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DOCKET NO. 53445

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

COMMISSION STAFF'S CLARIFICATION TO ORDER NO. 8

I. INTRODUCTION

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.

On January 30, 2023, the administrative law judge (ALJ) filed Order No. 10, establishing a deadline of February 13, 2023, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to clarify several details of its final recommendation. On February 13, 2023, Staff filed an extension request requesting an extension until February 27, 2023.

II. CLARIFICATION

In Order No. 8, the ALJ required Undine and Staff to clarify whether new facilities are required to serve the requested area. If new facilities are required, the ALJ also directed Staff to clarify whether Undine has provided sufficient capital commitment to address 16 Texas Administrative Code § 24.11(e)(5)(B)(ii) and to comment on the sufficiency of Undine's filings with regards to Texas Water Code (TWC) § 13.244(d)(3). Staff has concluded that new facilities are required and that Undine has provided sufficient information to satisfy the requirements of 16 TAC § 24.11(e)(5)(B)(ii) and TWC § 13.244(d)(3).

Staff has reviewed the application and recommends that new facilities are required to serve the requested area. To that effect, Staff has attached a revised memorandum from Patricia Garcia that eliminates the erroneous sentence that stated that no new facilities will be needed to be constructed to serve the requested area.

Since new facilities will be required to serve the requested area, the ALJ directed Staff to confirm that the issues raised by the Commission in its order on remand in Docket No. 52931 have been addressed. Specifically, the ALJ asked whether the cost of the new facilities will exceed \$100,000, and if so, to address whether Undine provided a sufficient capital commitment to

address the Commissioners' concerns regarding 16 TAC § 24.11(e)(5)(B)(ii). The ALJ also directed Staff to address why the guaranty agreement provided from Undine Group, LLC (the entity to which the loan approval documents were issued) to Undine is for the projected operations and maintenance shortages in the first five years of operation and not for capital construction.

Staff has reviewed the application and recommends that Undine has addressed the issues raised by the Commission in its order on remand in Docket No. 52391. As detailed in the attached memorandum of Ethan Blanchard, Rate Regulation Division, Staff recommends that the cost of the new facilities will exceed \$100,000. Nevertheless, Staff recommends that Undine has complied with the requirement of 16 Texas Administrative Code (TAC) § 24.11(e)(5)(B)(ii) that "[t]he owner must submit loan approval documents or firm capital commitments affirming funds are available to install . . . a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision." Undine has submitted documentation demonstrating access to a line of credit that exceeds the projected, necessary capital improvements both to the Tejas Landing water system in this Docket and the systems purchased by Undine between December 31, 2021 and April 1, 2022, the date this docket was filed.¹ As detailed in Mr. Blanchard's memorandum, a line of credit functions as superior form of loan, and it can be reasonably interpreted that a line of credit should be considered a "loan" for purposes of evaluating a utility's compliance with 16 TAC § 24.11(e)(5)(B)(ii).

Undine has filed a Guaranty Agreement between Undine and Undine's guarantor, Undine Group, LLC. Staff contends that the guaranty agreement provided from Undine Group, LLC to Undine is for the projected operations and maintenance shortages in the first five years of operation as well as for capital construction. The Guaranty Agreement states that Undine Group, LLC is capable, available, and willing to cover temporary cash shortages and any operations and maintenance shortages, per 16 TAC § 24.11(e)(3). By extension, the projected capital improvements discussed below would be covered by this Guaranty Agreement as any potential operating losses that Undine may incur as a result of payment for those capital improvements would be covered by Undine Group, LLC. Therefore, Staff recommends a finding that Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

Finally, the ALJ directed Staff to comment on the sufficiency of Undine's filings with

¹ The calculations for which can be found in confidential Attachment EB-2.

regards to the capital improvement plan contemplated in Texas Water Code § 13.244(d)(3) and discussed by the Commission in its order on remand if new facilities are required.

As previously discussed, Staff contends that new facilities are required and, as detailed in the revised memorandum of Ms. Garcia, Staff recommends that Undine's filings are sufficient with regards to the capital improvement plan contemplated in Texas Water Code § 13.244(d)(3) and discussed by the Commission in its order on remand.

III. CONCLUSION

Staff respectfully requests that the foregoing information be taken into consideration by the ALJ regarding the clarifications requested in Order No. 8.

Dated: February 27, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

John Harrison
Managing Attorney

/s/ Bradley Reynolds
Bradley Reynolds
State Bar No. 24125839
Ian Groetsch
State Bar No. 24078599
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7307
(512) 936-7268 (facsimile)
Brad.Reynolds@puc.texas.gov

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 February 27, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Bradley Reynolds
Bradley Reynolds

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: February 27, 2023

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

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. 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. ***An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).***

Undine will be constructing a new water treatment plant which will be an extension of the Tejas Lakes public water system. Undine estimated that the first lots would be connected within 6 months of the application being filed. Beyond the construction of the water treatment plant, the developer will install distribution lines throughout the requested area. I recommend that this qualifies as a capital improvement plan.

- 3.8. ***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.

- 3.9. ***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.

- 3.10. ***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.

- 3.11. ***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.

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: February 27, 2023

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

On April 1, 2022, Undine Texas, LLC (Undine) filed 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 and any operations and maintenance shortages, per 16 TAC § 24.11(e)(3).¹

By extension, the projected capital improvements discussed below would be covered by this Guaranty Agreement as any potential operating losses that Undine may incur as a result of payment for those capital improvements would be covered by Undine Group, LLC.

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

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 Group, LLC as of December 31, 2021.²

Based upon my review of the financial statements of Undine Group, LLC, I calculate a debt service coverage ratio equal to 0.46.³ 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 operating cash shortages in the first projected year of operations, however this cash shortage is exceeded by Undine Group, LLC's available cash.⁴ Additionally, Undine has provided a guaranty from Undine Group, LLC per 16 TAC § 24.11(e)(3). Therefore, I recommend a finding that Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(B).

In particular, § 24.11(e)(5)(B)(ii) states:

The owner must submit loan approval documents or firm capital commitments

² *Id.*, at 6.

³ The calculations for which can be found in confidential Attachment EB-1.

⁴ The calculations for which can be found in confidential Attachment EB-1.

affirming funds are available to install... a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision.

Undine has submitted documentation demonstrating access to a line of credit that exceeds the projected, necessary capital improvements both to the Tejas Landing water system in this Docket and the systems purchased by Undine between December 31, 2021 and the date this docket was filed.⁵

It may not be clear whether a line of credit can be considered a “loan” as described in 16 TAC § 24.11(e)(5)(B). A typical loan involves the lender delivering a lump sum of cash to the borrower who then must pay back the loan—with interest—over a specific period of time.⁶ If the borrower borrows too little, he may not increase the loan initially borrowed but would instead need to take out a new loan (with a worse credit score from the first loan).

In contrast, a line of credit is a “revolving” loan. In a line of credit, the lender has agreed to a maximum amount of cash that the borrower can withdraw, but the borrower is free to borrow less than the maximum and, as the borrower repays his initial borrowings, he may withdraw from the line of credit again in perpetuity.⁷

The difference between a loan and a line of credit is that a line of credit is better. The borrower (in this case, Undine) may use operating profit to pay off the balance of their line of credit and then withdraw funds again for further capital investment. As long as Undine is profitable, their line of credit will function as an infinite loan. Even though a line of credit’s maximum is typically lower than the principal of a loan, Undine’s creditors have given Undine access to a large credit line.

Additionally, at the Open Meeting on October 6, 2022, Commissioner McAdams made statements regarding 16 TAC § 24.11(e)(5) and his interpretation of “loan approval documents or firm capital commitments.” Chairman Lake agreed with Commission McAdams and stated that he considers “a letter of credit, or any number of ways” to be sufficient demonstrations of compliance

⁵ The calculations for which can be found in confidential Attachment EB-2.

⁶ A typical household example of which would be a mortgage.

⁷ A typical household example of which would be a credit card.

with 16 TAC § 24.11(e)(5).

Therefore, since a letter of credit—which serves as collateral in case of default—is less similar to a “loan” than a line of credit, and a line of credit functions as a superior form of loan, it can be reasonably interpreted that a line of credit should be considered a “loan” for purposes of evaluating a utility’s compliance with 16 TAC § 24.11(e)(5)(B), as a line of credit clearly falls under the category of what the Chairman intended by “any number of ways.”

The applicant has filed documentation demonstrating adequate funding of the planned system improvements for the Tejas Landing water system alongside all of Undine’s other planned system improvements this year.⁸ Consequently, I recommend a finding that Undine has demonstrated the financial capability need to provide continuous and adequate service as required by 16 TAC § 24.11 (e)(5)(B).

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.

⁸ The calculations for which can be found in confidential Attachment EB-1.