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**SOAH DOCKET NO. 473-23-23621
PUC DOCKET NO. 52797**

APPLICATION OF CONROE RESORT UTILITIES, LLC, UNDINE TEXAS, LLC, AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MONTGOMERY COUNTY	§ § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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JOINT REQUEST FOR CERTIFICATION

COME NOW Conroe Resort Utilities, LLC, Undine Texas, LLC, and Undine Texas Environmental, LLC (together, “Applicants”); Staff of the Public Utility Commission (Commission Staff); and the Office of Public Utility Counsel (OPUC) (collectively, the “Parties”) and file this Joint Request for Certification of an issue to the Commission pursuant to the prehearing conference held in this matter on August 25, 2023 and pursuant to SOAH Order No. 2 issued on August 25th.

I.

INTRODUCTION

The Parties seek certification of a single issue, which the Parties consider to be dispositive to the outcome of the matter pending in this hearing. The issue the Parties seek to certify is as follows:

Whether the Commission, as part of the approval of an STM application submitted pursuant to Texas Water Code § 13.3011, can authorize the implementation of a phase of a tariff that is different than the phase of the tariff in place at the time of the submittal of the application.

The Parties submit this motion pursuant to 16 Tex. Admin. Code § 22.127, which provides that the presiding officer may certify to the Commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.¹ The issue the Parties seek to certify is

¹ 16 Tex. Admin. Code 22.127(a)

eligible for certification pursuant to § 22.127(b) because the issue seeks the Commission's interpretation of an applicable statute, specifically Texas Water Code § 13.3011.²

II.

PROCEDURAL BACKGROUND

On November 8, 2021, the Applicants filed this application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Montgomery County (the "Application"). 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.

On May 12, 2023, Commission Staff issued its final recommendation recommending that the transaction will serve the public interest and should be allowed to proceed without a public hearing. On that same day, OPUC submitted a request for hearing on the merits.

On July 18, 2023, Commission Counsel issued an Order of Referral referring the docket to SOAH to conduct a hearing.

On July 20, 2023, the Commission issued a Preliminary Order in the matter.

III.

DISCUSSION

In Docket Nos. 50017³ and 50200⁴, 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. Undine Texas and Undine Texas Environmental's Application requests to charge the customers of Conroe Resort Utilities Undine's tariffed and in-force rates under Texas Water Code § 13.3011. On September 27, 2022, the Commission ALJ required briefing from the parties addressing whether under Texas Water Code § 13.3011 phase one or phase three of Undine's rates were in force. All

² Id at 22.127(b)(1)

³ *Application of Pure Utilities, LC 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 Port of Pure Utilities, LCs Certificated Area and to Amend Uncertificated Water Service Area in Liberty and Polk Counties*, Docket No. 50017 Notice of Approval (Mar. 4, 2023).

⁴ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Final Order (Nov. 5, 2020).

parties' briefs supported applying phased-in rates, i.e., phase-one rates, to the customers of Conroe Resort Utilities. Despite the consensus of the Parties as set out in the responsive briefs, the Commission ALJ declined to approve applying the phase one rates as proposed in the Application.

The Parties maintain that Texas Water Code § 13.3011 allows for the implementation of phase-one rates in this matter. Importantly, as counsel for Commission Staff represented to the ALJ during the preliminary hearing, Commission Staff's current rulemaking project to implement Texas Water Code § 13.3011, Project No. 53924, provides that the Commission may charge phase-one rates of a phase-in tariff regardless of the phase in place at the time of the submittal of the application.⁵ The rule as being proposed by Commission Staff adopts an interpretation of Texas Water Code § 13.3011 consistent with the interpretation of the Parties to this proceeding.⁶ It also provides for implementation of Texas Water Code § 13.3011 in a manner that allows reasonable flexibility in adopting rates pursuant to Texas Water Code § 13.3011 that protects the interests of the customers.

There are no factual disputes at issue in this proceeding between the Parties. It is the position of the Parties that there is otherwise nothing for the Parties to adjudicate at hearing, since the Parties are in agreement as to the appropriate interpretation of Texas Water Code § 13.3011. The Parties believe that the continued prosecution of the matter through a SOAH hearing would be inefficient relative to the certification of the identified issue to the Commission.

II. PRAYER

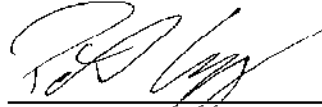
The Applicants respectfully request the ALJ's certification of the identified issue to the Commission.

⁵ *Water and Sewer Utility Rates After Acquisition*, Project No. 53924

⁶ *Water and Sewer Utility Rates After Acquisition*, Project No. 53924-2, Discussion Draft - Staff Requests Comments on the Proposed Rule and Related Policy Issues at pg. 6, Proposed § 24.240(c)(4), (May 17, 2023).

Respectfully submitted,

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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 September 18, 2023 in accordance with the Order Suspending Rules, issued in Project No. 50664.