



## Filing Receipt

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| <b>APPLICATION OF CONROE RESORT UTILITIES, LLC AND UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MONTGOMERY COUNTY</b> | <b>§<br/>§<br/>§<br/>§<br/>§<br/>§</b> | <b>PUBLIC UTILITY COMMISSION<br/><br/>OF TEXAS</b> |
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**COMMISSION STAFF’S RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS AND NOTICE AND MOTION FOR A DETERMINATION OF APPLICABLE RATES**

On November 8, 2021, Conroe Resort Utilities, LLC (Conroe) 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 Montgomery County. On August 25, 2022, the application was amended to replace Undine Development, LLC with Undine Texas, LLC (Undine Texas) and Undine Texas Environmental, LLC (Undine Texas Environmental) as the applicants. Supplemental information was filed on August 26 and 30, 2022.

On September 2, 2022, the administrative law judge filed Order No. 10, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation regarding the administrative completeness of the application and a new recommendation on notice by September 20, 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 Ethan Blanchard 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. NOTICE

Staff has reviewed the proof of notice submitted by Applicants and, as detailed in the attached memorandum from Patricia Garcia, recommends that it be found sufficient under 16 Texas Administrative Code (TAC) §24.239(c). On September 14, 2022, Applicants filed an affidavit by Carey A. Thomas, Senior Vice President of Undine, attesting that notice was mailed to all current customers, neighboring utilities, and affected parties on August 15, 2022, using the notice forms provided by Staff and the maps deemed sufficient. Accordingly, Staff recommends that the notice provided is sufficient.

## III. APPLICABLE RATES

In the amended application filings, Applicants included new tariffs they intend on using that contain phased-in rates.<sup>1</sup> Staff contends that phased-in rates are allowable under TWC § 13.3011. This statute gives an acquiring utility the discretion to propose use of its rates for service using the acquired system. Under TWC § 13.3011(a)(2), an acquiring utility's initial rates for service from the acquired system must be "in force for the other water or sewer system" of the acquiring utility on the date the application is filed.

As the Commission has not yet adopted rules implementing TWC § 13.3011, Staff must rely solely on this statute and, in doing so, interpret the Legislature's intent. When interpreting a statutory provision, the Commission must ascertain and effectuate the legislative intent by looking at the plain meaning of the statute's words or phrase.<sup>2</sup> Dictionaries are often used to ascertain the plain meaning of a statute's words and phrases.<sup>3</sup> A definition of "in force" is "VALID,

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<sup>1</sup> Applicant's Application Amendment at 27-53 (Aug. 25, 2022) and Applicants' Correction to Application Amendment at 115-125 (Aug. 30, 2022).

<sup>2</sup> *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010) (stating that in construing statutes, a court's "primary objective is to give effect to the Legislature's intent"; and to do so, courts "rely on the plain meaning of the text as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results.").

<sup>3</sup> *See Powell v. City of Houston*, 628 S.W.3d 838, 843-44 (Tex. 2021) (explaining that to determine the plain meaning of a statute, courts "typically look first to dictionary definitions and then consider the term's usage in other statutes, court decisions, and similar authorities." (quoting *Tex. State Bd. Of Exam'rs of Marriage and Family Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 35 (Tex. 2017))).

OPERATIVE.”<sup>4</sup> The term “valid,” in turn, has several meanings, including “having legal efficacy or force”; “especially: executed with the proper legal authority and formalities”; “well-grounded or justifiable: being at once relevant and meaningful”; “logically correct”; and “appropriate to the end in view: EFFECTIVE.”<sup>5</sup> The term “operative” likewise has several meanings, including “producing an appropriate effect: EFFICACIOUS”; “most significant or essential”; and “exerting force or influence: OPERATING.”<sup>6</sup> It is noteworthy that the term “in force” was used rather than “in effect.”

Although these definitions help clarify legislative intent for the phrase “in force,” they do not help clarify the specific types of rates an acquiring utility may select in its tariff under TWC § 13.3011. When the Legislature’s intent cannot be readily ascertained by examining the plain meaning of the statute’s words or phrases, the statutory scheme as a whole should be considered.<sup>7</sup> However, an examination of Chapter 13 of the Texas Water Code, and Chapter 13’s Subchapter H specifically, does not provide any insight on what the Legislature intended regarding the specific types of rates that can be selected by an acquiring utility under TWC § 13.3011. Thus, the Legislature’s intent on this portion of the statute is ambiguous. In the case of an ambiguous statute, extrinsic aids, such as legislative history, may be used to interpret the statute.<sup>8</sup> Since the specific types of rates an acquiring utility may select under TWC § 13.3011 is ambiguous, the section’s legislative history may be used to help determine the Legislature’s intent.

TWC § 13.3011 was enacted in 2021 and the bill analysis for the engrossed version of the bill in which the provision was contained states in part:

Acquiring utilities would like to extend their previously approved existing rates to the customers transferred from the seller utility without filing a new rate change application. This will better enable the acquiring utility to more quickly upgrade, improve, and

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<sup>4</sup> Merriam-Webster online dictionary at <https://www.merriam-webster.com/dictionary/force>.

<sup>5</sup> *Id.* at <https://www.merriam-webster.com/dictionary/valid>.

<sup>6</sup> *Id.* at <https://www.merriam-webster.com/dictionary/operative>.

<sup>7</sup> *Greater Houston P`ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015).

<sup>8</sup> *Id.* See also Code Construction Act, Tex. Gov’t Code § 311.023(3) (Code Construction Act) (“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: ... legislative history;”).

modernize the seller utility system and encourage the consolidation of substandard water and wastewater utilities. This benefits the consumer with:

- more reliable water and wastewater service and fewer service disruptions over time;
- more consistent and equitable rates across the utility's service area;
- reduced operation and maintenance costs, which means fewer rate increases over time; and
- improved water quality and increased water capacity[.]<sup>9</sup>

The bill analysis explains that the Legislature intended TWC § 13.3011 to streamline the acquisition of systems such as the Conroe Resort water and sewer systems that need upgrades, in a manner that benefits both customers and utilities.

As shown in the tariff pages Undine filed in its amended application filings, the Commission approved three-step, phased-in rates for Undine Texas and Undine Texas Environmental, with the first phase having an effective date of August 1, 2020, the second phase having an effective date of August 1, 2021, and the third and final phase having an effective date of August 1, 2022. All three steps of the phase-ins should be considered in force at the time the application initiating this docket was filed. "In force" is not synonymous with "in effect." All three steps of the phased-in rates were in force at the time the application in the current docket was filed, because all three steps at that time were "having legal efficacy or force," "well-grounded or justifiable," "logically correct," "appropriate to the end in view," and "producing an appropriate effect."<sup>10</sup>

To interpret TWC § 13.3011(a)(2) as limiting the rate options to the ones in effect at the time the application is filed would be inconsistent with the legislative intent of TWC § 13.3011 to streamline the acquisition of systems such as the Conroe Resort water and sewer systems that need upgrades. In the current docket, such an interpretation would result in rates frozen at the second step of the phased-in rates, meaning that customers would not get the benefit of the lower first phase, and Undine would not get to eventually move to the higher rates of phase 3. That result

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<sup>9</sup> House Comm. on Natural Res., Bill Analysis, Tex. H.B. 1484, 87th Leg., R.S. (2021) (attached).

<sup>10</sup> See Merriam-Webster online dictionary at <https://www.merriam-webster.com/dictionary/force> (defining "in force" as "valid") and at <https://www.merriam-webster.com/dictionary/valid>.

could dissuade a utility such as Undine from acquiring a utility or could delay the acquisition for years until the phase-in of rates approved by the Commission reach the final phase. Alternatively, it could result in the utility initiating a rate case for the acquired system, which could raise rates above the final phase of the acquiring utility's previously approved phased-in rates and result in the utility charging non-uniform rates, one set of rates for the acquired system and another set of rates for the rest of its systems. That interpretation should also be rejected on the basis that it would not produce a just and reasonable result.<sup>11</sup> Accordingly, Staff respectfully requests a determination that Undine Texas and Undine Texas Environmental can use its previously approved phased-in rates for service from the acquired systems.

#### IV. CONCLUSION

For the reasons detailed above, Staff respectfully requests the issuance of an order that finds the application administrative complete, that deems the notice provided by Applicants sufficient, and that determines that phased-in rates approved by the Commission in Undine's last comprehensive rate case can be used.

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<sup>11</sup> See *State v. T.S.N.*, 547 S.W.3d 617, 620 (Tex. 2018) (stating that statutes are analyzed with "the presumption that the Legislature intended a just and reasonable result."). See also Code Construction Act § 311.021(3) ("In enacting a statute, it is presumed that...a just and reasonable result is intended."). Although not at issue in the current docket, TWC § 13.3011 can be interpreted more flexibly to allow a utility to phase-in rates for an acquired system even if a phase-in was not previously approved for the utility's other systems.

Dated: September 20, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52797**

**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 20, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch  
Ian Groetsch

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Ian Groetsch, Attorney  
Legal Division

**FROM:** Patricia Garcia, Infrastructure Analysis Section Director  
Infrastructure Division

**DATE:** September 20, 2022

**RE:** Docket No. 52797 – *Application of Conroe Resort Utilities, LLC and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*

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On November 8, 2021, Undine Development, LLC (Undine Development) and Conroe Resort Utilities, LLC (Conroe Resort) filed an application for a public interest determination for a transaction to transfer facilities and certificate rights in Montgomery County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. The application will be amended to substitute Undine Texas, LLC (Undine Texas) and Undine Texas Environmental, LLC (Undine Texas Environmental) as the purchasing utilities. Collectively, I refer to Undine Texas, Undine Texas Environmental, and Conroe Resort as the Applicants.

Undine Texas, water certificate of convenience and necessity (CCN) No. 13260, seeks approval to acquire facilities and to transfer all of the water service area and customers from Conroe Resort under water CCN No. 11942.

Undine Texas Environmental, sewer CCN No. 20816, seeks approval to acquire facilities and to transfer all of the sewer service area and customers from Conroe Resort under sewer CCN No. 20638.

The area to be transferred is the entire certificated water and sewer service areas of Conroe Resort. Conroe Resort's certificated water and sewer service areas completely overlap; cover approximately 282 acres; and include approximately 294 water customer connections and 289 sewer customer connections.

Based on the mapping review by Tracy Montes, Infrastructure Division, the revised maps submitted on August 15, 2022 (Item 77) are sufficient as clarified on August 26, 2022 (Item 88).



The *requested water area* includes 294 water customer connections and includes approximately 282 acres of transferred area from Conroe Resort (CCN No. 11942) to Undine Texas (CCN No. 13260).

The application proposes the subtraction of approximately 282 acres from Conroe Resort (CCN No. 11942). The application proposes the addition of approximately 282 acres to Undine Texas (CCN No. 13260).

The *requested sewer area* includes 289 sewer customer connections and includes approximately 282 acres of transferred area from Conroe Resort (CCN No. 20638) to Undine Texas Environmental (CCN No. 20816).

The application proposes the subtraction of approximately 282 acres from Conroe Resort (CCN No. 20638). The application proposes the addition of approximately 282 acres to Undine Texas Environmental (CCN No. 20816).

Based on the mapping review and my technical and managerial review of the revised maps filed on August 15, 2022, the updated notice filed on August 16, 2022, and the revised application filed on August 25, 2022, I recommend that the application be deemed administratively complete. Undine Texas and Undine Texas Environmental provided notice consistent with 16 TAC § 24.239(c) to current customers, neighboring systems, and cities on August 15, 2022. I recommend that the notice provided by Undine Texas and Undine Texas Environmental be deemed sufficient.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Ian Groetsch  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** June 24, 2022

**RE:** Docket No. 52797 – *Application of Conroe Resort Utilities, LLC and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*

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### **1. Introduction**

On November 8, 2021, Undine Development, LLC and Conroe Resort Utilities, LLC (Conroe) filed an application for the sale of facilities and certificate rights in Montgomery County under the provisions of Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. The application will be amended to substitute Undine Texas, LLC as the applicant for the acquisition of the water facilities and water service certificate rights and Undine Texas Environmental, LLC as the applicant for the acquisition of the sewer facilities and sewer service certificate rights (acquiring entities). This substitution of Undine entities does not substantively affect my evaluation because the financial guarantee will remain as in the original application with the same ultimate parent, Undine Group, LLC.

TWC § 13.301(e)(2) and 16 TAC § 24.239(h)(2) require consideration of the financial capability of the acquiring entities to provide continuous and adequate service to the service area being acquired and to any areas currently certificated to the acquiring entities; TWC § 13.246(c)(6) requires consideration of the financial ability of the acquiring entities to pay for the facilities necessary to provide continuous and adequate service; and TWC § 13.246(c)(6) and 16 TAC § 24.239(h)(5)(F) require consideration of the financial stability of the acquiring entities, including, if applicable, the adequacy of the acquiring entities' debt-equity ratios. These issues are addressed by 16 TAC § 24.11, which states in subsection (a) that the section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate

and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. Subsection (b) states that the section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance under TAC Chapter 16. Furthermore, subsection (c) states that financial assurance must be demonstrated by compliance with subsection (d) or (e) of the section, with subsection (d) providing for an irrevocable stand-by letter of credit and subsection (e) providing a financial test.

The acquiring entities will submit information to demonstrate compliance with the financial test in 16 TAC § 24.11(e). Paragraph (1) states that an owner or operator may demonstrate financial assurance by satisfying the leverage and operations tests that conform to the requirements of the section, unless the commission finds good cause exists to require only one of these tests. Paragraph (4) requires as part of meeting these two tests that the owner or operator submit an affidavit meeting certain requirements and a copy of one of three types of financial information.

## **2. Leverage Test**

The leverage test is in 16 TAC § 24.11(e)(2) and requires the owner or operator to meet one or more of four criteria and subparagraph (E) allows the owner or operator to meet one or more of those four criteria by demonstrating that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The acquiring entities will meet subparagraph (E) by filing a guaranty agreement between Undine Texas, LLC and Undine Group, LLC and a guaranty agreement between Undine Texas Environmental, LLC and Undine Group, LLC, each of which state that Undine Group, LLC is capable, available, and willing to cover temporary cash shortages of the acquiring entities.

The acquiring entities will meet the criterion in 16 TAC § 24.11(e)(2)(A), which requires that the owner or operator must have a debt-to-equity ratio of less than one, using long-term debt and equity or net assets. Financial statements of Undine Group, LLC that comply with 16 TAC § 24.11(e)(4)(B)(i) have been filed in the docket.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Application, *Highly Sensitive Attachments to Response to RFI No. 1*, at bates 7 (Mar. 11, 2022).

<sup>2</sup> *Id.*

Based upon my review of the financial statements of Undine Group, LLC, I calculated the debt-to-equity ratio to be equal to 0.18.<sup>3</sup> Because the ratio is less than one, Undine Group, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, the acquiring entities through their affiliate, Undine Group, LLC, meet the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

### **3. Operations Test**

16 TAC § 24.11(e)(3) requires an owner or operator to demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations and also provides that an affiliated interest may provide a written guarantee of coverage of temporary cash shortages.

### **4. Capital Improvement Plan**

An applicant who is proposing service to a new CCN area requiring capital improvements in excess of \$100,000 must provide documents indicating funds are available for the purchase of an existing system plus any improvements, as required by 16 TAC § 24.11(e)(5)(A).

Undine provided a list of needed system improvements<sup>4</sup> which will be withheld from the purchase price.<sup>5</sup> Undine has provided loan approval documents demonstrating that funds are available for the purchase price.<sup>6</sup> Therefore, I recommend a finding that Undine meets the requirements specified in 16 TAC § 24.11(e)(5)(A).

### **5. Additional Financial Assurance**

TWC § 13.301(d) allows the Commission to require an applicant for a CCN or CCN amendment 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. Because the acquiring entities will meet the financial test in 16 TAC § 24.11(e), I do not recommend that the acquiring entities be required to provide additional financial assurance.

### **6. Conclusion**

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<sup>3</sup> *Id.*, at 8. The calculations for which can be found in confidential Attachment EB-1.

<sup>4</sup> Application, *Highly Sensitive Applicant's Supplement Information – Attachment A*, item no. 68, at bates 5 (Jun. 14, 2022).

<sup>5</sup> Application, *Confidential Undine Response to OPUC's First RFI (Exhibit A)*, item no. 72, at bates 2 (Jun. 29, 2022).

<sup>6</sup> The calculations for which can be found in confidential Attachment EB-1.

After the filing of the financial guarantees between Undine Group, LLC and the acquiring entities and the filing of the affidavit required by 16 TAC § 24.11(e)(4)(A) signed by the acquiring entities attesting to the accuracy of the information provided, I recommend a finding that the acquiring entities demonstrate the financial capability needed to provide continuous and adequate service to the area subject to this application. My determinations are based on information for Undine Group, LLC as of the date specified above and therefore does not reflect any changes after that date.