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DOCKET NO. 52852

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

**JOINT MOTION TO ADMIT EVIDENCE AND
PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED**

COME NOW Terra Southwest, Inc., and Undine Texas, LLC (collectively, the Applicants), together with the staff of the Public Utility Commission of Texas (Staff) (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed. In support thereof, the Parties show the following:

I.

BACKGROUND

On November 16, 2021, Terra Southwest, Inc. (Terra) and Undine Development, LLC (Undine Development) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of facilities and certificate rights in Denton County. On September 1, 2022, the application was restyled to replace Undine Development with Undine Texas, LLC (Undine Texas or Undine) as the applicant. Supplemental information was filed on November 17 and 22, and December 13, 2021; January 24, April 29, June 14, August 26 and 29, and September 7, 8, 15, 17, and 23, 2022; and February 15, 17, and 21, 2023.

Applicants seek approval to acquire facilities, transfer all of Terra's water service area under water CCN No. 11608 to Undine Texas, amend to include existing customers in Denton County, and charge new initial rates. The application reflects a requested area of approximately 1,339.4 acres and 867 current customers.

On April 5, 2023, the ALJ filed Order No. 25, establishing a deadline of May 18, 2023, for the Parties to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

II.

JOINT MOTION TO ADMIT EVIDENCE

The Parties respectfully request that the following documents be admitted into evidence in this proceeding:

- A. The application for sale, transfer, or merger of facilities and certificate rights, filed on November 16 and 17, 2021 (AIS Item Nos. 1-7);
- B. Terra Southwest, Inc.'s Notice of Appearance, filed on November 19, 2021 (AIS Item No. 9);
- C. Applicants' response to Order No. 1, filed on November 22, 2021 (AIS Item No. 10);
- D. Supplemental mapping, filed on December 13, 2021 (AIS Item Nos. 16-17);
- E. Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on January 18, 2022 (AIS Item No. 24);
- F. Applicant's second supplement to application, filed on January 24, 2022 (AIS Item Nos. 26-27);
- G. Undine's response to Order No. 5, filed on February 3, 2022 (AIS Item Nos. 28-29);
- H. Undine's supplemental response to Order No. 5, filed on February 17, 2022 (AIS Item No. 30);
- I. Undine's response to Order No. 6, filed on March 10, 2022 (AIS Item Nos. 33-34);
- J. Undine's supplemental response to Order No. 2, filed on March 14, 2022 (AIS Item No. 35);
- K. Undine's second supplemental response to Order No. 2, filed on March 22, 2022 (AIS Item No. 37);
- L. Applicant's supplement to application, filed on April 29, 2022 (AIS Item Nos. 40-41);
- M. Applicant's supplemental information, filed on June 14, 2022 (AIS Item Nos. 51-52);
- N. Parties' joint request for Abatement, filed on June 24, 2022 (AIS Item No. 54);
- O. Staff's status update, filed on July 18, 2022 (AIS Item No. 56);
- P. Applicants' status report, filed on July 18, 2022 (AIS Item No. 57);
- Q. Staff's clarification, filed on July 29, 2022 (AIS Item No. 59);

- R. Applicants' second status report, filed on August 1, 2022 (AIS Item No. 60);
- S. Staff's status report, filed on August 8, 2022 (AIS Item No. 62);
- T. Staff's status report, filed on August 15, 2022 (AIS Item No. 64);
- U. Applicants' application amendment, filed on August 26, 2022 (AIS Item Nos. 66-74);
- V. Staff's status report, filed on August 31, 2022 (AIS Item No. 75);
- W. Applicants' application supplement, filed on September 7, 2022 (AIS Item Nos. 77-79);
- X. Supplemental mapping, filed on September 15, 2022 (AIS Item No. 80);
- Y. Undine's supplement to application, filed on September 17, 2022 (AIS Item No. 81);
- Z. Undine's supplement to application, filed on September 23, 2022 (AIS Item No. 82);
- AA. Staff's recommendation on administrative completeness, rates, notice and proposed procedural schedule, filed on September 28, 2022 (AIS Item No. 83);
- BB. Undine's response to Order No. 17, filed on November 1, 2022 (AIS Item No. 85);
- CC. Staff's recommendation on the transaction, filed on November 30, 2022 (AIS Item Nos. 87-89);
- DD. Undine's response to recommendation, filed on December 1, 2022 (AIS Item No. 90);
- EE. Undine's supplement to application, filed on February 15 and 16, 2023 (AIS Item Nos. 100-101);
- FF. Undine's supplement to application, filed on February 17, 2023 (AIS Item Nos. 102 and 104);
- GG. Staff's clarification, filed on February 17, 2023 (AIS Item No. 103);
- HH. Undine's clarification, filed on February 17 and 21, 2023 (AIS Item Nos. 105-106);
- II. Staff's clarification update, filed on February 21, 2023 (AIS Item No. 107);
- JJ. Undine's response to Order No. 23, filed on February 22, 2023 (AIS Item Nos. 108-109);
- KK. Undine's supplemental response to Order No. 23, filed on March 2, 2023 (AIS Item No. 111);

- LL. Staff's recommendation on revised notice, filed on March 24, 2023 (AIS Item No. 115);
- MM. Staff's recommendation on the transaction including the attached tariff, certificate, map, and Attachments 1, 2, and EB-1, filed on April 20, 2023 (AIS Item Nos. 121-123); and
- NN. Undine's response to Staff's recommendation, filed on April 24, 2023 (AIS Item No. 124).

III.

JOINT PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED

The parties move for the adoption of the attached Proposed Order Approving the Sale and Transfer to Proceed. The undersigned counsel for Undine represents that Terra has authorized them to file this Joint Motion to Admit Evidence on Terra's behalf.

IV.

CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Order Approving the Sale and Transfer to Proceed.

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

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APPLICATION OF TERRA	§	PUBLIC UTILITY COMMISSION
SOUTHWEST, INC. AND UNDINE	§	
TEXAS, LLC FOR SALE, TRANSFER,	§	OF TEXAS
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CERTIFICATE RIGHTS IN DENTON	§	
COUNTY	§	

JOINT PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Terra Southwest, Inc. (Terra) and Undine Texas, LLC (Undine Texas or Undine) (collectively, the Applicants), for the sale, transfer, or merger of facilities and certificate rights in Denton County and dual certification with the Town of Little Elm. Applicants seek approval to acquire facilities and to transfer all of Terra's water service area under its certificate of convenience and necessity (CCN) No. 11608 to Undine Texas, and to amend to include existing customers in Denton County. The administrative law judge (ALJ) grants that this sale is approved and the transaction between Applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Terra Southwest, Inc. is a for-profit corporation registered with the Texas secretary of state under file number 039190300.
2. Undine Texas, LLC is a for-profit corporation registered with the Texas secretary of state under file number 802339329.
3. Undine Texas operates, maintains, and controls facilities for providing water service under CCN No. 13260 in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

Application

4. On November 16, 2021, Terra and Undine Development, LLC (Undine Development), filed an application for the approval of the sale, transfer or merger of facilities and certificate rights in Denton County. On August 26, 2022, the application was restyled to replace Undine Development with Undine Texas as the applicant.

5. The sale and transfer affect approximately 1,339.4 acres and 867 current customers in Denton County, Texas. The areas subject to this transaction are as follows:
6. East Ponder Estates: the area subject to this transaction is located approximately 8 miles southwest of downtown Denton, TX, and is generally bounded on the north by H Lively Road; on the east by Ed Robson Boulevard; on the south by a line approximately 0.25 mile south of Seaborn Road; and on the west by Florance Road. The area being requested includes approximately 453 acres.
7. Hilltown Addition: the areas subject to this transaction are located approximately 9 miles east-southeast of downtown Denton, TX, and is generally bounded on the north by Martingale Trail and Shahan Prairie Road; on the east by Shahan Prairie Road and Lewisville Lake; on the south by Lewisville Lake and FM 710; and on the west by Lewisville Lake and Yacht Club Road. The total area being requested includes approximately 886.4 acres.
8. Applicants agreed to the sale and transfer of all of Terra's water service area under water CCN No. 11608. Undine Texas will amend the water CCN number 13260 to incorporate the water service area previously under water CCN number 11608 and amend to include existing customers in Denton County.
9. In Order No. 17 issued on September 29, 2022, the administrative law judge (ALJ) found the application and amended application, as supplemented, administratively complete.

Notice

10. On February 2 and 16, and March 1, 2022, Undine filed the affidavits of Carey A. Thomas, Authorized Representative of Undine, attesting that notice was provided to all current customers, landowners, neighboring utilities, and affected parties on February 1, 16., and 28, 2022.
11. On February 22, 2023, Undine also filed the affidavit of Carey A. Thomas, Authorized Representative of Undine, attesting that revised notice was provided to all current customers, landowners, neighboring utilities, and affected parties on February 9, 2023.
12. On March 2, 2023, Undine also filed a publisher's affidavit attesting to the publication of notice in the Denton Record-Chronicle, a newspaper of general circulation in Denton County, on February 12 and 19, 2023.
13. In Order No. 24, issued on March 27, 2023, the ALJ found the notice of the application sufficient.

Evidentiary Record

14. On May ____, 2023, the parties filed a joint motion to admit evidence.
15. In Order No. __, issued on _____, 2023 the ALJ admitted the following evidence into the record:
 - a. The application for sale, transfer, or merger of facilities and certificate rights, filed on November 16 and 17, 2021;
 - b. Terra Southwest, Inc.'s Notice of Appearance, filed on November 19, 2021;
 - c. Applicants' response to Order No. 1, filed on November 22, 2021;
 - d. Supplemental mapping, filed on December 13, 2021;
 - e. Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on January 18, 2022;
 - f. Applicant's second supplement to application, filed on January 24, 2022;
 - g. Undine's response to Order No. 5, filed on February 3;
 - h. Undine's supplemental response to Order No. 5, filed on February 17, 2022;
 - i. Undine's response to Order No. 6, filed on March 10, 2022;
 - j. Undine's supplemental response to Order No. 2, filed on March 14, 2022;
 - k. Undine's second supplemental response to Order No. 2, filed on March 22, 2022;
 - l. Applicant's supplement to application, filed on April 29, 2022;

- m. Applicant's supplemental information, filed on June 14, 2022;
- n. Parties' joint request for Abatement, filed on June 24, 2022;
- o. Staff's status update, filed on July 18, 2022;
- p. Applicants' status report, filed on July 18, 2022;
- q. Staff's clarification, filed on July 29, 2022;
- r. Applicants' second status report, filed on August 1, 2022;
- s. Staff's status report, filed on August 8, 2022;
- t. Staff's status report, filed on August 15, 2022;
- u. Applicants' application amendment, filed on August 26, 2022;
- v. Staff's status report, filed on August 31, 2022;
- w. Applicants' application supplement, filed on September 7, 2022;
- x. Supplemental mapping, filed on September 15, 2022;
- y. Undine's supplement to application, filed on September 17, 2022;
- z. Undine's supplement to application, filed on September 23, 2022;
- aa. Staff's recommendation on administrative completeness, rates, notice and proposed procedural schedule, filed on September 28, 2022;
- bb. Undine's response to Order No. 17, filed on November 1, 2022;
- cc. Staff's recommendation on the transaction, filed on November 30, 2022;
- dd. Undine's response to recommendation, filed on December 1, 2022;
- ee. Undine's supplement to application, filed on February 15 and 16, 2023;
- ff. Undine's supplement to application, filed on February 17, 2023;
- gg. Staff's clarification, filed on February 17, 2023;
- hh. Undine's clarification, filed on February 17 and 21, 2023;
- ii. Staff's clarification update, filed on February 21, 2023;
- jj. Undine's response to Order No. 23, filed on February 22, 2023;
- kk. Undine's supplemental response to Order No. 23, filed on March 2, 2023;
- ll. Staff's recommendation on revised notice, filed on March 24, 2023;
- mm. Staff's recommendation on the transaction including the attached tariff, certificate, map, and Attachments 1, 2, and EB-1, filed on April 20, 2023; and
- nn. Undine's response to Staff's recommendation, filed on April 24, 2023.

Adequacy of Existing Service and System Compliance

16. Terra holds Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) ID Nos. 0610161 and 0610112.
17. No additional construction is necessary for Undine to serve the requested area.
18. The last TCEQ compliance investigation of the East Ponder Estates system was on July 1, 2019. East Ponder Estates does not have any violations listed in the TCEQ database.
19. The Hilltown Addition system has active violations in the TCEQ database. Undine Texas has indicated they will be making upgrades at the water system that will address the violations.
20. The Commission's complaint records, which date back to 2017, show 41 informal complaints against Terra Southwest. All the complaints have been closed by the Commission's Customer Protection Division.
21. The Commission's complaint records, which date back to 2017, show complaints against Undine. Undine states they are actively working on resolving the violations that have been identified by the TCEQ at each of their water and wastewater system. Undine also has one open violation at the Commission for a violation related to compliance with its rate tariff. The investigation is currently on hold as a formal complaint was filed over the same issue.
22. Undine has demonstrated a compliance history that is adequate for approval of the sale to proceed.

Need for Service

23. There is no need for additional service, as the existing customers are currently receiving water from the Terra water system.
24. The Terra water system is currently in operation.

Effect of Approving the Transaction and Granting the Amendment

25. Approving the sale and transfer to proceed will obligate Undine to provide continuous and adequate water service to current and future customers.
26. There will be no effect on landowners as the requested area is currently certified.
27. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and none filed a protest or motion to intervene.

28. There will be no effect on any other retail public utility servicing the proximate area.

Ability to Serve: Managerial and Technical

29. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
30. Undine has sufficient capability to serve the customers and is capable of providing drinking water that meets the requirements of Chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.
31. No additional construction is necessary for Undine to serve the requested area.
32. Undine has the technical and managerial capability to provide continuous and adequate service.

Ability to Serve: Financial Ability and Stability

33. Undine has a debt-to-equity ration of less than one, satisfying the leverage test.
34. Undine demonstrated that an affiliated interest is capable, available, and willing to cover temporary cash shortages.
35. Undine has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction and possesses the cash and leverage ability to pay for capital improvements and necessary equity investments, satisfying the operations test.
36. Undine demonstrated has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

37. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility

38. The feasibility of obtaining service from an adjacent retail public utility was not considered because Terra was adequately serving the existing customers and its facilities offer sufficient capacity.
39. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

40. The construction of a physically separate water system is not necessary for Undine to serve the requested area.

41. Because construction of physically separate water system is unnecessary, concerns of regionalization or consolidation do not apply.

Environmental Integrity and Effect on the Land

42. Granting the transaction will not adversely impact the integrity of the land because the requested area is already being served.

Improvement of Service or Lowering Cost to Consumers

43. Undine, using the water system already in place, will continue to provide water service to the existing customers in the area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Public notice of the application was provided as required by TWC § 13.301(a) and 16 Texas Administrative Code (TAC) § 24.239(a) through (c).
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC §§ 13.301(b) and 16 TAC § 24.239(e).
3. It is not necessary for Undine to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
4. Undine has demonstrated that the sale of Terra to Undine will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC §§ 13.246(b) and 13.301(d) and (e).
5. Undine has demonstrated that the amendment of its certificates of convenience and necessity will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public. TWC §§ 13.301(d), 13.246(b).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the sale and transfer of all of Terra's water facilities and service area held under water CCN number 11608 to Undine Texas, and the amendment of Undine Texas' water CCN number 13260 to include the area previously included in Terra's water CCN number 11608 and remove the area from CCN number 11608.

2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that the requested area and associated facilities will remain under CCN number 11608 and will be held by Terra until the final order or notice of approval is issued in this matter, in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

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

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE