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Received - 2022-11-17 03:00:24 PM
Control Number - 53476
ItemNumber - 34

DOCKET NO. 53476

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

COMMISSION STAFF'S FINAL RECOMMENDATION

On April 8, 2022, Undine Texas LLC (Undine) filed an application to amend its water certificate of convenience and necessity (CCN) No. 13260 in Jackson County. Undine requests the amendment to add a residential community development consisting of 97 lots.

On September 28, 2022, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of November 17, 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 December 15, 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: November 17, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 November 17, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: November 11, 2022

RE: Docket No. 53476 – *Application of Undine Texas, LLC to Amend its Certificate of Convenience and Necessity in Jackson County*

On April 8, 2022, Undine Texas, LLC (Undine) filed an application to amend its water certificate of convenience and necessity (CCN), no. 13260, in Jackson County under 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.¹

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

¹ Application, *Confidential Exhibit A*, item no. 25, at bates 37 (Sep. 21, 2022).

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's available cash.⁴ Therefore, I recommend a finding that Undine meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan and Purchase Price

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).

The applicant has filed documentation demonstrating adequate funding of the planned system improvements for the Cape Shores water system alongside all of Undine's other planned system improvements this year.⁵ Therefore, I recommend a finding that Undine satisfies the requirements of 16 TAC § 24.11(e)(5)(B).

² *Id.* at 6.

³ *Id.* at 7. 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.

⁵ The calculations for which can be found in confidential Attachment EB-1.

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.

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: November 17, 2022

RE: Docket No. 53476 – *Application of Undine Texas LLC to Amend Its Certificate of Convenience and Necessity in Jackson County*

1. Application

On April 8, 2022, Undine Texas, LLC (Undine Texas) filed with the Public Utility Commission of Texas (Commission) an application to amend its water Certificate of Convenience and Necessity (CCN) No. 13260 in Jackson County, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

Based on the mapping review by Hank Journeay, Infrastructure Division:

- The requested area includes 2 customer connections and approximately 149 acres of uncertificated area.
- The application proposes the addition of approximately 149 acres to CCN No. 13260.

2. Notice

The deadline to intervene was August 26, 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)).*

Customers in the requested area currently receive service from Undine Texas's Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS)

registered as Cape Shore Subdivision, PWS ID No. 1200044. This is a new PWS that has been approved by the TCEQ.

The Commission's complaint records, which go back to 2017, show 100 complaints against Undine Texas. The Commission's Customer Protection Division has addressed each of the complaints.

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

There is a need for service as there are 2 existing customers and potential new customers in 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 Texas 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 areas 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 Texas has several TCEQ approved public water systems. The PWS that provides service to the requested area is registered as Cape Shore Subdivision, PWS ID No. 1200044.

The Commission's complaint records, which go back to 2017, show 100 complaints against Undine Texas. The Commission's Customer Protection Division has addressed each of the complaints.

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. None of the utilities responded to the requests for service. TCEQ has approved plans for Undine Texas 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 Texas is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

Undine Texas received a request for service for the requested area from a developer. Service was requested from neighboring utilities and none of them were able to provide service. Undine Texas 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)).*

Undine Texas will continue to provide water service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

Future residents of the planned development will have water service.

4. Recommendation

Based on the mapping review by Hank Journeay, Infrastructure Division, and my technical and managerial review, I recommend that Undine Texas 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 Texas consented to the attached map, tariff, and certificate on November 8, 2022.