



## **Filing Receipt**

**Filing Date - 2024-05-17 01:04:36 PM**

**Control Number - 53630**

**Item Number - 104**

**DOCKET NO. 53630**

<b>APPLICATION OF ORBIT SYSTEMS, INC. AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
---	---------------------------------	--

**ORDER NO. 31  
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Orbit Systems, Inc. and Undine Texas Environmental, LLC for approval of the sale, transfer, or merger of facilities and certificate rights in Brazoria County. The applicants seek approval of the following: (1) the sale and transfer to Undine of all facilities held by Orbit located within the service area of Orbit's certificate of convenience and necessity (CCN) number 20682 and within six acres of uncertificated area; (2) the sale and transfer of all service area under Orbit's CCN number 20682 to Undine; (3) the cancellation of Orbit's CCN number 20682; (4) the amendment of Undine's CCN number 20816 to include the area previously included in Orbit's CCN number 20682 and (5) the amendment of Undine's CCN number 20816 to add six acres of uncertificated area. This Order addresses only the proposed sale and transfer of facilities and certificate rights from Orbit to Undine. This Order does not address Undine's request for the addition of six uncertificated acres or the initial rates following Undine's acquisition of Orbit's facilities and service area. The administrative law judge (ALJ) approves the transaction between Orbit and Undine and authorizes it to be completed as proposed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Orbit is a Texas corporation registered with the Texas secretary of state under file number 72981900.

2. Orbit holds CCN number 20682 which obligates it to provide retail sewer service in its certificated service area in Brazoria County.
3. Orbit owns the Grasslands sewer system, which is permitted with the Texas Commission on Environmental Quality (TCEQ) under Texas Pollutant Discharge Elimination System permit number WQ0012672001.
4. Undine is a Texas limited liability company registered with the Texas secretary of state under file number 801768069.
5. Undine holds CCN number 20816 which obligates it to provide retail sewer service in its certificated service area in Brazoria, Parker, and Tarrant counties.

**Application**

6. On May 23 and 25, 2022, Orbit and Undine filed the application at issue in this proceeding.
7. The applicants filed supplemental information on June 21, September 21 and 22, October 6 and 14, 2022, February 15, 16, 17, and 21, and June 16 and 29, 2023.
8. In the application, as supplemented and amended, the applicants seek approval of the following:
  - a. the sale and transfer to Undine of all facilities held by Orbit located within the service area of Orbit's CCN number 20682 and within six acres of uncertificated area;
  - b. the sale and transfer of all service area under Orbit's CCN number 20682 to Undine,
  - c. the amendment of Undine's CCN number 20816 to include the area previously included in Orbit's CCN number 20682;
  - d. the cancellation of Orbit's CCN number 20682; and
  - e. the amendment of Undine's CCN number 20816 to add six acres of uncertificated area.
9. The requested area includes the following:
  - a. 146 acres of area that is singly certificated under Orbit's CCN number 20682;

- b. Six acres of uncertificated area immediately adjacent to Orbit's existing certificated service area; and
  - c. 195 customer connections.
10. The requested area is located approximately two miles north of downtown Bonney, Texas and is generally bounded on the north by Farm-to-Market Road 1462; on the east by County Road 7977; on the south by County Road 841; and on the west by Farm-to-Market Road 521.
11. In Order No. 3 filed on July 21, 2022, the ALJ found the application, as supplemented, administratively complete.

### Sale

12. In Order No. 25 filed on July 21, 2023, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
13. In Order No. 25 filed on July 21, 2023, the ALJ ordered the transaction to be completed within 180 days and, if no extension had been granted, the approval would be void and the applicants would be required to reapply for approval.
14. The transaction was not completed within the 180-days and no extension was requested or granted.
15. In Order No. 26 filed on January 30, 2024, the ALJ voided the transaction and required the parties to file an amended application.
16. On February 5, 2024, Undine filed an amended application.
17. On March 21 and 27, 2024, Undine filed a supplement and clarification.

### Notice

18. On August 16, 2022, the applicants filed the affidavit of Carey A. Thomas, senior vice-president of Undine, attesting that notice was provided to all current customers of Orbit, landowners, neighboring utilities, and affected parties on July 28, 2022. Attached to the affidavit were copies of the notice and maps provided by the applicants.

19. On August 16, 2022, the applicants filed a publisher's affidavit attesting to the publication of notice in *The Facts*, a newspaper of general circulation in Brazoria County, on July 28 and August 4, 2022.
20. On August 17, 2022, the applicants confidentially filed the list of recipients for the notice.
21. In Order No. 6 filed on September 8, 2022, the ALJ found the notice sufficient.
22. In Order No. 12 filed on December 28, 2022, the ALJ withdrew the finding in Order No. 6 that notice was sufficient and required revised notice of the application.
23. On February 22, 2023, the applicants filed the affidavit of Mr. Thomas attesting that notice was provided to all current customers of Orbit, landowners, neighboring utilities, and affected parties on February 15, 2023. Attached to the affidavit were copies of the notice and maps provided by the applicants, and a confidential list of recipients for the notice.
24. On March 7, 2023, the applicants filed a publisher's affidavit attesting to the publication of notice in *The Facts*, a newspaper of general circulation in Brazoria County, on February 14 and 21, 2023.
25. In Order No. 16 filed on March 13, 2023, the ALJ found the notice sufficient.
26. On May 24, 2023, the applicants filed the affidavit of Mr. Thomas attesting that there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area.
27. In Order No. 20 filed on June 16, 2023, the ALJ found the supplemental notice sufficient.

#### **Intervention**

28. In Order No. 4 filed on August 10, 2022, the ALJ granted Tommy Green's motion to intervene.

#### **Evidentiary Record**

29. In Order No. 10 filed on December 14, 2022, the ALJ admitted the following evidence into the record of this proceeding:
  - a. The application and all attachments filed on May 23, 2022;
  - b. Undine's confidential attachments to the application filed on May 25, 2022;

- c. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on June 21, 2022;
  - d. Undine's first supplement to the application filed on June 21, 2022;
  - e. Undine's request to change the docket style filed on June 21, 2022;
  - f. Commission Staff's supplemental recommendation on administrative completeness and notice, proposed procedural schedule, and request to restyle docket filed on July 20, 2022;
  - g. Undine's proof of notice and confidential attachment filed on August 16 and 17, 2022;
  - h. Commission Staff's recommendation on sufficiency of notice filed on August 29, 2022;
  - i. Commission Staff's supplemental recommendation on sufficiency of notice filed on September 7, 2022;
  - j. Undine's second supplement to application filed on September 21, 2022;
  - k. Undine's third supplement to application filed on September 22, 2022;
  - l. Undine's fourth supplement to application filed on October 6, 2022;
  - m. Undine's fifth supplement to application filed on October 14, 2022; and
  - n. Commission Staff's final recommendation on the transaction filed on November 4, 2022.
30. In Order No. 23 filed on July 20, 2023 the ALJ admitted the following evidence into the record of the proceeding:
- a. Undine's sixth supplement to application filed on February 15, 2023;
  - b. Undine's confidential exhibit A to the supplement to the application filed on February 16, 2023;
  - c. Commission Staff's clarification filed on February 17, 2023;
  - d. Undine's clarification filed on February 17, 2023;

- e. Undine's confidential attachment A to the clarification filed on February 21, 2023;
  - f. Undine's response to Order No. 15 filed on February 22, 2023;
  - g. Undine's confidential exhibit B to the response to Order No. 15 filed on February 22, 2023;
  - h. Undine's supplemental response to Order No. 15 filed on March 7, 2023;
  - i. Commission Staff's supplemental recommendation on revised notice filed on March 10, 2023;
  - j. Commission Staff's recommendation on the transaction including the attached tariff and confidential attachments filed on April 21, 2023;
  - k. Undine's response to Commission Staff's recommendation on the transaction filed on April 24, 2023;
  - l. Undine's response to Order No. 18 requiring clarification on notice filed on May 24, 2023;
  - m. Commission Staff's recommendation on sufficiency of supplemental notice and financial assurance filed on June 14, 2023;
  - n. Undine's supplemental information including confidential attachments filed on June 16, 2023; and
  - o. Undine's supplemental information filed on June 29, 2023.
31. In Order No. 30 filed on May 17, 2024, the ALJ admitted the following evidence into the record of the proceeding:
- a. Joint response to Order No. 21 filed on July 7, 2023;
  - b. Undine's status report filed on September 27, 2023;
  - c. Undine's application amendment filed on February 5, 2024;
  - d. Undine and Orbit's motion for reconsideration filed on February 6, 2024;
  - e. Undine's application supplement filed on March 21, 2024;
  - f. Undine's clarification filed on March 27, 2024;

- g. Commission Staff's recommendation on the transaction filed on March 28, 2024; and
- h. Undine's response to Commission Staff's recommendation filed on April 2, 2024.

**Purchaser's Compliance History**

- 32. The Commission's complaint records, which date back to five years, show four informal complaints against Undine. The Commission's Customer Protection Division has evaluated and closed the four complaints at this time. The number of complaints does not include complaints for Undine Development, LLC and Undine Texas, LLC.
- 33. Undine has been subject to enforcement actions by the Commission and the TCEQ for non-compliance with rules, orders, or statutes.
- 34. Undine is actively working on resolving the violations that have been identified by the TCEQ at each of their water and sewer systems.
- 35. Undine does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 36. Undine has demonstrated a compliance status that is adequate for approval of the transaction to proceed.

**Adequacy of Existing Service**

- 37. There are currently 195 connections in the requested area that are being served by Orbit through the Grasslands sewer system under Texas Pollutant Discharge Elimination System permit number WQ0012672001, and such service has been continuous and adequate.
- 38. The last TCEQ compliance investigation of the Grasslands sewer system was on January 31, 2022.
- 39. Orbit's sewer system does not have any violations listed in the TCEQ database.
- 40. The Commission's complaint records, which go back to 2017, show no complaints against Orbit.
- 41. Undine has planned capital improvements for the system.
- 42. There is no evidence in the record that Orbit has failed to comply with any Commission or TCEQ order.



**Need for Additional Service**

43. There are 195 existing customer connections in the requested area that are receiving service from Orbit and have an ongoing need for service.
44. The requested area includes uncertificated area with existing facilities owned by Orbit and an existing customer served by Orbit.

**Effect of Approving the Transaction and Granting the Amendments**

45. Approving the sale and transfer to proceed and granting the CCN amendments will obligate Undine to provide continuous and adequate sewer service to current and future customers in the requested area.
46. There will be no effect on landowners as requested area is currently certificated or receiving service from Orbit.
47. All retail public utilities in the proximate area were provided notice of the transaction proposed in this application, and no protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility.
48. Undine will be the sole certificated sewer utility for the requested area and will be required to provide continuous and adequate sewer service to current and future customers in the requested area.

**Ability to Serve: Managerial and Technical**

49. Undine owns and operates numerous TCEQ-permitted sewer systems in Texas.
50. Undine employs TCEQ-licensed operators who will be responsible for operation of the public sewer system being transferred.
51. Undine has the technical and managerial capability to provide continuous and adequate service to the requested area.

**Feasibility of Obtaining Service from an Adjacent Retail Public Utility**

52. Orbit is currently serving customers throughout the requested area, and such service has been continuous and adequate.
53. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.

54. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation**

55. It will not be necessary for Undine to construct a physically separate sewer system to serve the requested area.

56. Because the requested area will not require the construction of a physically separate sewer system, consideration of regionalization or consolidation with another retail public utility is not required.

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

57. Undine Group, LLC, an affiliate of Undine, is capable, available, and willing to cover temporary cash shortages and has a debt-to-equity ratio that is less than one. Therefore, Undine has satisfied the leverage test.

58. Undine Group provided a written guarantee of coverage of temporary cash shortages and has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction. Therefore, Undine has satisfied the operations test.

59. Undine is proposing to make capital improvements in excess of \$100,000 to the Grasslands sewer system.

60. Undine submitted documents indicating funds are available for the purchase of the public sewer system plus planned capital improvements necessary to provide continuous and adequate service to existing customers.

61. Undine submitted a capital improvement plan.

62. Undine has demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

**Financial Assurance**

63. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

**Environmental Integrity and Effect on the Land**

64. The effects on environmental integrity and the land will be temporary as capital improvements are made for Undine to continue providing service to the requested area.

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

65. Undine will continue to provide sewer service to Orbit's existing customers in the requested area.
66. Reliability and quality of sewer service is expected to improve under Undine's management.
67. Undine requested authorization to charge the customers served by the public sewer system being acquired its rates that are currently in force, which were approved in Docket No. 50018.<sup>1</sup>
68. If authorization is granted, rates for customers in the requested area will be higher than the rates currently charged by Orbit because Undine will charge its current sewer utility tariff's rates.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246(a) and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).<sup>2</sup>
2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
3. Undine demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area as required by TWC §§ 13.241(a) and 13.301(b).

---

<sup>1</sup> *Application of Pure Utilities, LC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Sewer Facilities and Certificate Rights and to Decertify a Portion of Pure Utilities, LC's Certificated Area, and to Amend Uncertificated Sewer Service Area in Polk County*, Docket No. 50018, Notice of Approval (Mar. 12, 2021).

<sup>2</sup> After this application was filed, 16 TAC § 24.239 was amended, effective March 29, 2023. Accordingly, all references and citations to 16 TAC § 24.239 in this Order are made to the version in effect at the time the application was filed.

4. The applicants demonstrated that the sale and transfer of Orbit's facilities and service area to Undine will serve the public interest and is necessary for the continued service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the transaction between Orbit and Undine in this proceeding and authorizes it to be completed as proposed.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants must reapply for approval.
5. This Order does not transfer CCN number 20682 and the associated service area from Orbit or authorize Undine to provide service in Orbit's certificated service area. Orbit must provide continuous and adequate service in its certificated service area until a final order or notice of approval issued by the Commission cancels or transfers Orbit's CCN.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was completed.
7. Within 15 days following the filing of the applicants' proof that the transaction has been completed and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas on the 17th day of May 2024.

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read "Christina Denmark", written in a cursive style.

---

**CHRISTINA DENMARK**  
**ADMINISTRATIVE LAW JUDGE**