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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	§	

ORDER NO. 30
APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Terra Southwest, Inc. and Undine Texas, LLC for approval of the sale, transfer, or merger of facilities and certificate rights in Denton County. The applicants seek approval of the following: (a) the sale and transfer to Undine Texas of all facilities held by Terra Southwest located within 1,321 acres of service area of Terra Southwest's certificate of convenience and necessity (CCN) number 11608, within 0.4 acres of uncertificated service area, and within 18 acres of service area of the Town of Little Elm's CCN number 11202; (b) the sale and transfer of all certificated service area under Terra Southwest's CCN number 11608 to Undine Texas; (c) the amendment of Undine Texas' CCN number 13260 to include all facilities previously held by Terra Southwest and the service area previously included in Terra Southwest's CCN number 11608; (d) the cancellation of Terra Southwest's CCN number 11608; (e) the amendment of Undine Texas' CCN number 13260 to add 0.4 acres of uncertificated area; and (f) the amendment of Undine Texas' CCN number 13260 to add 18 acres of area in Denton County, which are singly certificated under Little Elm's CCN number 11202. This Order addresses only the proposed sale and transfer of facilities and certificate rights from Terra Southwest to Undine Texas. This Order does not address Undine Texas' request for the addition of 0.4 uncertificated acres or the addition of 18 acres to be dually certificated with Little Elm. The administrative law judge (ALJ) approves the transaction between Terra Southwest and Undine Texas and the transaction may be completed as proposed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Terra Southwest is a Texas corporation registered with the Texas secretary of state under filing number 039190300.
2. Terra Southwest holds CCN number 11608 which obligates it to provide retail water service in its certificated service area in Denton County.
3. Terra Southwest owns public water systems registered with the Texas Commission on Environmental Quality (TCEQ) as follows: (1) the East Ponder Estates public water system, under TCEQ identification number TX0610161; and (2) the Hilltown Addition public water system, under TCEQ identification number TX0610112.
4. Undine Texas is a Delaware limited liability company registered with the Texas secretary of state under filing number 802339329.
5. Undine Texas holds CCN number 13260, which obligates it to provide retail water service in its certificated service area in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

Application

6. On November 16 and 17, 2021, Terra Southwest and Undine Development, LLC filed an application for approval of the sale, transfer or merger of facilities and certificate rights in Denton County.
7. On August 26, 2022, the application was amended to replace Undine Development, LLC with Undine Texas as the applicant.
8. The applicants filed supplemental information on December 13, 2021, January 24, April 29, June 14, August 29, September 7, 8, 15, 17 and 23, 2022, February 15, 16, 17, and 21, and June 19 and 27, 2023.
9. In the application, as amended and supplemented, Terra Southwest and Undine Texas seek approval of the following:

- a. the sale and transfer to Undine Texas of all facilities held by Terra Southwest located within 1,321 acres of service area of Terra Southwest's CCN number 11608, within 0.4 acres of uncertificated service area, and within 18 acres of service area of the Town of Little Elm's CCN number 11202;
 - b. the sale and transfer of all certificated service area under Terra Southwest's CCN number 11608 to Undine Texas;
 - c. the amendment of Undine Texas' CCN number 13260 to include all facilities previously held by Terra Southwest and the service area previously included in Terra Southwest's CCN number 11608;
 - d. the cancellation of Terra Southwest's CCN number 11608;
 - e. the amendment of Undine Texas' CCN number 13260 to add 0.4 acres of uncertificated area; and
 - f. the amendment of Undine Texas' CCN number 13260 to add 18 acres of area in Denton County, which are singly certificated under Little Elm's CCN number 11202.
10. The total requested area includes 1,339.4 acres and 867 current customers.
11. The requested area is composed of the following:
- a. East Ponder Estates. 453 acres of certificated area that is singly certificated under Terra Southwest's CCN number 11608. The East Ponder Estates requested area is located approximately eight miles southwest of downtown Denton, Texas, 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 miles south of and parallel to Seabom Road; and on the west by Florance Road.
 - b. Hilltown Addition. Approximately 868 acres of certificated area that is singly certificated under Terra Southwest's CCN number 11608, 0.4 acres of uncertificated area, and 18 acres of certificated area that is singly certificated under Little Elm's CCN number 11202. The Hilltown Addition requested areas are located approximately nine miles east-southeast of downtown Denton, Texas, 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 Farm-to-Market Road 710; and on the west by Lewisville Lake and Yacht Club Road.

12. In Order No. 5 filed on January 18, 2022, the ALJ found the application, as supplemented, administratively complete.
13. In Order No. 16 filed on September 1, 2022, the ALJ withdrew Order No. 5's finding of administrative completeness.
14. In Order No. 17 filed on September 29, 2022, the ALJ found the application, as amended and supplemented, administratively complete.

Notice

15. On February 3, 2022, the applicants filed the affidavit of Carey A. Thomas, senior vice president for Undine Development, attesting that notice was mailed to current customers, landowners, neighboring utilities, and affected parties on February 1, 2022. Attached to the affidavit were copies of the notice and map provided by the applicants.
16. On March 10, 2022, the applicants confidentially filed the list of recipients for the notice.
17. On March 14, 2022, the applicants 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 March 6 and 13, 2022.
18. In Order No. 7 filed on March 24, 2022, the ALJ found notice sufficient.
19. In Order No. 20 filed on December 20, 2022, the ALJ required revised notice of the application.
20. On February 22, 2023, the applicants filed the affidavit of Mr. Thomas, senior vice president of Undine Texas, attesting that notice was provided to current customers, landowners, neighboring utilities, and affected parties on February 9, 2023. Attached to the affidavit were copies of the notice and map provided by the applicants, and a confidential list of recipients for the notice.
21. On March 2, 2023, the applicants 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.

22. In Order No. 24 filed on March 27, 2023, the ALJ found the revised notice sufficient.
23. On June 8, 2023, the applicants filed the affidavit of Mr. Thomas attesting that there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area.
24. On June 12, 2023, the applicants filed the affidavit of Vance Tillman, chief financial officer of Undine Texas, attesting that supplemental notice, including maps, was provided on June 1, 2023, to current customers and affected parties in the Oak Point, Wellington Trace, and Gates at Waters Edge subdivisions, which are served by Terra Southwest's Hilltown Addition public water system.
25. In Order No. 28 filed on July 12, 2023, the ALJ found the revised notice, as supplemented, sufficient.

Intervention

26. In Order No. 2 filed on December 7, 2021, the ALJ denied Central States Water Resources, Inc.'s motion to intervene.
27. In Order No. 8 filed on May 12, 2022, the ALJ denied Central States Water Resources' renewed motion to intervene.

Evidentiary Record

28. In Order No. 29 filed on July 12, 2023, the ALJ admitted the following evidence into the record of this proceeding:
 - a. The application and all attachments filed on November 16, 2021;
 - b. The confidential attachments to the application filed on November 17, 2021;
 - c. Terra Southwest's notice of appearance filed on November 19, 2021;
 - d. Terra Southwest and Undine Development's response to Order No. 1 filed on November 22, 2021;
 - e. Supplemental mapping filed on December 13, 2021;
 - f. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on January 18, 2022;

- g. The supplement to the application filed on January 24, 2022;
- h. Undine Development's response to Order No. 5 filed on February 3, 2022;
- i. Undine Development's supplemental response to Order No. 5 filed on February 17, 2022;
- j. Undine Development's response to Order No. 6 filed on March 10, 2022;
- k. Undine Development's supplemental response to Order No. 2 filed on March 14, 2022;
- l. Undine Development's second supplemental response to Order No. 2 filed on March 22, 2022;
- m. The supplement to application filed on April 29, 2022;
- n. The confidential supplement to the application filed on June 14, 2022;
- o. The supplemental information filed on June 14, 2022;
- p. The joint request for abatement filed on June 24, 2022;
- q. Commission Staff's status update filed on July 18, 2022;
- r. The status report filed on July 18, 2022;
- s. Commission Staff's clarification filed on July 29, 2022;
- t. The second status report filed on August 1, 2022;
- u. Commission Staff's status report filed on August 8, 2022;
- v. Commission Staff's status report filed on August 15, 2022;
- w. The amended application filed on August 26 and 29, 2022;
- x. Commission Staff's status report filed on August 31, 2022;
- y. The applicants' supplement to the amended application filed on September 7, 2022;
- z. Supplemental mapping filed on September 15, 2022;
- aa. Undine Texas' supplement to the amended application filed on September 17, 2022;

- bb. Undine Texas' supplement to the amended application filed on September 23, 2022;
- cc. Commission Staff's recommendation on administrative completeness, rates, notice and proposed procedural schedule filed on September 28, 2022;
- dd. Undine Texas' response to Order No. 17 filed on November 1, 2022;
- ee. Commission Staff's recommendation on the transaction filed on November 30, 2022;
- ff. Undine Texas' response to Commission Staff's recommendation filed on December 1, 2022;
- gg. Undine Texas' supplement to the amended application filed on February 15, 2023;
- hh. Undine Texas' confidential exhibit A to the supplement to the application filed on February 16, 2023;
- ii. Undine Texas' supplement to the application and confidential exhibit A filed on February 17, 2023;
- jj. Commission Staff's clarification filed on February 17, 2023;
- kk. Undine Texas' clarification filed on February 17, 2023;
- ll. Undine Texas' confidential attachment A to Undine Texas' clarification filed on February 21, 2023;
- mm. Commission Staff's clarification update filed on February 21, 2023;
- nn. Undine Texas' response to Order No. 23 filed on February 22, 2023;
- oo. Undine Texas' supplemental response to Order No. 23 filed on March 2, 2023;
- pp. Commission Staff's recommendation on revised notice filed on March 24, 2023;
- qq. Commission Staff's recommendation on the transaction including the attached tariff, certificate, map, and attachments 1, 2, and EB-1 filed on April 20, 2023;
- rr. Undine Texas' response to Commission Staff's recommendation filed on April 24, 2023;

- ss. Undine Texas' response to Order No. 26 and all attachments filed on June 8, 2023;
- tt. Undine Texas' supplement to the amended application with public Exhibit A, including confidential attachment filed on June 12, 2023;
- uu. Commission Staff's recommendation on supplemental notice filed on June 15, 2023;
- vv. Applicant's supplemental information including a confidential attachment filed on June 19, 2023;
- ww. Applicant's supplemental information filed on June 27, 2023; and
- xx. Commission Staff's comments on supplemental filings including a confidential attachment filed on June 30, 2023.

Purchaser's Compliance History

- 29. The Commission's complaint records, which date back to 2017, show 133 informal complaints against Undine Texas. The Commission's Customer Protection Division has evaluated and closed 130 complaints at this time. The three open complaints were received in April 2023.
- 30. Undine Texas has been subject to enforcement actions by the Commission, the TCEQ, the Texas Department of State Health Services, the Texas Office of the Attorney General, or the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or statutes.
- 31. Undine Texas is actively working on resolving the violations that have been identified by the TCEQ at each of their water and sewer systems.
- 32. Undine Texas does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 33. Undine Texas has demonstrated a compliance status that is adequate for approval of the transaction to proceed.

Adequacy of Existing Service

34. There are currently 867 connections in the requested area that are being served by Terra Southwest through public water system numbers TX0610161 and TX0610112 and such service has been continuous and adequate.
35. Terra Southwest's public water systems are registered with the TCEQ.
36. The last TCEQ compliance investigation of Terra Southwest's East Ponder Estates public water system was on July 1, 2019. There are no violations associated with the East Ponder Estates public water system in the TCEQ database.
37. Terra Southwest's Hilltown Addition system has active violations associated with it in the TCEQ's database. Undine Texas plans to make upgrades that will address the violations.
38. The Commission's complaint records, which date back to 2017, show 53 informal complaints against Terra Southwest. All the complaints have been closed by the Commission's Customer Protection Division.
39. Capital improvements are necessary for Undine Texas to continue providing continuous and adequate service to the requested area.
40. There is no evidence in the record that Terra Southwest has failed to comply with any Commission or TCEQ order.

Need for Additional Service

41. There are 867 existing customer connections in the requested area that are receiving service from Terra Southwest and have an ongoing need for service.
42. The requested area includes uncertificated area with existing facilities owned by Terra Southwest and existing customers served by Terra Southwest.

Effect of Approving the Transaction and Granting the Amendments

43. Undine Texas will be the sole certificated water utility for 1,321.4 acres of the requested area.
44. The remaining 18 acres of the requested area will be dually certificated to Undine Texas and Little Elm.

45. Undine Texas will be required to provide continuous and adequate water service to current and future customers in the requested area.
46. Landowners in the dually certificated area will be able to obtain water service from Undine Texas or Little Elm.
47. All retail public utilities in the proximate area were provided notice of the application, and no protests or adverse comments were filed.
48. Little Elm consented in writing to dual certification.
49. With the exception of the partial dual certification with Little Elm, there will be no effect on any retail public utility providing service in the proximate area.

Ability to Serve: Managerial and Technical

50. Undine Texas owns and operates numerous TCEQ-registered public water systems in Texas.
51. Undine Texas employs TCEQ-licensed operators who will be responsible for operation of the public water systems being transferred.
52. Undine Texas has the technical and managerial capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

53. Terra Southwest is currently serving customers throughout the requested area, and such service has been continuous.
54. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.
55. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

56. It will not be necessary for Undine Texas to construct a physically separate water system to serve the requested area.

57. Because the requested area will not require the construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Financial Ability and Stability

58. Undine Group, LLC, an affiliate of Undine Texas, is capable, available, and willing to cover temporary cash shortages and has a debt-to-equity ratio that is less than one. Therefore, Undine Texas has satisfied the leverage test.
59. Undine Group provided a written guarantee of coverage of temporary cash shortages and has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction. Therefore, Undine Texas has satisfied the operations test.
60. Undine Texas is proposing to make capital improvements in excess of \$100,000 to the East Ponder Estates and Hilltown Addition water systems.
61. Undine Texas submitted loan approval documents indicating funds are available for the purchase of the public water systems plus the planned capital improvements necessary to provide continuous and adequate service to the existing customers.
62. Undine Texas demonstrated has demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

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

Environmental Integrity and Effect on the Land

64. The environmental integrity and effect on the land will be temporary as capital improvements are made for Undine Texas to continue providing service to the requested area.

Improvement of Service or Lowering Cost to Consumers

65. Undine Texas will continue to provide water service to Terra Southwest's existing customers in the requested area.
66. Reliability and quality of water service is expected to improve under Undine Texas' management.
67. Undine Texas requested authorization to charge the customers served by the public water systems being acquired its rates that are currently in force, which were approved in Docket No. 50200.¹
68. If authorization is granted, rates for customers in the requested area will be higher than the rates currently charged by Terra Southwest because Undine Texas will charge its current water utility tariff's rates.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239(c).²
2. After consideration of the factors in TWC § 13.246(c), Undine Texas demonstrated that it is capable of rendering continuous and adequate water service to every customer within the requested area, as required by TWC § 13.251.
3. Undine Texas demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service in the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. Undine Texas and Terra Southwest demonstrated that the sale and transfer of Terra Southwest's facilities and service area to Undine Texas will serve the public interest and

¹ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

² After this application was filed, 16 Texas Administrative Code (TAC) § 24.239 was amended, effective March 29, 2023. Accordingly, all references and citations to 16 TAC § 24.239 in this Order are made to the version in effect at the time the application was filed.

is necessary for the continued service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).

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 transaction between Terra Southwest and Undine Texas in this proceeding and authorizes it to be completed as proposed.
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 completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants must reapply for approval.
5. This Order does not transfer CCN number 11608 and the associated service area from Terra Southwest or authorize Undine Texas to provide service in Terra Southwest's certificated service area. Terra Southwest must provide continuous and adequate service in its certificated service area until a final order or notice of approval issued by the Commission cancels or transfers Terra Southwest's CCN.
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 completed.
7. Within 15 days following the filing of the applicants' proof that the transaction has been completed 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 12th day of July 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "Isaac TA", written over a horizontal line.

ISAAC TA
ADMINISTRATIVE LAW JUDGE