



Filing Receipt

Filing Date - 2023-05-23 09:34:50 AM

Control Number - 52797

Item Number - 251

DOCKET NO. 52797

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 §
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PUBLIC UTILITY COMMISSION OF TEXAS

**ORDER NO. 27
REQUIRING SUPPLEMENTAL INFORMATION, RECOMMENDATION
FROM COMMISSION STAFF, MOTION TO ADMIT
THE ADDITIONAL INFORMATION, AND EXTENDING DEADLINE**

This Order addresses the need for Conroe Resort Utilities, LLC, Undine Texas, LLC and Undine Texas Environmental, LLC to supplement the application, for Commission Staff to file a supplemental recommendation, and for the parties to move to admit the additional information into the record.

During the Commission's May 11, 2023 open meeting, the Commission discussed certain aspects of sale, transfer, or merger applications.¹ Specifically, Commissioner Jackson filed a memorandum in Docket No. 51646² stating that more evidence was needed regarding the capital improvements plan, notice, and mapping, among other issues. These issues were incorporated into the Commission's order remanding the proceeding to Docket Management.

Capital Improvements Plan

Under Texas Water Code (TWC) § 13.244(d)(3) and 16 Texas Administrative Code (TAC) § 24.233(a)(6), an applicant for a certificate of convenience and necessity (CCN) or amendment to a CCN must provide a capital improvement plan, which must include a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area and must be keyed to a map showing where the facilities will be located to provide

¹ Open Meeting at 1:22 (May 11, 2023), Item No. 2 (*available at https://www.adminmonitor.com/tx/puct/open_meeting/202305112/*).

² *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646 (pending).

service.³ A pro forma budget is not a capital improvement plan under the TWC or the Commission's rules.⁴

After review of the application, the administrative law judge (ALJ) has determined that the materials in water attachment O and sewer attachment P of the application do not constitute capital improvements plans that meet the Commission's expectations or the requirements of TWC § 13.244(d)(3) or 16 TAC § 24.233(a)(6).

By June 8, 2023, the applicants must file capital improvements plans conforming with the Commission's discussions in Docket Nos. 51646 and 52391⁵ and the requirements in TWC § 13.244(d)(3) and 16 TAC § 24.233(a)(6).

By June 23, 2023, Commission Staff must file a recommendation on whether the applicants' capital improvement plans satisfy the requirements of the Commission, TWC § 13.244(d)(3), and 16 TAC § 24.233(a)(6).

Loan Documentation

The requirements of 16 TAC § 24.11(e)(5) apply either when an applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000. Under 16 TAC § 24.11(e)(5)(A), for a sale, transfer, or merger application, the owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers.

It appears from the materials provided by the applicants in water attachment O and sewer attachment P that capital improvements in excess of \$100,000 are required for the system at issue. If capital improvements in excess of \$100,000 are required, the applicants must provide, by June 8, 2023, loan documentation in accordance with 16 TAC § 24.11(e)(5)(A) or request a good cause exception under 16 TAC § 24.2(b).

³ *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management at 2 (Oct. 20, 2023).

⁴ *Id.*

⁵ *Id.*, Corrected Order (Feb. 22, 2023).

By June 23, 2023, Commission Staff must file a recommendation on the loan documentation or the request for a good cause exception.

Notice

Under 16 TAC § 24.239(e)(1), notice of a sale, transfer, or merger application must be provided to affected customers and other affected parties. Under TWC § 13.246(a-1) and 16 TAC § 24.235(b)(2), notice of an application for an amendment to a CCN must be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified.

Attached to the proof of notice filed by Undine is a confidential list of persons and entities who received notice of the application. However, there is insufficient evidence in the record to support a finding that notice has been provided to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the amendment. Specifically, the record does not identify the tracts of land that are at least 25 acres and are wholly or partially in the requested area nor does the record show who owns those tracts of land. Further, there is no affidavit attesting that notice was mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Therefore, the record does not show that notice has been mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified.

By June 8, 2023, the applicants must supplement their proof of notice by providing an updated affidavit and attachments with the information outlined above.

By June 23, 2023, Commission Staff must file a supplemental recommendation on the applicants' supplemented notice.

Extension of Deadline

In its May 19, 2023 filing, Commission Staff requested that the deadline for the parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed be temporarily suspended pending the resolution of the remainder of Commission Staff's motion.

The ALJ denies the request to temporarily extend the deadline as requested by Commission Staff and instead extends the deadline for the parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed to June 30, 2023.

Signed at Austin, Texas the 23rd day of May 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink that reads "Katie Moore Marx". The signature is written in a cursive, flowing style.

**KATIE MOORE MARX
ADMINISTRATIVE LAW JUDGE**