



## 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</b>	<b>§</b>	
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>IN FORT BEND COUNTY</b>	<b>§</b>	

**JOINT MOTION TO ADMIT EVIDENCE AND  
PROPOSED NOTICE OF APPROVAL**

COME NOW Undine Texas, LLC (Undine or Applicant), together with the Staff of the Public Utility Commission of Texas (Commission Staff or Staff) (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Notice of Approval. In AIS Item Nos. 31 and 32, Parties inadvertently forgot to sign the Joint Motion to Admit Evidence and inadvertently neglected to attach the final map, certificate, and tariff, respectively. Parties refile the Joint Motion to Admit Evidence and Proposed Notice of Approval to correct those errors. In support thereof, the Parties show the following:

**I.**

**BACKGROUND**

On April 1, 2022, Applicant filed an application with the Public Utility Commission of Texas (Commission) to amend its Certificate of Convenience and Necessity (CCN) in Fort Bend County. Specifically, Applicant seeks to amend its water service area under CCN number 13260 to add ninety-six (96) acres of uncertificated land. Applicant filed supplemental information on April 4, and September 12, 14, and 21, 2022.

On June 17, 2022, the administrative law judge (ALJ) filed Order No. 3, finding the notice sufficient and establishing a procedural schedule.

On July 19, 2022, Staff provided a final map, a revised certificate, and a proposed tariff to Undine for review and consent.

On July 20, 2022, Applicant filed its consent form concurring with the final map, revised certificate, and proposed tariff.

On September 19, 2022, Staff filed a recommendation that Applicant's application was consistent with the applicable Commission rules.

On October 5, 2022, the ALJ filed Order No. 6, establishing a deadline of November 4 for the Parties to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

## **II.**

### **MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- A. The application to amend a certificate of convenience and necessity and attachments, filed on April 1, 2022 (AIS Item No. 1);
- B. Confidential attachments to the application, filed on April 4, 2022 (AIS Item Nos. 2, 3, 4, and 5)
- C. Commission Staff's Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule, filed on May 2, 2022 (AIS Item No. 7);
- D. Affidavits of public notice, filed on June 3, 2022 (AIS Item No. 9);
- E. Commission Staff's Supplemental Recommendation on Sufficiency of Notice, filed on June 17, 2022 (AIS Item No. 10);
- F. Applicant's Response to Staff's First Request for Information, filed on July 6, 2022 (AIS Item No. 13);
- G. Undine's consent form for the map, certificate, and tariff, filed on July 20, 2022 (AIS Item No. 14);
- H. Applicant's Response to Staff's Second Request for Information, filed on August 13, 2022 (AIS Item No. 18);
- I. Applicant's Supplemental Information, filed on September 12, 2022 (AIS Item Nos. 19-20);
- J. Applicant's Supplemental Information, filed on September 14, 2022 (AIS Item Nos. 23-24);
- K. Staff's Final Recommendation on the application and confidential attachment, filed September 19, 2022 (AIS Item Nos. 25-26);
- L. Applicant's Supplemental Information, filed on September 21, 2022 (AIS Item Nos. 27-28);
- M. Staff's third request for an extension of time to prepare the joint proposed findings of fact and conclusions of law, filed October 4, 2022 (AIS Item No. 29); and
- N. The attached final map, Undine's revised water certificate, and Undine's revised tariff.

### **III.**

#### **JOINT PROPOSED NOTICE OF APPROVAL**

Commission Staff and Undine have agreed to the attached Joint Proposed Notice of Approval, which would grant Applicants' application to amend its water certificate in Fort Bend County. Additionally, the Parties have attached the final map, revised water certificate, and proposed tariff that were provided by Staff to Applicant on July 19, 2022, and subsequently approved by Applicant via filed consent form on July 20, 2022.

### **IV.**

#### **CONCLUSION**

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Notice of Approval.

Respectfully submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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**Attorneys for Undine Texas, LLC**

**DOCKET NO. 53445**

**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 November 4, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

**DOCKET NO. 53445**

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

This Notice of Approval addresses the application of Undine Texas, LLC (Undine or Applicant), to amend its Certificate of Convenience and Necessity (CCN) number 13260 in Fort Bend County. The requested service area consists of 96 acres and 0 existing connections. The Commission approves the amendment of Undine's CCN number 13260.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. Undine is a for-profit corporation registered with the Texas secretary of state under file number 801768069.
2. Undine operates, maintains, and controls facilities for providing water service under CCN No. 13260 in Fort Bend County.

**Application**

3. On April 1, 2022, Undine filed an application to amend its Certificate of Convenience and Necessity in Fort Bend County. Specifically, Applicant seeks to amend its water service area under CCN number 13260 to add ninety-six (96) acres of uncertificated land.
4. The amendment affects 96 acres and 0 current customers in Fort Bend County, Texas.
5. The requested area is located approximately 2.25-mile(s) north of downtown Needville, Texas, and is generally bounded on the north by Williams School Road; on the east by Foerster School Road; on the south by Highway 36; and on the west by Baker Road.
6. In Order No. 2 issued on May 3, 2022, the administrative law judge (ALJ) found the application administratively complete.

### **Notice**

7. On June 3, 2022, Undine filed the affidavit of Carey A. Thomas, Senior Vice President, attesting that notice was provided to all current customers, landowners, neighboring utilities, and affected parties on May 3, 2022.
8. On June 3, 2022, Undine filed a publisher's affidavit attesting to the publication of notice in the *Fort Bend Herald*, a newspaper of general circulation in Fort Bend County, on May 5, 2022 and May 12, 2022 .
9. In Order No. 3, issued on June 17, 2022, the ALJ found the notice of the application sufficient.

### **Comments, Landowner Opt-Outs, and Motions to Intervene**

10. No comments, landowner opt-out requests, or motions to intervene were filed in this docket.
11. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application and none requested to intervene.

### **Evidentiary Record**

12. On \_\_\_\_\_, 2022, the parties filed a joint motion to admit evidence.
13. In Order No. \_\_, issued on \_\_\_\_\_, 20\_\_ the ALJ admitted the following evidence into the record: (a) the applicants' application and attachments, filed on April 1, 2022; (b) confidential attachments to the application, filed on April 4, 2022 (c) Staff's recommendation on administrative completeness and notice, filed May 2, 2022; (d) affidavits of public notice, filed June 3, 2022; (e) Staff's supplemental recommendation on sufficiency of notice, filed June 17, 2022; (f) Applicant's response to Staff's first request for information, filed July 6, 2022; (g) Undine's consent form for the map, certificate, and tariff, filed July 20, 2022; (h) Applicant's response to Staff's second request for information, filed August 13, 2022; (i) Applicant's supplemental information, filed September 12, 2022; (j) Applicant's supplemental information, filed September 14, 2022; (k) Staff's final recommendation on the application and confidential attachment, filed September 19, 2022; (l) Applicant's supplemental information, filed September 21, 2022; and (m) the attached final map, Undine's revised water certificate, and Undine's revised tariff, previously attached to the Joint Motion to Admit Evidence and Proposed Notice of Approval, filed on \_\_\_\_\_, 2022.



**Adequacy of Existing Service**

14. There are no existing customers in the requested area and water service is not currently being provided to the requested area.

**Need for Service**

15. There are no existing water connections in the requested area.
16. There is a need for service as the property owner intends to develop the requested area and anticipates a total of 90 water connections.

**Effect of Granting the Amendment**

17. Undine will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.
18. The landowners in the area will have a reliable water service provider available when they need to request water service.
19. There will be no effect on any other retail public utility servicing the proximate area as there are no other water providers in the area.

**Ability to Serve: Managerial and Technical**

20. Undine has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) throughout Texas.
21. Undine has a proven record of ability to provide continuous and adequate water service to customers in the requested area and Undine's other certificated areas throughout Texas.
22. 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 in the TCEQ database. The Commission's complaint records, which go back to 2017, show 115 complaints against Undine.
23. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
24. Undine has an adequate supply of water and is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health & Safety Code, chapter 13 of the Texas Water Code (TWC), and TCEQ's rules..

**Ability to Serve: Financial Ability and Stability**

25. Undine has filed a Guaranty Agreement between Undine and Undine Group, LLC, which states that Undine Group LLC is capable, available, and willing to cover temporary cash shortages.
26. Undine Group LLC has a debt service coverage ratio of less than one, satisfying the leverage test. Through their affiliate, Undine satisfies the leverage test as well.
27. 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. Therefore, Undine satisfies the operations test.
28. Undine demonstrated adequate financial and managerial capability to provide continuous and adequate service to the requested area.

**Financial Assurance**

29. Because Undine meets the financial tests, 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**

30. Undine received a request for service for the requested area from a developer.
31. Undine requested service from neighboring utilities and none of them were able to provide service.
32. 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.
33. It is not feasible to obtain service from an adjacent retail public utility in the requested area.

**Regionalization or Consolidation**

34. 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.

**Environmental Integrity and Effect on the Land**

35. The environmental integrity and effect on the land will be minimally affected as facilities are constructed to provide service to the requested area.

36. Where new construction is planned, proper construction protocols will be followed to ensure that the environmental integrity of the land will not be disrupted or negatively affected to such a degree that the application should not be granted.

**Improvement of Service or Lowering Cost to Consumers**

37. Future residents of the planned development in the requested area will have water service.
38. No lowering of cost to consumers in the requested area will result from amending the CCN because there are no existing customers in the requested area.

**Tariff and Map**

39. On July 19, 2022, Commission Staff emailed to Undine the proposed final map, revised certificate, and proposed tariff related to this docket.
40. On July 20, 2022, Undine filed the consent form concurring with the proposed final map, the revised certificate, and the proposed tariff.
41. The final proposed map, revised certificate, and proposed tariff were filed as attachments to the joint motion to admit evidence and proposed notice of approval.

**Informal Disposition**

42. More than 15 days have passed since the completion of notice provided in this docket.
43. No person filed a protest or motion to intervene.
44. Undine and Commission Staff are the only parties to this proceeding.
45. No party requested a hearing and no hearing is needed.
46. Commission Staff recommended approval of the application.
47. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under TWC §§ 13.041, 13.241, 13.244, and 13.246.
2. Undine is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Undine's application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.
4. Public notice of the application was provided as required by TWC § 13.246 and 16 TAC § 24.235.

5. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
6. After consideration of the factors in TWC §§ 13.246(c) and 13.246(c) and 16 TAC § 24.227(e), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area, as required by TWC § 13.241 and 16 TAC § 24.227.
7. Undine has access to an adequate supply of water to serve the requested area and its existing certificated service areas, and its public water system is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the rules of the TCEQ in accordance with TWC § 13.241(b) and 16 TAC § 24.227(a)(1).
8. After consideration of TWC § 13.241(d) and 16 TAC § 24.277(b), regionalization or consolidation is not feasible, because no neighboring utilities have the facilities needed to provide service to the requested area.
9. It is not necessary for Undine to provide a bond or other financial assurance under TWC 13.246(d) or 16 TAC § 24.227(f).
10. Undine has demonstrated that the amendment of its certificate of convenience and necessity No. 13260 is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC § 13.246(b) and 16 TAC §24.227.
11. Undine must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Fort Bend County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording in accordance with TWC §13.257(r) and (s).
12. 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:

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<sup>1</sup> Tex. Gov't Code ch. 2001.

1. The Commission approves the amendment of Undine's CCN number 13260, to the extent provided in this Notice of Approval and shown on the attached map.
2. The Commission approves the map and tariff attached to the Joint Motion to Admit Evidence and Proposed Notice of Approval filed on \_\_\_\_\_, 2022.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Undine must serve every customer and applicant for service within the approved area under water CCN number 13260 who requests water service and meets the terms of Undine's water service, and such service must be continuous and adequate.
5. Undine must comply with the recording requirements in TWC §13.257(r) and (s) for the area in Fort Bend County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.
6. Within ten days of the date of this 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.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

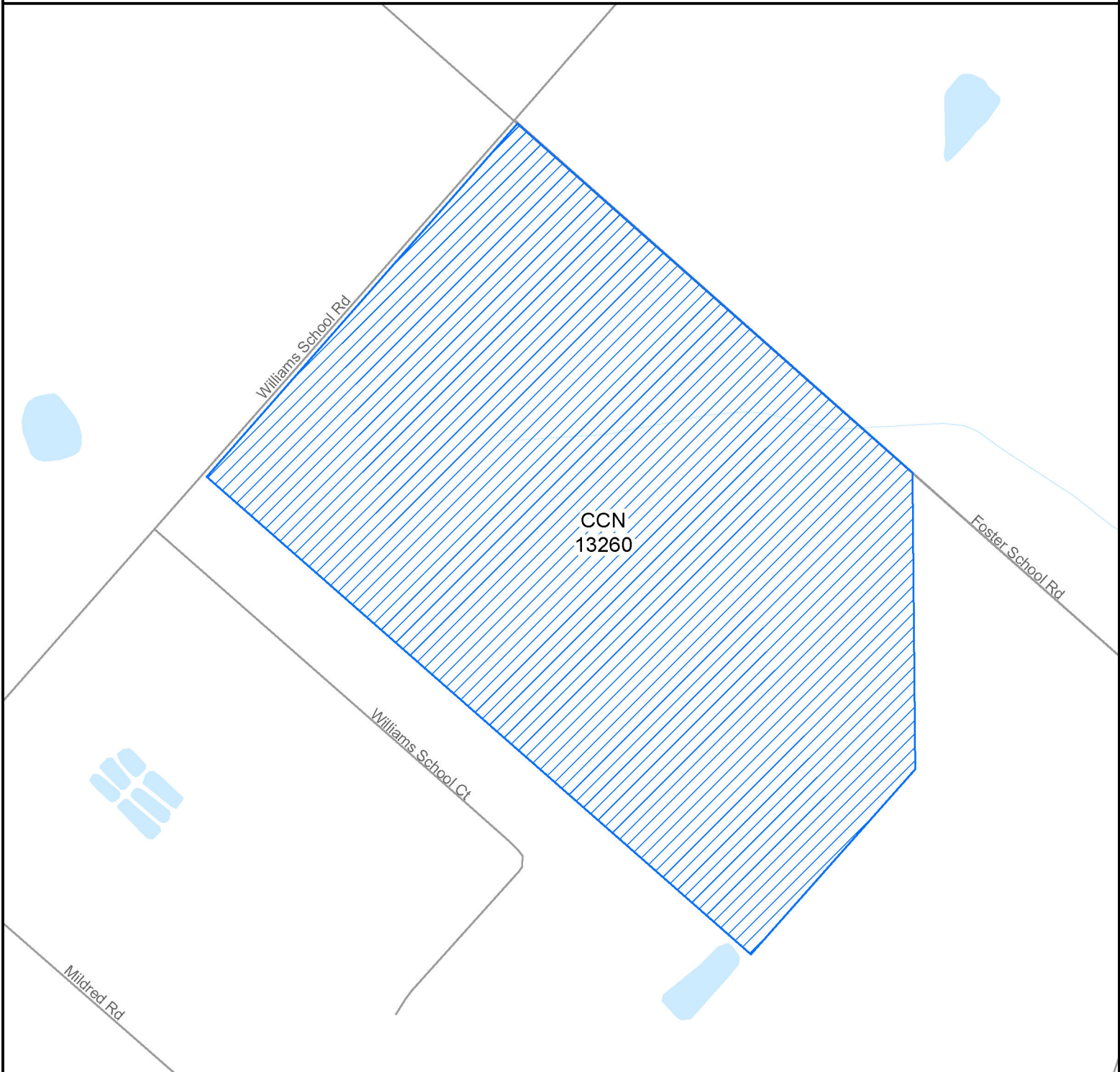
**Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2022.**

**PUBLIC UTILITY COMMISSION OF TEXAS**


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ADMINISTRATIVE LAW JUDGE

Undine Texas, LLC  
Portion of Water CCN No. 13260  
PUC Docket No. 53445  
Amended CCN No. 13260 in Fort Bend County



**Water CCN**

 13260 - Undine Texas LLC

0 250 500  
Feet





# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

**Undine Texas, LLC**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Undine Texas, LLC is entitled to this

## **Certificate of Convenience and Necessity No. 13260**

to provide continuous and adequate water utility service to that service area or those service areas in Brazos, Brazoria, Burleson, Chambers, Fort Bend, Harris, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, and Tyler Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 53445 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Undine Texas, LLC to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.