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Executive Director

Public Utility Commission of Texas

TO: Interim Chair Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: John Kelly
Commission Advising

RE: *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, Docket No. 52797, Draft Preliminary Order, July 20, 2023 Open Meeting, Item No. XX.*

DATE: July 11, 2023

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the July 20, 2023 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 20, 2023 open meeting.

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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	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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DRAFT PRELIMINARY ORDER

Conroe Resort Utilities, LLC, Undine Texas, LLC, and Undine Texas Environmental, LLC, jointly filed an application for the sale, transfer, or merger of facilities and certificate rights in Montgomery County. This preliminary order identifies the issues that must be addressed.

Undine Texas seeks approval to acquire facilities and to transfer a water service area from Conroe Resort Utilities in Montgomery County under water certificate of convenience and necessity (CCN) number 11942. Undine Texas Environmental seeks approval to acquire facilities and to transfer a sewer service area from Conroe Resort Utilities in Montgomery County under sewer CCN number 20816. The requested area includes approximately 282 acres, 294 water connections, and 289 sewer connections. Undine Texas provides water service under CCN number 13260. Undine Texas Environmental provides sewer service under CCN number 20816.

On November 8, 2021, the applicants made application. On April 13, 2022, intervention was granted to the Office of Public Utility Counsel (OPUC).¹ On July 22 and August 11 and 15, 2022, the applicants supplemented the application. On August 25, 2022, the applicants filed an application amendment. On August 30, 2022, the applicants filed a correction to the application amendment. On September 27, 2022, the Commission administrative law judge (ALJ) found the application administratively complete and under Commission rules² this is the date of filing. On April 20, 2023, the Commission ALJ found notice, as revised by the applicants, sufficient.³

¹ Order No. 7 at 1 (Apr. 13, 2022).

² 16 Texas Administrative Code § 24.8(d).

³ Order No. 22 (Apr. 20, 2023).

In Docket Nos. 50017⁴ and 50200⁵, the Commission approved three phases of rates for Undine Texas and Undine Texas Environmental, with the first phase being effective August 1, 2020 through July 31, 2021; the second phase being effective August 1, 2021 through July 31, 2022; and the third and final phase being effective on and after August 1, 2022. Upon approval of their application for the sale, transfer, or merger, Undine Texas and Undine Texas Environmental's amended application requests to charge the customers of Conroe Resort Utilities customers Undine's tariffed and in-force rates under Texas Water Code (TWC) § 13.3011. On September 27, 2022, the Commission ALJ required briefing from the parties addressing whether under Texas Water Code (TWC) § 13.3011 phase one or phase three of Undine's rates were in force.⁶ All parties' briefs supported applying phased-in rates, i.e., phase-one rates, to the customers of Conroe Resort Utilities. After receiving responsive briefs, the Commission ALJ declined to approve applying the phase one rates as proposed in the amended application.⁷ The applicants supplemented the amended application on February 21 and April 12, 2023. On May 12, 2023, OPUC requested a hearing before the State Office of Administrative Hearings (SOAH). This proceeding has not yet been referred to the SOAH.

The applicants were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by June 7, 2023. OPUC timely filed a list of issues. The applicants filed a list of issues on June 8, 2023. On July 6, 2023, the Commission ALJ declined to certify issues to the Commission.⁸

⁴ *Application of Pure Utilities, I.C. and Undine Texas, LLC for Sale, Transfer, or Merger of Water Facilities and Certificate Rights in Liberty, Polk, San Jacinto, and Tyler Counties, and to Decertify a Portion of Pure Utilities, I.C.'s Certificated Area and to Amend Uncertificated Water Service Area in Liberty and Polk Counties*, Docket No. 50017, Notice of Approval (Mar. 4, 2021).

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

⁶ Order No. 11 at 1–2 (Sept. 27, 2022).

⁷ Order No. 14 (Dec. 20, 2022).

⁸ Order No. 20 (Jul. 6, 2023).

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Rates

1. If the applicant's three-phased rates are allowed under Texas Water Code (TWC) § 13.3011 to be charged former Conroe Resort Utilities customers, what rate should be charged?
2. Can the Commission authorize a utility to use a phased-in rate structure where the effective dates of earlier rates have passed but the phased-in rate structure still exists in the tariff in force under TWC § 13.3011?
3. Should the acquired customers be subject to any of the pass-through rates listed in the proposed tariff?
4. Should the acquired customers be subject to the rate case expense surcharge listed in the proposed tariff?

Application

5. Did Undine Texas and Undine Texas Environmental give proper notice to the public in accordance with TWC § 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239(b) and (e).
6. In addition to the sale, transfer, or merger under 16 TAC § 24.239, are Undine Texas and Undine Texas Environmental amending their CCNs under 16 TAC § 24.227? If so, did Undine Texas and Undine Texas Environmental comply with the notice requirements of 16 TAC § 24.235, including mailing notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the CCN under 16 TAC § 24.235(b)(2)?
7. What is the effective date of the proposed transaction?

⁹ Tex. Gov't Code Ann. § 2003.049(e).

8. Was the application filed at least 120 days before the effective date of the transaction in accordance with TWC § 13.301(a) and 16 TAC § 24.239(b)?
9. Did Conroe Resort Utilities notify Undine Texas and Undine Texas Environmental of the requirements of TWC § 13.301 and provide a copy of 16 TAC § 24.239 before signing an agreement to sell, assign, lease, or rent its facilities in accordance with TWC § 13.301(k) and 16 TAC § 24.239(r)?
10. Were Conroe Resort Utilities' facilities or systems partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the Commission under TWC § 13.301(j) and 16 TAC § 24.239(q)?
 - a. If so, were these surcharges over and above revenues required for normal operating expenses and return?
 - b. If so, did Conroe Resort Utilities provide Undine Texas and Undine Texas Environmental with a written disclosure relating to the contributions before the date of the sale or transfer?
 - i. Did the disclosure contain the total dollar amount of the contributions?
 - ii. Did the disclosure contain a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the Commission in rate-making proceedings?

Public Interest

11. Will approving the proposed transaction serve the public interest under TWC § 13.301(d), (e), and (g) and 16 TAC § 24.239(g)–(h)?
 - a. Have Undine Texas and Undine Texas Environmental demonstrated adequate financial, managerial, and technical capability for continuous and adequate service to the service area being acquired and to any areas currently certified to Conroe Resort Utilities under TWC §§ 13.301(b), (c) and (e), 13.246(c), and 16 TAC § 24.239(f), (h), and (j)?
 - i. What is the adequacy of service currently provided to the requested area under 16 TAC § 24.239(h)(5)(A)?
 - ii. Is there a need for additional service in the requested area under 16 TAC § 24.239(h)(5)(B)?

- iii. What is the effect of approving the transaction on Conroe Resort Utilities, Undine Texas and Undine Texas Environmental, on the landowners in the area, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area under 16 TAC § 24.239(h)(5)(C).
- iv. What is the ability of Undine Texas and Undine Texas Environmental to provide adequate service under 16 TAC § 24.239(h)(5)(D)?
- v. What is the feasibility of obtaining service from an adjacent retail public utility under 16 TAC § 24.239(h)(5)(E)?
- vi. Are Undine Texas and Undine Texas Environmental able to demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to every customer within the requested area under TWC § 13.246(c)(6), TWC § 13.251, and 16 TAC § 24.239(h)(4)?
- vii. What is the financial stability of Undine Texas and Undine Texas Environmental, including, if applicable, the adequacy of the debt-equity ratios of Undine Texas and Undine Texas Environmental if the transaction is approved under 16 TAC § 24.239(h)(5)(F)?
- viii. If Undine Texas, Undine Texas Environmental, or both transferees have not demonstrated adequate financial capability, should the Commission require Undine Texas, Undine Texas Environmental, or both transferees to provide financial assurance under 16 TAC § 24.239(f)?
- ix. If the Commission requires Undine Texas or Undine Texas Environmental to provide financial assurance, what form and amount of financial assurance should the Commission require under 16 TAC §§ 24.11, 24.239(f)?
- x. What impact does this transaction have on the environmental integrity of the requested area under 16 TAC § 24.239(h)(5)(G)?
- xi. Is there a probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction under 16 TAC § 24.239(h)(5)(H)?

- xii. What is the effect, if any, on the land to be included in the certificated area under TWC § 13.246(c)(9)?
 - b. Do Undine Texas or Undine Texas Environmental have a history of noncompliance with the requirements of the Commission, the Texas Commission on Environmental Quality (TCEQ), or the Department of State Health Services under 16 TAC § 24.239(h)(3)(A)?
 - c. Under 16 TAC § 24.239(h)(5)(I), has Conroe Resort Utilities, Undine Texas, or Undine Texas Environmental failed to comply with any Commission or TCEQ order? Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met?
 - d. Do Undine Texas or Undine Texas Environmental have a history of continuing mismanagement or misuse of revenues as a utility service provider under 16 TAC § 24.239(H)(3)(B)?
 - e. What is the experience of Undine Texas and Undine Texas Environmental as a utility service provider under TWC § 13.301(b) and 16 TAC § 24.239(h)(2)?
- 12. Do the water and sewer systems being purchased from Conroe Resort Utilities have any deficiencies or problems that need correction to be in compliance with the rules of the Commission or TCEQ?
 - a. If so, what are those deficiencies or problems?
 - b. How and when will those deficiencies or problems be corrected?
 - c. Do Undine Texas and Undine Texas Environmental have access to adequate financial resources to timely correct those deficiencies and problems?
- 13. Should the Commission approve Undine Texas's purchase and transfer of Conroe Resorts Utilities' water system identified in the application and operated under water CCN number 11942?
- 14. Should the Commission approve Undine Texas Environmental's purchase and transfer of Conroe Resorts Utilities' sewer system identified in the application and operated under sewer CCN 20638?

Cancellation of Transferor's Certificate of Convenience and Necessity

15. Should the Commission cancel Conroe Resort Utilities' water CCN number 11942 under TWC § 13.254(a)?
16. Should the Commission cancel Conroe Resort Utilities' sewer CCN number 20638 under TWC § 13.254(a)?

Amendment of Transferees' Certificates of Convenience and Necessity

17. Does the service area encompassed by this transaction require construction of a physically separate water system?
18. If so, have Undine Texas and Undine Texas Environmental met the requirements of 16 TAC § 24.227(b)?
19. Is amending Undine Texas's water CCN and Undine Texas Environmental's sewer CCN necessary for the service, accommodation, convenience, or safety of the public under 16 TAC § 24.227(c)?
20. If applicable, what are Undine Texas's and Undine Texas Environmental's efforts to extend retail utility service to any economically distressed areas located within Undine Texas's and Undine Texas Environmental's certificated service areas under 16 TAC § 24.227(g).
21. Should the Commission amend Undine Texas's CCN to include the area described by the application encompassed by water CCN number 11942?
22. Should the Commission amend Undine Texas Environmental's CCN to include the area described by the application encompassed by sewer CCN number 20638?

Post-Transaction Requirements

23. Does Conroe Resort Utilities currently retain any customer deposits including any membership fees or other types of retained funds from its members under 16 TAC § 24.239(k) and (l)?
 - a. If so, what is the total amount of those retained funds under 16 TAC § 24.239(k)(3)?
 - b. Does Conroe Resort Utilities have the proper records to allow retained funds and any unpaid interest to be returned under 16 TAC § 24.239(k)(4)?
 - c. Will retained funds be returned to customers or transferred to Undine Texas or Undine Texas Environmental under 16 TAC § 24.239(l)?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER