



## Filing Receipt

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**APPLICATION OF CONROE RESORT UTILITIES, LLC AND UNDINE DEVELOPMENT, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MONTGOMERY COUNTY** § § **PUBLIC UTILITY COMMISSION OF TEXAS**

**APPLICANTS’ RESPONSE TO JOINT REQUEST FOR REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

On April 14, 2022, Commission Staff and OPUC filed a joint request that this matter be referred to SOAH. The sole explanation and justification for the joint request is as follows:

“As Staff has identified certain issues with the application that warrant further examination, Staff cannot file a recommendation at this time. OPUC has also identified issues that warrant further examination.”

Commission Staff and OPUC recommend this matter be referred to SOAH without providing any basis for asserting that referral to SOAH is warranted. Tex. Water Code. § 13.301(e)<sup>1</sup> sets out the criteria under which the Commission may hold a hearing. Neither Commission Staff nor OPUC has articulated any basis under Tex. Water Code. § 13.301(e) for referral of this matter to SOAH. The Commission cannot evaluate whether referral is appropriate under Tex. Water Code. § 13.301(e) in the absence of any justification for the referral request. Further, the Applicants should be afforded an opportunity evaluate and respond to Commission Staff and OPUC’s basis for referral before the Commission makes a decision on the request.

A decision to refer this matter to SOAH will have a critical adverse impact on the proposed transaction.<sup>2</sup> Such a decision should not be made without the applicants having an opportunity to address the basis for the requested referral. Informal discussions with Commission Staff indicate

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<sup>1</sup> See also the Commission’s implementing rules at 16 Tex. Admin. Code § 24.239(h)

<sup>2</sup> There have been no requests for hearing by the customers of the system or other interested parties, so the joint request is the only basis for a referral to SOAH.

that the “certain issues” that Commission Staff and OPUC assert “warrant further examination” do not, in fact, justify referral to SOAH pursuant to Tex. Water Code § 13.301(e). At the least, the issues Commission Staff has raised with the Applicants to this point indicate that the issues ultimately amount to a single issue, and one that does not involve any disputed issue of fact that would require an evidentiary hearing before SOAH. Of course, until Commission Staff and OPUC articulate the basis for the recommendation to refer the matter to SOAH, the Applicants are left to speculate.

The Applicants request that Commission Staff and OPUC be required to articulate the issue or issues that they assert justify referral to SOAH, and that the Parties then have an opportunity to brief whether the matter should be referred to SOAH for a hearing, and that no order of referral be issued prior to a decision following the briefing of the issue.

Respectfully submitted,

**Gregg Law PC**



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**CERTIFICATE OF SERVICE**

I certify by my above signature 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 April 21, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.