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DOCKET NO. 52852

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

**COMMISSION STAFF’S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS, RATES, NOTICE, AND PROPOSE PROCEDURAL SCHEDULE**

On November 16, 2021, Terra Southwest, Inc. (Terra) and Undine Development, LLC (Undine), (collectively, Applicants), 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 September 1, 2022, the administrative law judge (ALJ) filed Order No. 16 requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission) and Applicants (collectively, Parties) to file its recommendation on administrative completeness of the amended application by September 29, 2022. Therefore, this pleading is timely filed.

I. ADMINISTRATIVE COMPLETENESS

Staff has reviewed the application and, as detailed in the attached memoranda from Patricia Garcia of the Infrastructure Division and Ethan Blanchard of the Rate Regulation Division, recommends that the supplemented application be found administratively complete. Staff’s recommendation on administrative completeness is not a comment on the merits of the application.

II. PHASE-IN RATES

As a result of negotiations between Undine and Staff, Undine has agreed to amend the application and apply the water rates approved for docket no. 50200,¹ instead of the rates it included in its application.² This new tariff includes a phase-in of water rates over three years, and

¹ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Memo with Water and Undine Sewer Tariffs at 3-34 (Nov. 11, 2020). (Undine Rate Change Application).

² The attached memoranda recommending approval of the proposed transaction are unaffected by the proposed amendment.

Staff contends this complies with TWC § 13.3011. This statute allows a person who files a sale, transfer, merger application to request authorization to charge initial rates that are different from the rates the system-to-be-acquired is currently using. In order to do so, the proposed, new rates must be “shown in a tariff filed with the regulatory authority” by the person making the request and must already be in force on the date the application is filed.³ Neither of these requirements preclude the use of phase-in rates nor do they specifically prescribe what kind of rates can be used. In this instance, the agreed-upon tariff is in force in dozens of subdivisions and systems throughout the Houston area⁴ and was previously approved in docket no. 50200.⁵ Finally, after considering both the originally proposed tariff and the phase-in tariff approved in docket no. 50200, Staff has concluded that the latter tariff is the more just and reasonable tariff for consumers, since it contains lower rates that are phased in over three years. Thus, Staff maintains that the proposed, phase-in water tariff not only meets the requirements of TWC § 13.3011(a) but also serves the public interest as it is more protective of consumers than the originally proposed tariff. Accordingly, Staff respectfully requests that the ALJ approve the transaction with this new tariff

III. NOTICE

As Undine states in its application amendment, Staff and Undine contend there is no need to re-notify Terra ratepayers. The notice Undine previously issued contained sufficient information to inform ratepayers of the transaction and the change in water rates and was found sufficient by the ALJ.⁶ In its previously-issued notice, Undine did not reference specific rates and only provided a link for ratepayers to view the new proposed rate.⁷ If Undine had to re-notify ratepayers, Staff would recommend using the same notice forms, and Undine would issue notice that was practically identical to the notice it originally issued. Thus, re-notification would not have any practical effect

³ TWC § 13.3011(a).

⁴ Undine Rate Change Application at 4-6.

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

⁶ Order No. 7. Finding Notice Sufficient and Establishing Procedural Schedule (Mar. 25, 2022).

⁷ See Undine Response to Order No. 6 Regarding Proof of Notice at 6 (Mar. 10, 2022).

for ratepayers, as the information would be the same and would only serve to confuse ratepayers. Thus, to save the time and expense of re-notification and to save the ratepayers from further confusion, Staff does not recommend requiring Undine to re-notify the Terra ratepayers.

IV. PROCEDURAL SCHEDULE

Staff recommends that the application be found administratively complete; therefore, Staff proposes the following procedural schedule:

Event	Date
Deadline for Staff to request a hearing or file a recommendation on approval of the sale and on the CCN amendment	October 28, 2022
Deadline for parties to file a response to Staff's recommendation on approval of the sale	November 1, 2022
Deadline for parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed.	November 7, 2022

V. CONCLUSION

For the reasons stated above, Staff respectfully requests an order finding the supplemented application administratively complete, allowing the proposed transaction to proceed with the phase-in tariff, and not requiring Undine to re-notice ratepayers.

Dated: September 28, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52582

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 September 28, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: September 28, 2022

RE: Docket No. 52852 – *Application of Terra Southwest, Inc. and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*

On November 16, 2021, Undine Development, LLC (Undine Development) and the Terra Southwest, Inc. (Terra Southwest) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights and dual certification with the Town of Little Elm (Little Elm) in Denton County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237 and § 24.239. The application will be amended to substitute Undine Texas, LLC (Undine Texas) as the purchasing utility. As a result, my evaluation assumes that Undine Texas will be the acquiring entity of the water service area, facilities, and customers. I refer to Undine Texas and Terra Southwest as the Applicants.

Specifically, Undine Texas, Certificate of Convenience and Necessity (CCN) No. 13260, seeks approval to amend its CCN to add uncertificated area and to acquire facilities and transfer all of the water service area from Terra Southwest under water CCN No. 11608. Additionally, Undine Texas is requesting dual certification with a portion of Little Elm's certificated service area under water CCN No. 11202.

Based on the mapping review by Tracy Montes, Infrastructure Division, the digital mapping data submitted on November 16, 2021 (Item 1) and the maps submitted on September 23, 2022 (Item 82) are sufficient.

The requested area includes 867 current customers and approximately 1,339.4 acres, comprised of:

- 0.4 acres of uncertificated area;
- 1,321 acres of transferred area from Terra Southwest, CCN No. 11608; and
- 18 acres of dual certificated area with Town of Little Elm, CCN No. 11202.

The result of the application will be the addition of approximately 1,339.4 acres to Undine Texas, CCN No. 13260, and the subtraction of approximately 1,321 acres from Terra Southwest, CCN No. 11608.

Approximately 1,321.4 acres will be single certification with Undine Texas, CCN No. 13260; and 18 acres will be dually certificated between Undine Texas, CCN No. 13260, and the Town of Little Elm, CCN No. 11202.

The application indicates that the total acreage being requested is approximately 1,326 acres. Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined the requested area is approximately 1,339.4 acres.

Based on the mapping review and my technical and managerial review of the revised application filed on August 26, 2022 and September 15, 2022, I recommend that the application be deemed administratively complete.

Undine Texas has requested a good cause exception to the notice as notice was previously published and provided to current customers, landowners, neighboring systems, and cities. Prior to notice being provided Central States Water Resources, Inc. (Central States Water Resources) submitted a motion to intervene. Their request was denied by the Administrative Law Judge (ALJ) on December 7, 2021. On May 3, 2022, Central States Water Resources submitted a renewed motion to intervene and motion to abate along with a District Court Judgement. On May 12, 2022, the ALJ again denied the motion to intervene and motion to abate requested by Central States Water Resources.

Undine Development provided notice consistent with 16 TAC § 24.239(c)¹. The deadline to intervene was April 12, 2022; a customer filed a letter with comments in the docket but did not request to intervene and did not request a hearing. The customer is concerned about the rate increase being proposed by Undine Development after the transfer is complete. The revised application to substitute Undine Texas in place of Undine Development allows for phased in rates. I recommend not requiring renote under 16 TAC § 24.239(c) of the amended application that will substitute Undine Texas as the purchasing utility.

¹ Order No. 7. Finding Notice Sufficient and Establishing Procedural Schedule (Mar. 24, 2022).

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: September 28, 2022

RE: Docket No. 52852 – *Application of Terra Southwest, Inc. and Undine Development, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*

1. Introduction

On November 16, 2021, Undine Development, LLC., CCN No. 12407, and Terra Southwest, Inc., CCN No. 11608, filed an application for the sale and transfer of facilities and certificate rights in Denton County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

TWC § 13.301(e)(2) and 16 TAC § 24.239(h)(2) require consideration of the financial capability of the acquiring entities to provide continuous and adequate service to the service area being acquired and to any areas currently certificated to the acquiring entities; TWC § 13.246(c)(6) requires consideration of the financial ability of the acquiring entities to pay for the facilities necessary to provide continuous and adequate service; and TWC § 13.246(c)(6) and 16 TAC § 24.239(h)(5)(F) require consideration of the financial stability of the acquiring entities, including, if applicable, the adequacy of the acquiring entities' debt-equity ratios. These issues are addressed by 16 TAC § 24.11, which states in subsection (a) that the section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. Subsection (b) states that the section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance under TAC Chapter 16. Furthermore, subsection (c) states that financial assurance must be demonstrated by

compliance with subsection (d) or (e) of the section, with subsection (d) providing for an irrevocable stand-by letter of credit and subsection (e) providing a financial test.

The acquiring entities will submit information to demonstrate compliance with the financial test in 16 TAC § 24.11(e). Paragraph (1) states that an owner or operator may demonstrate financial assurance by satisfying the leverage and operations tests that conform to the requirements of the section, unless the commission finds good cause exists to require only one of these tests. Paragraph (4) requires as part of meeting these two tests that the owner or operator submit an affidavit meeting certain requirements and a copy of one of three types of financial information.

2. Leverage Test

The leverage test is in 16 TAC § 24.11(e)(2) and requires the owner or operator to meet one or more of four criteria and subparagraph (E) allows the owner or operator to meet one or more of those four criteria by demonstrating that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The acquiring entities will meet subparagraph (E) by filing a guaranty agreement between Undine Development, LLC and Undine Group, LLC which states that Undine Group, LLC is capable, available, and willing to cover temporary cash shortages of the acquiring entities.

The acquiring entities will meet the criterion in 16 TAC § 24.11(e)(2)(A), which requires that the owner or operator must have a debt-to-equity ratio of less than one, using long-term debt and equity or net assets. Financial statements of Undine Group, LLC that comply with 16 TAC § 24.11(e)(4)(B)(i) have been filed in the docket.¹ These financial statements contain an unqualified auditor's opinion from Plante & Moran, PLLC stating that the financial statements present fairly, in all material respects, the financial position of Undine Group, LLC as of December 31, 2020.²

Based upon my review of the financial statements of Undine Group, LLC, I calculated the debt-to-equity ratio to be equal to 0.18.³ Because the ratio is less than one, Undine Group, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, Undine Development

¹ Application, *Confidential Exhibit A – Financial Information*, item no. 41, at bates 37 (Apr. 29, 2022).

² *Id.*

³ *Id.*, at 8. The calculations for which can be found in confidential Attachment EB-1.

through their affiliate, Undine Group, LLC, meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

3. Operations Test

16 TAC § 24.11(e)(3) requires an owner or operator to demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations and also provides that an affiliated interest may provide a written guarantee of coverage of temporary cash shortages.

Undine's financial projections show that there are no projected cash shortages over the next five years.⁴ Therefore, I recommend a finding that Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

4. Capital Improvement Plan

An applicant who is proposing service to a new CCN area requiring capital improvements in excess of \$100,000 must provide documents indicating funds are available for the purchase of an existing system plus any improvements, as required by 16 TAC § 24.11(e)(5)(A).

Undine provided a list of planned capital expenditures.⁵ Undine has provided loan approval documents demonstrating that funds are available for the purchase price.⁶ Therefore, I recommend a finding that Undine meets the requirements specified in 16 TAC § 24.11(e)(5)(A).

5. Additional Financial Assurance

TWC § 13.301(d) allows the Commission to require an applicant for a CCN or CCN amendment to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided. Because the acquiring entities will meet the financial test in 16 TAC § 24.11(e), I do not recommend that the acquiring entities be required to provide additional financial assurance.

6. Conclusion

After the filing of the financial guarantees between Undine Group, LLC and the acquiring entities and the filing of the affidavit required by 16 TAC § 24.11(e)(4)(A) signed by the acquiring entities attesting to the accuracy of the information provided, I recommend a finding that the

⁴ Application, Confidential- Attachment H- Financial Information, item no. 6, at bates 6 (Nov. 17, 2021)

⁵ Application, *Confidential Applicant's Supplemental Information (Attachment A – Highly Sensitive)*, item no. 52, at bates 3 (Jun. 14, 2022).

⁶ The calculations for which can be found in confidential Attachment EB-1.

acquiring entities demonstrate the financial capability needed to provide continuous and adequate service to the area subject to this application. My determinations are based on information for Undine Group, LLC as of the date specified above and therefore does not reflect any changes after that date.