ found that the notice remains sufficient as determined in Order No. 7.

Evidentiary Record

12. On _____, 2022, the parties filed a joint motion to admit evidence.
13. In Order No. __, issued on _____, 2022 the ALJ admitted the following evidence into the record: (a) the applicants' application, filed on September 2, 2021; (b) Applicants' response to Order No. 1, filed on September 14, 2021; (c) Undine Development's first supplement to application, filed on September 27, 2021; (d) Undine Development's second supplement to application, filed on November 4 and 5, 2021; (e) Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on November 8, 2021; (f) Undine Development's response to Order No. 3, filed on December 7, 2021; (g) Cover letter with revised maps, written descriptions, and digital maps, filed on December 23, 2021; (h) Applicant's response to Staff's first request for information, filed on January 24, 2022; (i) Applicant's supplemental response to Staff's first request for information, filed on February 1, 2022; (j) Staff's supplemental recommendation on administrative completeness and notice and proposed procedural schedule, filed on February 7, 2022; (k) Undine's response to Order No. 6 regarding proof of notice, filed on March 10, 2022; (l), Staff's recommendation on sufficiency of notice, filed on March 23, 2022; (m) Applicants' supplement to the application, filed on April 29, 2022; (n) Applicant's supplemental information submittal, filed on June 14, 2022; (o) Joint request for abatement, filed on June 23, 2022; (p)

Applicants' response to Order No. 11, filed on August 1, 2022; (q) Applicants' application amendment, filed on August 26 and 29, 2022; (r) Applicants' third supplement to application, filed on August 31, 2022; (s) Applicants' application supplement, filed on September 7, 2022; (t) Applicants' application supplement, filed on September 16, 2022; (u) Applicants' application supplement, filed on September 23, 2022; (v) Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule, filed on September 29, 2022; (w) Staff's recommendation on administrative completeness, rates, notice, and proposed procedural schedule, filed on October 31, 2022; and (x) Applicants' response to recommendation; filed on October 31, 2022.

Adequacy of Existing Service

14. TWS holds Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) ID Nos. 1070176, 230015, 2300021, 2300020, 0920031, 2120081, 2120034, 2300026, and 2120104.
15. Some of the public water systems TWS services have violations listed in the TCEQ database. Undine has plans in place to address said violations.
16. The Commission's complaint records, which date back to 2017, show complaints against Undine, all of which have been closed.
17. The customers in the requested area are currently receiving water service from TWS.

Need for Service

18. There is no need for additional service, as the existing customers are currently receiving water service from the TWS water system.
19. The TWS water system is currently in operation.

Effect of Approving the Transaction and Granting the Amendment

20. Approving the sale and transfer to proceed will obligate Undine to provide continuous and adequate water service to current and future customers.
21. There will be no effect on landowners as the requested area is currently certified.
22. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and none filed a protest or motion to intervene.
23. There will be no effect on any other retail public utility servicing the proximate area as there are no other water providers in the area.

Ability to Serve: Managerial and Technical

24. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
25. Undine has sufficient capability to serve the customers and is capable of providing drinking water that meets the requirements of Chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
26. No additional construction is necessary for Undine to serve the requested area.
27. Undine has the technical and managerial capability to provide continuous and adequate service.

Ability to Serve: Financial Ability and Stability

28. Undine has a debt-to-equity ration of less than one, satisfying the leverage test.
29. Undine demonstrated that an affiliated interest is capable, available, and willing to cover temporary cash shortages.
30. Undine has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction and possesses the cash and leverage ability to pay for capital improvements and necessary equity investments, satisfying the operations test.
31. Undine demonstrated has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

32. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

33. The feasibility of obtaining service from an adjacent retail public utility was not considered because TWS was adequately serving the existing customers and its facilities offer sufficient capacity.
34. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

35. The construction of a physically separate water system is not necessary for Undine to serve the requested area.
36. Because construction of physically separate water system is unnecessary, concerns of regionalization or consolidation do not apply.

Environmental Integrity and Effect on the Land

37. Granting the transaction will not adversely impact the integrity of the land because the requested area is already being served.

Improvement of Service or Lowering Cost to Consumers

38. Undine, using the water system already in place, will continue to provide water service to the existing customers in the area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Public notice of the application was provided as required by TWC §§ 13.246(a) and 13.301(a) and 16 TAC § 24.239(a) through (c).
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC §§ 13.301(b) and 16 TAC § 24.239(e).
3. It is not necessary for Undine to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
4. Undine has demonstrated that the sale and transfer of TWS's certificated service area and existing facilities under CCN number 12473 to Undine will serve the public interest and is necessary for the service, accommodation, convenience, or 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 Commission approves the sale and transfer of a portion of TWS's water facilities and service area held under water CCN number 12473 to Undine Texas, and the amendment of Undine Texas' water CCN number 13260 to include the area previously included in TWS's water CCN number 12743 and remove the area from CCN number 12743.
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 area and associated facilities will remain under CCN number 12743 and will be held by TWS until the final order or notice of approval is issued in this matter, in accordance with Commission 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 _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE