



## Filing Receipt

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**DOCKET NO. 53445**

<b>APPLICATION OF UNDINE TEXAS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC TO AMEND ITS CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FORT BEND COUNTY</b>	<b>§</b>	

**COMMISSION STAFF'S FINAL RECOMMENDATION**

On April 1, 2022, Undine Texas LLC (Undine) filed an application to amend its Certificate of Convenience and Necessity (CCN) in Fort Bend County. Undine holds water CCN No. 13260. The requested service area consists of 90 acres and 0 existing connections. Undine filed supplemental information on April 4, 2022 and September 12 and 14, 2022.

On September 13, 2022, the administrative law judge (ALJ) filed Order No. 5, establishing a deadline of September 19, 2022, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application. Therefore, this pleading is timely filed.

**I. FINAL RECOMMENDATION**

As detailed in the attached memoranda of Ethan Blanchard, Rate Regulation Division, and Patricia Garcia, Infrastructure Division, Staff has reviewed the application and recommends that it be approved. Staff's review indicates that Undine meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code and, therefore, is capable of providing continuous and adequate service. Additionally, Staff's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

On or before October 4, 2022, the parties will jointly file proposed findings of fact and conclusions of law.

**III. CONCLUSION**

For the reasons discussed above, Staff respectfully recommends approval of the application.

Dated: September 19, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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/s/ Bradley Reynolds  
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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 on September 19, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Bradley Reynolds  
Bradley Reynolds

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Bradley Reynolds  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** September 16, 2022

**RE:** Docket No. 53445 – *Application of Undine Texas, LLC to Amend its Certificate of Conveniences and Necessity in Fort Bend County*

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On April 1, 2022, Undine Texas, LLC (Undine) an application to amend its water Certificate of Convenience and Necessity (CCN), No. 12407, in Fort Bend County under the provisions of Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Undine must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

### ***Leverage Test***

Undine has filed a Guaranty Agreement between Undine and Undine's guarantor, Undine Group, LLC, which states that Undine Group, LLC is capable, available, and willing to cover temporary cash shortages.<sup>1</sup>

My analysis is based on financial statements filed ending December 31, 2021. 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

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<sup>1</sup> Application, *Confidential* – Exhibit A, item no. 24, at bates 37 (Sep. 14, 2022).

Group, LLC as of December 31, 2021.<sup>2</sup>

Based upon my review of the financial statements of Undine Group, LLC, I calculate a debt service coverage ratio equal to 0.46.<sup>3</sup> Because the ratio is less than one, I recommend a finding that Undine Group, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through their affiliate—Undine meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

### ***Operations Test***

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Undine projects cash shortages in the first of five years of system operations. This loss, along with all other projected losses in all other systems acquired by Undine and affiliates this year, amount to less than Undine's available cash.<sup>4</sup> Therefore, I recommend a finding that Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

### ***Recommendation***

Because Undine meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Undine Texas, LLC demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Undine before the date of this memorandum and may not reflect any changes in Undine's status after this review.

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<sup>2</sup> *Id.*, at 6.

<sup>3</sup> *Id.*, at 7. The calculations for which can be found in confidential Attachment EB-1.

<sup>4</sup> Application, *Confidential Attachment K*, item no. 5, at bates 3 (Apr. 4, 2022). The calculations for which can be found in confidential Attachment EB-1.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Bradley Reynolds, Attorney  
Legal Division

**FROM:** Patricia Garcia, Infrastructure Analysis Section Director  
Infrastructure Division

**DATE:** September 12, 2022

**RE:** Docket No. 53445 – *Application of Undine Texas LLC to Amend Its Certificate of Convenience and Necessity in Fort Bend County*

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### **1. Application**

On April 1, 2022, Undine Texas, LLC (Undine) filed with the Public Utility Commission of Texas (Commission) an application to amend its water Certificate of Convenience and Necessity (CCN) No. 13260 in Fort Bend County, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

Undine is seeking to amend its water CCN for the service area containing 0 customer connections and approximately 96 acres, comprised of uncertificated area.

The application proposes the addition of approximately 96 acres to CCN No. 13260.

### **2. Notice**

The deadline to intervene was June 13, 2022; there were no motions to intervene, protests, or opt-out requests received.

### **3. Factors Considered**

Under TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227, the Commission must consider certain factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered.

#### **3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1); 16 TAC § 24.227(a) and (e)(1)).***

There are no customers in the requested area.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)).***

A developer has requested service from Undine for the requested area.

**3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC §§ 13.241(b) and 13.246(c)(3), 16 TAC § 24.227(e)(3)).***

Undine will be the certificated entity for the requested area and will be required to provide continuous and adequate service to the requested area.

The landowners in the area will have a water provider available when they need to request water service.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application and did not request to intervene.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC § 13.246(c)(4); 16 TAC § 24.227(a) and (e)(4)).***

Undine has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS). The PWS that will provide service to the requested area is registered as Tejas Lakes, PWS ID No. 0790504. The Tejas Lakes PWS does not have any violations listed in the TCEQ database. No additional construction is necessary for Undine to serve the requested area. The Commission's complaint records, which go back to 2017, show 115 complaints against Undine.

**3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

Service was requested from neighboring utilities and none of them responded to the request to provide service. TCEQ has approved plans for Undine to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the area. Therefore, concerns of regionalization or consolidation do not apply.

**3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)).***

Undine received a request for service for the requested area from a developer. Service was requested from neighboring utilities and none of them responded to the request to provide

service. Undine has approved TCEQ plans to build facilities in the requested area to serve future customers and will have sufficient capacity to serve the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

**3.8. *Requirement of the applicant 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 (TWC §§ 13.246(d); 16 TAC § 24.227(f)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

**3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC § 24.227(e)(7) and (9)).***

The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.

**3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)).***

Future residents of the planned development will have water service.

#### **4. Recommendation**

Based on the mapping review by Dave Babicki, Infrastructure Division, and my technical and managerial review, I recommend that Undine meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service. I further recommend that approving this application to amend its water CCN No. 13260 is necessary for the service, accommodation, convenience and safety of the public.

Undine consented to the attached map, tariff, and certificate on July 20, 2022.