



## **Filing Receipt**

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**Item Number - 266**

**DOCKET NO. 52797**

<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>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 27**

**I. INTRODUCTION**

On November 8, 2021, Conroe Resort Utilities, LLC and Undine Development, LLC filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Montgomery County. On August 25, 2022, the application was amended to replace Undine Development, LLC with Undine Texas, LLC and Undine Texas Environmental, LLC (collectively, Undine) as the applicants.

On June 27, 2023, the administrative law judge filed Order No. 29, requiring Commission Staff to file recommendations on whether the applicants' capital improvement plans satisfy the requirements of the Commission, on the loan documentation or request for a good cause exception, and on the applicants' supplemental notice by June 30, 2023. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON CAPITAL IMPROVEMENT PLANT**

Staff has reviewed the application and supplemental information and, as supported by the attached memoranda of Patricia Garcia of the Infrastructure Division and of Fred Bednarski of the Rate Regulation Division, recommends that Undine has satisfied the requirements of Texas Water Code § 13.244(d)(3) and 16 Texas Administrative Code (TAC) § 24.233(a)(6).

**III. RECOMMENDATION ON LOAN DOCUMENTATION**

Staff has reviewed the application and supplemental information and, as supported by the attached memorandum of Mr. Bednarski, recommends that Undine has satisfied the requirements of 16 TAC § 24.11(e)(5). In the alternative, Staff recommends that a good cause exception should be granted for 16 TAC § 24.11(e)(5).

#### IV. RECOMMENDATION ON SUPPLEMENTAL NOTICE

Staff has reviewed the supplemental proof of notice and, as supported by the attached memorandum of Ms. Garcia, recommends that notice be found sufficient. As stated in Ms. Garcia's memorandum, Undine provided proof of notice to the only landowner of a tract of land of at least 25 acres that is wholly or partially included in the area proposed to be certificated. Undine also provided a map indicating the location of the landowner's property. Accordingly, Staff recommends that Undine's supplemental notice is sufficient.

#### V. CONCLUSION

Staff respectfully recommends that the capital improvement plant, loan documentation, and supplemental notice provided by Undine be deemed sufficient for further processing of this matter.

Dated: June 28, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

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*/s/ Ian Groetsch*  
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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 June 28, 2023, in accordance with the Second Order Suspending Rules, filed 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:** June 28, 2023

**RE:** 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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### **1. Introduction**

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.

## **2. Notice**

Undine Development provided notice consistent with 16 TAC § 24.239(c).<sup>1</sup> The deadline to intervene was February 28, 2022; there were 27 protests received and one intervenor, the Office of Public Utility Counsel. Undine Texas and Undine Texas Environmental provided notice to customers on August 16, 2022. The deadline to intervene was September 16, 2022. There were 6 protests received. Notice was deemed sufficient by the administrative law judge (ALJ) on September 27, 2022.

On December 20, 2022, Order No. 14, the ALJ withdrew the finding that notice was sufficient when the amended applications were submitted and required revised notice to be sent to customers. Undine Texas provided revised notice on April 6, 2023. The intervention deadline date was May 8, 2023; there were 63 protests received and 5 intervenors. There are 30 protestors from whom the ALJ has requested clarification regarding intervention on the case.

On June 13, 2023, an affidavit was provided affirming that notice was submitted to one landowner in the requested area on April 6, 2023. A map indicating the location of the landowner's properties was provided.

## **3. Capital Improvement Plan**

*An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

Undine Texas and Undine Texas Environmental will be installing new facilities to provide additional service to the requested area. Estimated costs to build the facilities are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

The timeline of improvements will start within the first year after closing. A keyed map showing where facilities will be located was provided. The facilities will be in addition to the facilities already providing service to the Conroe Resort Water and Sewer Systems.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

## **4. Recommendation**

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Conroe Resort for the customers being served by Conroe Resort Water and Sewer Systems. I further recommend that a public hearing is not necessary.

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<sup>1</sup> Order No. 7. Finding Notice Sufficient and Establishing Procedural Schedule (Mar. 25, 2022).

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Ian Groetsch  
Legal Division

**FROM:** Fred Bednarski III  
Rate Regulation Division

**DATE:** June 28, 2023

**RE:** 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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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 was 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. This substitution of the two entities Undine Texas, LLC and Undine Texas Environmental, LLC (collectively, Undine) 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 (Undine LLC).

On May 23, 2023, the administrative law judge issued Order No. 27, requiring staff to file a recommendation on the loan documentation or good cause exception provided by Undine.

Undine provided funding agreements demonstrating access to adequate funding for the purchase price and capital improvements as indicated in confidential attachment FB-1. Undine's parent (Undine LLC) has committed capital to pay for the capital improvements and purchase price of Conroe and is capable, available, and willing to cover any temporary cash shortages and oper-

ating expense shortfalls.<sup>1</sup> Therefore, I recommend a finding that Undine provided access to adequate cash funding, a firm capital commitment, and that, if necessary, a good cause exception should be granted for 16 TAC § 24.11(e)(5)(A).

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<sup>1</sup> Confidential Financial Assurance Supplement at pdf 2, 3, and 4 (Feb. 21, 2023) and Confidential Financial Assurance Supplement (Undine Texas, LLC) at pdf 3, 4, and 5 (Feb. 21, 2023).