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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 SUPPLEMENTAL EVIDENCE AND
PROPOSED NOTICE OF APPROVAL**

COME NOW Terra Southwest, Inc., (Terra) and Undine Texas, LLC (Undine) (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 Supplemental Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following:

I.

BACKGROUND

On August 4, 2023, Applicants filed closing documents reflecting the consummation of Undine's acquisition of Terra's facilities and certificated service area. Staff filed its recommendation on August 21, 2023, recommending that the Applicants' closing documentation be found sufficient. On September 5, 2023, the administrative law judge (ALJ) issued Order No. 31, establishing a deadline of October 12, 2023, for the Parties to file a Proposed Notice of Approval. 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. Applicants' notice of completed transaction, filed August 4, 2023 (AIS Item No. 141);
- B. Staff's recommendation on closing documents and proposed procedural schedule, filed on August 21, 2023 (AIS Item No. 142);
- C. Terra's consent form, filed on September 29, 2023 (AIS Item No. 144);
- D. Undine's consent form, filed on September 29, 2023 (AIS Item No. 145); and
- E. The attached map, certificate, and tariff.

III.

PROPOSED NOTICE OF APPROVAL

The parties move for adoption of the attached Proposed Notice of Approval.

IV.

CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Notice of Approval be adopted.

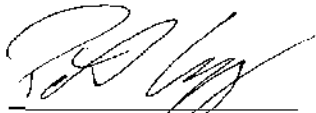
Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52852

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 October 12, 2023 in accordance with the Order Suspending Rules, issued in Project No. 50664.

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TEXAS, LLC FOR SALE, TRANSFER,	§	OF TEXAS
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CERTIFICATE RIGHTS IN DENTON	§	
COUNTY	§	

JOINT PROPOSED NOTICE OF APPROVAL

This Order addresses the application of Terra Southwest, Inc. (Terra) and Undine Texas, LLC (Undine or Undine Texas) (collectively, the Applicants), for the sale, transfer, or merger of facilities and certificate rights in Denton County. 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 is a Texas corporation registered with the Texas secretary of state under file number 039190300.
2. Terra holds CCN number 11608 which obligates it to provide retail water service in its certificated service area in Denton County.
3. Terra 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 file 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 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.
7. On August 26, 2022, the application was restyled to replace Undine Development 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 and Undine Texas seek approval of the following:
 - a. the sale and transfer to Undine Texas of all facilities held by Terra located within 1,321 acres of service area of Terra'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 area under Terra's CCN number 11608 to Undine Texas;
 - c. the amendment of Undine Texas' CCN number 13260 to include all facilities previously held by Terra and the service area previously included in Terra's CCN number 11608;
 - d. the cancellation of Terra'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 areas are composed of the following:

- a. East Ponder Estates: 453 acres of certificated area that is singly certificated under Terra'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 mile south of and parallel to Seaborn Road; and on the west by Florance Road.
 - b. Hilltown Addition: Approximately 868 acres of certificated area that is singly certificate under Terra'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 are 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 Carey A. Thomas, authorized representative of Undine Texas, 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's Hilltown Addition public water system.
25. In Order No. 28, issued 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, issued 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's notice of appearance filed on November 19, 2021;
- d. Terra 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;

29. In Order No. ____, issued on October ____, 2023 the ALJ admitted the following evidence into the record:
1. Applicants' notice of completed transaction, filed August 4, 2023;
 2. Commission Staff's recommendation on closing documents and proposed procedural schedule, filed on August 21, 2023;
 3. Terra's consent form, filed on September 29, 2023;
 4. Undine Texas' consent form, filed on September 29, 2023; and
 5. The attached map, certificate, and tariff.

Sale

22. In Order No. 30 filed on July 12, 2023 the ALJ approved the sale and transaction to proceed and required Applicants to file proof that the transaction had closed, and customer deposits had been addressed.
23. On August 4, 2023, Applicants filed notice that the sale had closed on August 1, 2023, and confirmed that there were no outstanding customer deposits that needed to be addressed.
24. In Order No. 31 filed on September 5, 2023, the ALJ found the closing documents sufficient.

Purchaser's Compliance History

25. 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.
26. 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.
27. Undine Texas is actively working on resolving the violations that have been identified by the TCEQ at each of their water and sewer systems.
28. Undine Texas does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.

29. Undine Texas has demonstrated a compliance status that is adequate for approval of the transaction to proceed.

Adequacy of Existing Service

30. There are currently 867 connections in the requested area that are being served by Terra through public water system numbers TX0610161 and TX0610112 and such service has been continuous and adequate.
31. Terra's public water systems are registered with the TCEQ.
32. 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.
33. Terra'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.
34. 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.
35. Capital improvements are necessary for Undine Texas to continue providing continuous and adequate service to the requested area.
36. There is no evidence in the record that Terra has failed to comply with any Commission or TCEQ order.

Need for Additional Service

37. There are 867 existing customer connections in the requested area that are receiving service from Terra and have an ongoing need for service. is a continuing need for service.
38. The requested area includes uncertificated area with existing facilities owned by Terra and existing customers served by Terra.

Effect of Approving the Transaction and Granting the Amendment

39. Undine Texas will be the sole certificated water utility for 1.321.4 acres of the requested area.
40. The remaining 18 acres of the requested area will be dually certificated to Undine Texas and Little Elm.

41. Approving the sale and transfer to proceed and granting the CCN amendment will obligate Undine to provide continuous and adequate water service to current and future customers in the requested areas.
42. Landowners in the dually certificated area will be able to obtain water service from Undine Texas or Little Elm.
43. All retail public utilities in the proximate area were provided notice of the application, and no protests or adverse comments were filed.
44. Little Elm consented in writing to dual certification.
45. With the exception of the partial dual certification with Little Elm, there will be no effect on any other retail public utility providing service in the proximate area.

Ability to Serve: Managerial and Technical

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

Ability to Serve: Financial Ability and Stability

49. 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.
50. 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.
51. Undine Texas is proposing to make capital improvements in excess of \$100,000 to the East Ponder Estates and Hilltown Addition water systems.
52. 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.

53. 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

54. 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

55. Terra is currently serving customers throughout the requested area, and such service has been continuous.
56. 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.
57. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

58. It will not be necessary for Undine Texas to construct a physically separate water system to serve the requested area.
59. 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.

Environmental Integrity and Effect on the Land

60. 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

61. Undine, using the water system already in place, will continue to provide water service to the existing customers in the area.
62. Undine Texas will continue to provide water service to Terra Southwest's existing customers in the requested area.
63. Reliability and quality of water service is expected to improve under Undine Texas' management.

64. 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
65. 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.

Tariff, Map, Certificate

66. On September 21, 2023, Commission Staff emailed to the applicants the final proposed map, tariff, and certificate related to this docket.
67. On September 29, 2023, Commission Staff emailed to the applicants a revised final proposed tariff for this docket.
68. On September 29, 2023, the applicants filed their consent forms concurring with the proposed final map, certificate, and tariff.
69. On October 12, 2023, the final map, certificate, and tariff were included as attachments to the joint supplemental motion to admit evidence and proposed notice of approval.

Informal Disposition

70. More than 15 days have passed since the completion of notice provided in this docket.
71. No person filed a protest or motion to intervene.
72. Terra, Undine Texas, and Commission Staff are the only parties to this proceeding.
73. No party requested a hearing, and no hearing is needed.
74. Commission Staff recommended approval of the application.
75. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.
2. Terra and Undine Texas are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).

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

3. The Commission processed the application as required by the TWC, the Administrative Procedure Act,² and Commission Rules.
4. The application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
5. Terra and Undine Texas have complied with the requirements of 16 TAC § 24.239(k) and (l) with respect to customer deposits.
6. Terra and Undine Texas completed the sale within the time frame required by 16 TAC § 24.239(m).
7. Terra and Undine Texas provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2) and 16 TAC § 24.239(a) through (c).³
8. After consideration of the factors in TWC § 13.246(c), Undine Texas has demonstrated it is capable of rendering continuous service to every customer in the requested area, as required by TWC § 13.251.
9. Undine Texas demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
10. Terra and Undine Texas demonstrated that the sale of Terra's water facilities and the amendment of Undine Texas' water CCN No. 13260 to include the area formerly served by Terra will serve the public interest and is necessary for the for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).
11. Undine Texas meets the requirements of TWC §§ 13.24(b) and 13.301(b) to provide water utility service.
12. It is not necessary for Undine Texas to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
13. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
14. Undine Texas must record a certified copy of its certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real

² Tex. Gov't Code §§ 2001.001-.903.

³ After this application was filed, 16 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.

property records of Denton County within 31 days of receiving this Notice of Approval and must submit to the Commission evidence of the recording. TWC § 13.257(r), (s).

15. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

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, to the extent provided in this Order and as shown on the attached map.
2. The Commission cancels Terra's water CCN number 11608.
3. The Commission amends Undine Texas' CCN number 13260 to include the area previously included in Terra's CCN number 11608, as shown on the attached map.
4. The Commission approves the map and tariff attached to the Notice of Approval.
5. The Commission issues the certificate attached to this Notice of Approval.
6. Undine Texas must provide service to every customer or applicant for service within the approved area under water CCN 13260 that requests service and meets the terms of Undine Texas' water service, and such service must be continuous and adequate.
7. Undine Texas must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Denton County affected by the application and must submit to the Commission evidence of the recording no later than 31 days after receipt of the Notice of Approval.
8. Within ten days of the date of the Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked Approved and filed in the Commission's tariff books.
9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

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

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE