



Filing Receipt

Received - 2022-12-20 03:09:44 PM

Control Number - 52852

ItemNumber - 93

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. 20
ADDRESSING PHASE-IN RATES, REQUIRING REVISED NOTICE, AND
REQUIRING CLARIFICATION**

This Order addresses Undine Texas, LLC’s request for phase-in rates and the need for clarification.

I. Phased Rates

In the amended application at issue in this proceeding, Undine seeks approval of rates which were previously approved in Docket No. 50200 under Texas Water Code (TWC) § 13.3011, which states:

INITIAL RATES FOR CERTAIN WATER OR SEWER SYSTEMS AFTER PURCHASE OR ACQUISITION. (a) A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

- (1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and
- (2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

(b) The regulatory authority may not require a person who makes a request under Subsection (a) to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.

In Docket No. 50200, the Commission approved rates that would change over time. Specifically, the Commission approved three phases of rates for Undine, with the first phase being effective August 1, 2020 through July 31, 2021; the second phase being effective August 1, 2021 through July 31, 2022; and the third and final phase being effective on and after August 1, 2022.

The application was filed on September 29, 2022.¹ As such, if the Commission were to approve the rates in force on September 29, 2022, from Docket No. 50200 for this docket, the phase-in nature of the rates for Docket No. 50200 means that the phase three rates are in force and Undine Texas can only be authorized to charge the phase three rates from Docket No. 50200 to the customers of the newly-acquired system.

II. Requiring Revised Notice

In Order No. 7 filed on March 24, 2022, the administrative law judge (ALJ) found notice of the application to be sufficient. On August 26, 2022, the application was amended to replace Undine Development, LLC with Undine Texas, LLC. In its September 28, 2022 recommendation on notice, Commission Staff recommended that revised notice not be required. Specifically, Commission Staff recommended:

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 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.²

In Order No. 17 filed on September 29, 2022, the ALJ found that notice of the application remained sufficient.

After further review of the pleadings in this docket, the ALJ withdraws the finding that notice of the application remains sufficient and requires notice of the amended application. The ALJ believes there have been substantial changes to the application that warrant notice of the amended application. Additionally, the tariff linked in the notice that was provided does not match the tariff that was approved in Docket No. 50200.³

¹ Applicants' Application Amendment (Aug. 26, 2022). Under 16 Texas Administrative Code § 24.8(d), "Applications under subchapter H of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete." In Order No. 17 filed on September 29, 2022, the administrative law judge found the application administratively complete.

² Commission Staff's Recommendation on Administrative Completeness, Rates, Notice, and Propose Procedural Schedule at 2–3 (Sept. 28, 2022).

³ Compare <https://undinellc.com/wp-content/uploads/Undine-Texas-LLC-Water-Tariff.pdf> with Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates, Docket No. 50200, Memo with Water and Sewer Tariffs (Nov. 16, 2020) (the tariff linked in the notice and the water tariff filed in Docket No. 50200 do not appear to match).

By February 3, 2023, Undine Texas and must issue revised notice of the application. By February 17, 2023, Undine Texas must file proof of the revised notice. By March 3, 2023, Commission Staff must file a recommendation on revised notice. Requests for a hearing, if any, must be filed by March 3, 2023.

III. Clarification

The administrative law judge requires clarification regarding the following issues:

1. Whether there are any violations, resolved or unresolved, associated with Undine Texas, LLC in the Commission or the Texas Commission on Environmental Quality's databases;
2. Whether Undine Texas, LLC is able to satisfy the leverage test while relying on a guaranty agreement between Undine Development, LLC and Undine Group, LLC; and
3. Whether environmental integrity or the land will be adversely affected based on the planned upgrades to bring the Hilltown Addition public water system back into compliance.

By January 6, 2023, the parties must file clarification on the issues identified above.

Signed at Austin, Texas the 20th day of December 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**