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TARIFF CONTROL NO. 53209

**APPLICATION OF UNDINE
TEXAS, LLC FOR A PASS
THROUGH RATE CHANGE**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

**UNDINE TEXAS, LLC'S RESPONSE TO COMMISSION STAFF'S
RECOMMENDATION ON THE APPLICATION**

Undine Texas, LLC (Undine) files this response to the Public Utility Commission of Texas (Commission) Staff's Recommendation on the Application filed on August 12, 2022.¹

I. BACKGROUND

On February 11, 2022, Undine filed an application for approval of a pass-through rate change pursuant to 16 Texas Administrative Code (TAC) § 24.25(b)(2) and Ordering Paragraph No. 5 of the Notice of Approval filed in Tariff Control No. 51828.² On August 12, 2022, Commission Staff filed its Recommendation on the Application (Recommendation) recommending approval of the Application with significant modifications to Undine's requested line loss recovery.³ On August 16, 2022, the Administrative Law Judge (ALJ) issued Order No. 9 finding the Application administratively complete and establishing a deadline of August 30, 2022, for Undine to respond to Commission Staff's Recommendation.⁴ Therefore, this response is timely filed.

Undine's Application seeks to adjust the pass-through rates for the Spring Creek Valley Estates Subdivision in Harris County (PWS # 1010213), the Hazy Hollow East Estates Subdivision in Montgomery County (PWS # 1700013), and the River Club Water Company in Montgomery County (PWS # 1700185) (collectively, the Nerro Systems).⁵ Undine initially acquired the Nerro Systems from Nerro Supply Investors, Inc. (Nerro) on June 30, 2020.⁶ Prior to Undine's

¹ Commission Staff's Recommendation on the Application and Notice and Proposing a Procedural Schedule (Aug. 12, 2022) (Commission Staff's Recommendation).

² *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 51828, Notice of Approval at 5 (Apr. 13, 2021).

³ Commission Staff's Recommendation, Memorandum of Kathryn Eiland (Memorandum) at 2.

⁴ Order No. 9—Finding Application Administratively Complete, Revised Notice Sufficient, and Establishing Procedural Schedule (Aug. 16, 2022).

⁵ See Application of Undine Texas, LLC for a Pass-Through Rate Change (Feb. 11, 2022) (Application).

⁶ See *Application of Nerro Supply, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities*

acquisition, the Nerro Systems were under-performing and experiencing substantial line losses. Accordingly, Undine has since invested significant capital in leak repairs and water pressure infrastructure to provide more efficient and reliable service.⁷ As expected, water pressure improvements have temporarily increased the Nerro Systems' line losses. The Nerro Systems will continue to experience high line losses until Commission Staff affords Undine the time and cost recovery necessary to rectify system deficiencies.

Commission Staff recognized Undine's efforts to improve the Nerro Systems in Tariff Control No. 51828, when it recommended the approval of pass-through rates that included line loss recovery amounts of 30.12% for the Spring Creek Valley Estates Subdivision and the River Club Water Company water systems, and 20.26% for the Hazy Hollow East Estates water system.⁸ To secure adequate revenue and rectify current line losses, Undine's current application requests that Commission Staff use actual line losses of 52.25%, 24.28%, and 61.37% in the pass-through rate calculations for the Spring Creek Valley Estates Subdivision, Hazy Hollow East Estates Subdivision, and the River Club Water Company, respectively.⁹ In response to Undine's request, Commission Staff recommended that Undine recover a mere 15% line loss amount for all three systems.¹⁰

II. ARGUMENT

Undine objects to Commission Staff's recommendation that the ALJ approve line loss recoveries of 15% for the Nerro Systems. Undine's acquisition of Nerro's inadequate water systems, and Undine's subsequent efforts to make improvements, fall within Undine's standard business practice. Undine has routinely acquired failing water systems to implement system-wide adjustments for the benefit of system users.¹¹ Undine's business model supports sound

and Certificate Rights in Brazos, Burlison, Chambers, Montgomery, Robertson, and Walker counties, and to Amend Undine Texas, LLC's, Nerro Supply, LLC's, and Deanville Water Supply Corporation's Water Certificates of Convenience and Necessity, Docket No. 49380 (Mar. 27, 2019).

⁷ *Id.*

⁸ Commission Staff's Recommendation on the Application and Notice, Memorandum at 2, Tariff Control No. 51828 (Mar. 29, 2021).

⁹ Application at 1-3.

¹⁰ Staff's Recommendation, Memorandum at 2.

¹¹ *See, e.g., Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 51788 (Feb. 3, 2021); *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 50071 (Oct. 2, 2019); *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 48307 (Apr. 23, 2018).

public policy to conserve water resources and provide reliable utility services. Reasonable time and cost recovery is imperative to adequately repair the dilapidated systems. If Undine is unable to recover significant portions of line losses through adequate pass-through rates, the Nerro Systems will remain in disrepair to the detriment of ratepayers.

Pursuant to 16 TAC § 24.25(b)(2)(E), a water system’s actual line loss amount “will be considered on a case-by-case basis.”¹² Accordingly, based on the Nerro Systems’ deficiencies and prior Commission Staff recommendations approving line loss recovery amounts greater than 15%, Commission Staff’s refusal to exercise its discretion and grant Undine line loss recoveries in excess of 15% is arbitrary and inconsistent with Commission precedent.

A. Undine requires additional time to remedy the Nerro Systems’ line losses and expects to lose \$13,144.25 if Commission Staff’s Recommendation is adopted.

Pass-through rates must “strike a balance between two competing considerations.”¹³ As such, Commission Staff must approve rates that allow water utilities to rectify infrastructure deficiencies without unduly burdening system consumers with expensive rates.¹⁴ Commission Staff’s proposed pass-through rates fail to strike this balance. The Recommendation will result in significant loss for Undine: the recommended rates would increase Undine’s losses by \$13,144.25 in 2022. Such a shortfall works an inequitable hardship on Undine and effectively ensures that Undine will not recover the necessary capital to implement system improvements.

In Tariff Control No. 49570, Commission Staff recognized that Undine’s unique business practice requires high levels of line loss recovery.¹⁵ In its recommendation in that case, Commission Staff opined that “Undine only recently acquired the systems that serve the [subdivisions] and has not had time to address all of the infrastructure improvements...”¹⁶ As such, for purposes of acceptable line loss recoveries, Commission Staff reasonably considered Undine’s recent acquisition of the systems.¹⁷ Further, Commission Staff recognized that “Undine is still working to locate and repair the more than 800 leaks that have been reported on these

¹² 16 Tex. Admin. Code § 24.25(b)(2)(E) (TAC).

¹³ *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 49570, Staff’s Recommendation on the Application and Notice at 3 (Sept. 26, 2019).

¹⁴ *See Id.*

¹⁵ *See Id.*

¹⁶ *Id.*

¹⁷ , Notice of Pass-Through Rate Change at 2-3, 6, Tariff Control No. 49570 (May 23, 2019) (providing that Undine acquired the relevant systems on July 2, 2018 (Docket No. 47477)).

systems and to replace old, inaccurate water meters.”¹⁸ Accordingly, Commission Staff recommended pass-through rates that were calculated with a 37.89% line loss recovery.¹⁹

Suburban’s Cypress Bend Subdivision illustrates Undine’s ability to acquire deficient systems and, with adequate pass-through rates, address high line losses in a reasonable amount of time.²⁰ On April 23, 2018, when Undine was acting as Temporary Manager of Suburban, Undine requested a pass-through rate change that incorporated a line loss level of 35.6%.²¹ Although Commission Staff initially limited Undine’s line loss recovery to 15%, on rehearing, the Commission approved a pass-through rate that included Undine’s requested line loss.²² Subsequently, Undine gradually improved the system’s line losses to 33% in 2019, 19% in 2020, and 15% in 2021. Without the higher pass-through rate, Undine would not have recovered the capital necessary to rectify the system’s line losses.

Similarly, Undine only recently acquired the Nerro Systems and is still actively implementing system improvements. When Undine submitted its application for pass-through rates, it had owned the Nerro Systems for roughly 18 months.²³ Thus, as Commission Staff conceded in Tariff Control No. 49570, Undine has not had time to implement system improvements. However, in contrast to Tariff Control No. 49570, Commission Staff has apparently disregarded Undine’s recent acquisition of the Nerro Systems and is instead recommending that Undine be penalized for high line losses. Similar to Suburban’s Cypress Bend Subdivision, Undine will require at least three years to identify and rectify the infrastructure deficiencies responsible for the high line losses.

Moreover, due to logistical issues and labor shortages beyond Undine’s control, Undine has been unable to replace deficient water meters in the Nerro Systems. Global supply chain disruptions have resulted in extraordinary delivery times and increased prices. Further, Undine acquired the Nerro Systems in July 2020 at the beginning of the pandemic, when most of the world was working remotely. Predictably, the lack of available personnel further exacerbated

¹⁸ Commission Staff’s Recommendation on the Application and Notice, Tariff Control No. 49570 at 4 (Sept. 26, 2019).

¹⁹ *Id.*, Memorandum at 2.

²⁰ *See Application of Undine Texas, LLC for a Pass Through Rate Change*, Docket No. 48307 (Apr. 23, 2018).

²¹ *Id.* at 2 (Apr. 23, 2018).

²² *Id.*, Order on Rehearing at 2 (Jul. 12, 2018).

²³ Application at 1-4.

inefficiencies related to system improvements. Based on current circumstances, Undine believes that it will replace the meters by 2024 and, by this time, resolve the line loss issues. In the interim, however, Commission Staff's recommendation to cap Undine's line loss recovery at 15% at such an early stage in Undine's ownership unreasonably punishes Undine for pandemic-related disruptions and would greatly frustrate Undine's ability to rectify system deficiencies.

B. Staff consistently approves line loss recoveries greater than 15%.

In response to previous Undine pass-through rate applications, Commission Staff has regularly recommended the approval of a line loss recovery amount in excess of 15%.²⁴ In fact, since 2017, when the Commission revised its rule to remove the 15% limitation on line loss allowance, Commission Staff had not capped Undine's line loss recovery amount at 15%—until now. Rather, for Undine's previous pass-through rate calculations, Commission Staff has applied the average line loss of each system, which routinely exceeds 30%.²⁵ This includes Commission Staff's recent recommendation of 30.12% and 20.26% line loss recovery rates for the same systems currently at issue.²⁶ Nevertheless, without explanation, Commission Staff now recommends a line loss recovery of 15% for all three systems.²⁷ Accordingly, Commission Staff's decision to cap Undine's line loss recovery at 15% is unprecedented and, absent additional justifications, unwarranted.

²⁴ See, e.g., *Application of Undine Texas for a Pass Through Rate Change*, Tariff Control No. 51788, Commission Staff's Recommendation on the Application and Notice, Memorandum at 1-2 (Mar. 29, 2021) (recommending pass through rates calculated with a line loss amount of 31.37 percent); *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 50072, Commission Staff's Recommendation on Pass-Through Rate Change, Memorandum at 1 (Feb. 21, 2020) (recommending pass through rates calculated with a line loss recovery amount of 34.55%); *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 49570, Commission Staff's Recommendation on the Application and Notice, Memorandum at 2 (Sept. 26, 2019) (recommending pass through rates calculated with a line loss amount of 37.89%).

²⁵ *Application of Undine, Texas LLC for a Pass-Through Rate Change*, Tariff Control No. 51828, Commission Staff's Recommendation on the Application and Notice, Memorandum at 1 (Mar. 29, 2021); *Application of Undine Texas for a Pass Through Rate Change*, Tariff Control No. 51788, Commission Staff's Recommendation on the Application and Notice, Memorandum at 1-2 (Mar. 29, 2021); *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 49570, Commission Staff's Recommendation on the Application and Notice, Memorandum at 2 (Sept. 26, 2019)

²⁶ Commission Staff's Recommendation on the Application and Notice, Memorandum at 2, Tariff Control No. 51828.

²⁷ Commission Staff's Recommendation, Memorandum at 2.

III. CONCLUSION

Based on the foregoing, Undine respectfully requests that the Commission deny Commission Staff's Recommendation and approve the line losses requested in Undine's Application. Undine hopes to work with Commission Staff to resolve the line loss discrepancies; however, if Commission Staff and Undine are unable to reach an agreement, Undine intends to file a request for hearing to fully resolve the matter.

Respectfully submitted,

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& TOWNSEND, P.C.**

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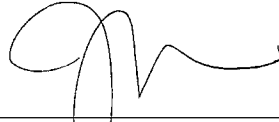
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CERTIFICATE OF SERVICE

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 August 30, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN