



## Filing Receipt

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<b>APPLICATION OF TERRA</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SOUTHWEST, INC. AND UNDINE</b>	<b>§</b>	
<b>TEXAS, LLC FOR SALE, TRANSFER,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OR MERGER OF FACILITIES AND</b>	<b>§</b>	
<b>CERTIFICATE RIGHTS IN DENTON</b>	<b>§</b>	
<b>COUNTY</b>		

**COMMISSION STAFF’S CLARIFICATION**

**I. INTRODUCTION**

On November 16, 2021, Terra Southwest, Inc. (Terra) and Undine Development, LLC (Undine Development), filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Denton County. On August 26, 2022, the application was supplemented to replace Undine Development with Undine Texas, LLC (Undine).

On February 3, 2022, the administrative law judge (ALJ) filed Order No. 23, requiring parties to clarify a number of issues by February 17, 2023. Therefore, this pleading is timely filed.

**II. CLARIFICATION**

In Order No. 20, the ALJ required clarification on three issues. The first is whether there are any violations, resolved or unresolved, associated with Undine in the Commission’s or Texas Commission on Environmental Quality’s (TCEQ) databases. In its review of the application, as amended, Staff evaluated the compliance history of the two public water systems (PWS) that are to be transferred in this transaction and concluded that the Hilltown Addition PWS has active violations in the TCEQ database.<sup>1</sup> Nevertheless, Undine has indicated that it will be making upgrades to the PWS that will address these violations.<sup>2</sup> Staff also notes that, since 2017, there have been 41 informal complaints against Terra, all of which have been closed.<sup>3</sup> Beyond this inquiry, Staff cannot confirm whether there are any other violations, resolved or unresolved, involving Undine. For the sake of efficiency and due to a lack of resources, for STM transactions, Staff focuses its review of seller’s compliance history and is unable to check all of the buyer’s

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<sup>1</sup> Commission Staff’s Recommendation on the Transaction, Attachment 1 at 2–3 (Nov. 30, 2022).

<sup>2</sup> *Id.*, Attachment 1 at 3.

<sup>3</sup> *Id.*

compliance history, especially when the buyer owns and operates multiple public water systems and wastewater treatment plants, like in this case. Thus, Staff can only confirm that one of the two PWSs to be transferred in this transaction has violations listed in the TCEQ database and that Undine has a plan in place to resolve these violations.

The ALJ next asks whether Undine is able to satisfy the leverage test while relying on a guaranty agreement between Undine Development and Undine Group, LLC. Staff notes that when Undine Development, LLC originally filed this application, it included the guaranty agreement between Undine Development, LLC and Undine Group, LLC. However, in August of 2022, the application was amended to substitute Undine Development, LLC with Undine Texas, LLC.<sup>4</sup> On February 17, 2023, Undine supplemented its application to include a guaranty agreement between Undine Group, LLC and Undine,<sup>5</sup> but as of the time of this filing, the confidential attachment has not yet been uploaded to the PUC Interchange, so Staff cannot yet review the guaranty agreement and comments on its sufficiency. Staff will submit an updated clarification as soon as it is able to review the updated guaranty agreement.

Finally, the ALJ requests clarification on whether environmental integrity or the land will be adversely affected based on the planned upgrades to bring the Hilltown Addition PWS back into compliance. In Staff's November 30, 2022 recommendation, Staff erroneously stated that "environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area."<sup>6</sup> Instead, Staff should have recommended that environmental integrity or the land will be minimally affected as new facilities are built to upgrade the capacity at the water systems. The disruption, however, will be minimal and should not prevent the transaction from moving forward

### III. CONCLUSION

For the reasons detailed above, Staff respectfully request an order reflecting Staff's recommendations.

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<sup>4</sup> See Applicant's Application Amendment (Aug. 26, 2022).

<sup>5</sup> Application Supplement (Feb. 17, 2023).

<sup>6</sup> Commission Staff's Recommendation on the Transaction, Attachment 1 at 4 (Nov. 30, 2022).

Dated: February 17, 2023

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**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 February 17, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch  
Ian Groetsch