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DOCKET NO. 53630

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

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

COME NOW Orbit Systems, Inc. (Orbit) and Undine Texas Environmental, LLC (Undine) (collectively, the Applicants), together with the staff of the Public Utility Commission of Texas (Staff) (collectively, the Parties), and file this Joint Motion to Admit Supplemental Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following:

I. Background

On June 20, 2024, Applicants filed closing documents reflecting the consummation of Undine’s acquisition of Orbit’s facilities and certificated service area. Staff filed its recommendation on July 8, 2024, recommending that the Applicants’ closing documentation be found sufficient. On July 11, 2024, the administrative law judge (ALJ) issued Order No. 32, establishing a deadline of August 15, 2024, for the Parties to file a Proposed Notice of Approval. Therefore, this pleading is timely filed.

II. Joint Motion to Admit Supplemental Evidence

The Parties respectfully request that the following documents be admitted into evidence in this proceeding:

- A. Undine’s Notice of Close of Transaction, filed on June 20, 2024 (AIS Item Nos. 105-106);
- B. Commission Staff’s recommendation on sufficiency of closing documents and proposed procedural schedule, filed on July 8, 2024 (AIS Item No. 107);
- C. Undine’s consent form, filed on July 31, 2024 (AIS Item No. 109);
- D. Orbit’s consent form, filed on July 31, 2024 (AIS Item No. 110); and
- E. The attached map, certificate, and tariff.

III. Proposed Notice of Approval

The parties move for the adoption of the attached Proposed Notice of Approval. The undersigned counsel for Undine Texas Environmental represents that Orbit has authorized them to file this Joint Motion to Admit Evidence on Orbit’s behalf.

IV. Conclusion

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Notice of Approval be adopted.

Date: August 9, 2024

Respectfully submitted,

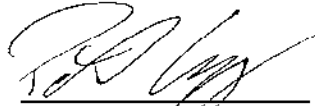
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CERTIFICATE OF SERVICE

As indicated by my signature above, I, Peter Gregg, 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 August 9, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

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APPLICATION OF ORBIT SYSTEMS, INC.	§	PUBLIC UTILITY COMMISSION
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JOINT PROPOSED NOTICE OF APPROVAL

This Order addresses the application of Orbit Systems, Inc. (Orbit) and Undine Texas Environmental, LLC (Undine or Undine Texas Environmental) (collectively, the Applicants), for the sale, transfer, or merger of facilities and certificate rights in Brazoria County. Applicants seek approval to acquire facilities and to transfer all of Orbit's sewer service area under its certificate of convenience and necessity (CCN) No. 20682 to Undine, the amendment of Undine's CCN No. 20816 to include all facilities previously held by Orbit and the service area previously included in Orbit's CCN No. 20682, and the cancellation of Orbit's sewer CCN No. 20682. The administrative law judge (ALJ) grants that this sale is approved and the transaction between Applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Orbit is a for-profit corporation registered with the Texas secretary of state under file number 72981900.
2. Undine is a for-profit corporation registered with the Texas secretary of state under file number 801768069.
3. Undine operates, maintains, and controls facilities for providing sewer service in Brazoria, Chambers, Fort Bend, Harris, Montgomery, Parker, Polk, Tarrant, and Walker counties under CCN No. 20816.

Application

4. On May 23, 2022, Orbit and Undine Texas, LLC (Undine Texas), filed an application for the approval of the sale, transfer or merger of facilities and certificate rights in Brazoria County.
5. On June 22, 2022, the application was restyled to replace Undine Texas with Undine Texas Environmental as the applicant.

6. In the application, as supplemented, the applicants seek approval of the following transaction:
 - a. The sale and transfer of Undine of the facilities and certificated area held under Orbit's CCN number 20682;
 - b. The cancellation of Orbit's CCN number 20682; and
 - c. The amendment of Undine's CCN number 20816 to include the facilities and area previously included in Orbit's CCN number 20682.
7. The sale and transfer affect approximately 152 acres and 195 total customer connections in Brazoria County, Texas.
8. The area subject to this transaction is located within approximately 2 miles north of downtown Bonney, Texas, and is generally bounded on the north by FM Highway 1462; on the east by County Road 7977; on the south by County Road 841; and on the west by FM Highway 521 in Brazoria County.
9. In Order No. 3 issued on July 21, 2022, the administrative law judge (ALJ) found the application and amended application, as supplemented, administratively complete.

Notice

10. On August 16, 2022, Carey A. Thomas, Senior Vice President, filed an affidavit on behalf of Undine attesting that notice was provided to all current customers, neighboring systems, and cities on July 28, 2022.
11. In Order No. 6, issued on September 8, 2022, the ALJ found the notice of the application sufficient.

Evidentiary Record

12. In Order No. 10, issued on December 14, 2022, the ALJ admitted the following evidence into the record:
 - a. the application for sale, transfer, or merger of facilities and certificate rights, filed on May 23 and 25, 2022;
 - b. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on June 21, 2022;
 - c. Applicant's first supplement to application, filed on June 21, 2022;
 - d. Applicant's request for change in style of matter, filed on June 21, 2022;

- e. Commission Staff's supplemental recommendation on administrative completeness and notice, proposed procedural schedule, and request to restyle docket, filed on July 20, 2022;
 - f. Applicant's response to Order No. 3 regarding proof of notice, filed on August 16 and 17, 2022;
 - g. Commission Staff's recommendation on sufficiency of notice, filed on August 29, 2022;
 - h. Commission Staff's supplemental recommendation on sufficiency of notice, filed on September 7, 2022;
 - i. Applicant's second supplement to application, filed on September 21, 2022;
 - j. Applicant's third supplement to application, filed on September 22, 2022;
 - k. Applicant's fourth supplement to application, filed on October 6, 2022;
 - l. Applicant's fifth supplement to application, filed on October 14, 2022; and
 - m. Commission Staff's final recommendation on the transaction, filed on November 4, 2022.
13. In Order No. 23, issued on July 20, 2023, the ALJ admitted the following evidence into the record:
- a. Undine's sixth supplement to application, filed on February 15 and 16, 2023;
 - b. Staff's clarification, filed on February 17, 2023;
 - c. Undine's clarification, filed on February 17 and 21, 2023;
 - d. Undine's response to Order No. 15, filed on February 22, 2023;
 - e. Undine's response to Order No. 15, filed on March 7, 2023;
 - f. Staff's supplemental recommendation on revised notice, filed on March 10, 2023;
 - g. Staff's recommendation on the transaction, including the attached tariff, and confidential attachments, filed on April 21, 2023;
 - h. Undine's response to Staff's recommendation on the transaction, filed on April 24, 2023;
 - i. Undine's response to Order 18 requiring clarification on notice, filed on May 24, 2023;
 - j. Staff's recommendation on sufficiency of supplemental notice and financial assurance, filed on June 14, 2023; and

- k. Undine's supplemental information, including confidential attachments, filed on June 16, 2023.
14. In Order No. 30, issued on May 17, 2024, the ALJ admitted the following evidence into the record:
- a. Joint response to Order No. 21, filed on July 7, 2024;
 - b. Undine's status report, filed on September 27, 2023;
 - c. Undine's application amendment, filed on February 5, 2024;
 - d. Applicants' 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. Staff's recommendation on the transaction, filed on March 28, 2024; and
 - h. Undine's response to Staff's recommendation, filed on April 2, 2024.
15. In Order No. 31 filed on May 17, 2024, the ALJ approved the sale and transfer to proceed.
16. In Order No. ____, issued on _____, 2024, the ALJ admitted the following evidence into the record:
- a. Undine's notice of close of transaction, filed on June 20, 2024 (AIS Item Nos. 105-106);
 - b. Commission Staff's recommendation on sufficiency of closing documents and proposed procedural schedule, filed on July 8, 2024 (AIS Item No. 107);
 - c. Undine's consent form, filed on July 31, 2024 (AIS Item No. 109);
 - d. Orbit's consent form, filed on July 31, 2024 (AIS Item No. 110); and
 - e. The attached map, certificate, and tariff.

Sale

22. In Order No. 25 filed on July 21, 2023 the ALJ approved the sale and transaction to proceed and required Applicants to file proof that the transaction had closed, and customer deposits had been addressed.
23. In Order No. 26 filed on January 30, 2024, the ALJ voided the approval of the transaction and required Applicants to file an amended petition.
24. On February 5, 2024, the Applicants filed an amended application with confidential attachments.

25. On February 5, 2024, Applicants filed notice that the sale had closed on January 9, 2024, and confirmed that there were no outstanding customer deposits that needed to be addressed.
26. In Order No. 24 filed on February 27, 2024, the ALJ found the closing documents sufficient.
27. The status that is adequate for approval of the transaction to proceed.

Adequacy of Existing Service and System Compliance

17. Orbit holds Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant (WWTP) under Wastewater Discharge Permit No. WQ 0012672-001 and registered as Grasslands WWTP.
18. No additional construction is necessary for Undine to serve the requested area.
19. The last TCEQ compliance investigation of the Grasslands WWTP was on January 31, 2022. Orbit does not have any violations listed in the TCEQ database for the Grasslands WWTP.
20. The Commission's complaint records, which date back to 2017, show no complaints against Orbit.
21. The Commission's complaint records, which date back to 2017, show complaints against Undine, all of which have been closed.
22. Undine demonstrated a compliance history that is adequate for approval of the sale to proceed.

Need for Service

23. There are 195 existing customer connections in the requested area that are receiving service from Orbis and have an ongoing need for service.
24. This is an application to transfer only existing facilities, customer, and service area. There have been no specific requests for additional service within the requested area.

Effect of Approving the Transaction and Granting the Amendment

25. Undine will be the sole certificated sewer utility for the requested area.
26. Undine will be required to provide continuous and adequate sewer service to current and future customers in the requested areas.
27. There will be no effect on landowners as the requested area is currently certificated and served by Orbit.

28. Because this application is to transfer only existing facilities, customers, and service area, there will be no effect on any other retail public utility servicing the proximate area.

Ability to Serve: Managerial and Technical

29. Undine owns and operates numerous TCEQ-registered wastewater treatment facilities in Texas.
30. Undine employs or contracts with TCEQ-licensed operators who will be responsible for operation of the wastewater treatment facilities being transferred.
31. Undine has the managerial and technical capability to provide adequate and continuous service to the requested service area.
32. Undine has sufficient capability to serve the customers and no additional construction is necessary.

Ability to Serve: Financial Ability and Stability

33. Undine's affiliate, Undine Group, LLC, is capable, available and willing to cover temporary cash shortages, and has a debt-to-equity ratio of less than one, satisfying the leverage test.
34. Undine has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations.
35. No capital improvements are necessary for Undine to continue providing continuous and adequate service to the requested area following the transaction.
36. Undine demonstrated 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

37. 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

38. Orbit is currently serving customers throughout the requested area and has sufficient capacity.
39. 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.
40. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

41. The construction of a physically separate sewer system is not necessary for Undine to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

Environmental Integrity and Effect on the Land

42. Granting the transaction will not adversely impact the integrity of the land because the requested area is already being served.

Improvement of Service or Lowering Cost to Consumers

43. Undine, using the sewer system already in place, will continue to provide sewer service to the existing customers in the area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.
2. Undine and Orbit are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Undine and Orbit's application meets the requirements of TWC § 13.244 and 16 TAC §§ 24.227 and 24.233.
4. Undine and Orbit provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2) and 16 TAC §§ 24.235 and 24.239(a)-(c).¹
5. The Commission processed this application as required by the TWC, the Administrative Procedure Act,² and Commission rules.
6. Undine and Orbit have complied with the requirements of 16 TAC § 24.239(k) and (l) with respect to customer deposits.
7. Undine and Orbit completed the sale and transfer within the time required by 16 TAC § 24.239(m).

¹ 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 Notice of Approval are made to the version in effect at the time the application was filed.

² Tex. Gov't Code §§ 2001.001-.903.

8. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area, as required by TWC § 13.251.
9. Undine demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested areas as required by TWC §§ 13.241(a) and 13.301(b).
10. It is not necessary for Undine to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
11. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate sewer system is not required.
12. Undine has demonstrated that the sale and transfer of Orbit's sewer facilities and service area held under CCN number 20682 to Undine will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC §§ 13.246(b) and 13.301(d) and (e).
13. Undine has demonstrated that the amendment of its certificates of convenience and necessity will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public. TWC §§ 13.301(d), 13.246(b).
14. Under TWC § 13.257 (r) and (s), Undine must record a certified copy of the certificates approved by this Notice of Approval, in the real property records of Smith County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording.
15. 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:

1. The Commission approves the sale and transfer of all of Orbit's sewer facilities and service area held under sewer CCN No. 20682 to Undine, as shown on the attached map.
2. The Commission amends Undine's sewer CCN No. 20816 to include the area previously included in Orbit's sewer CCN No. 20682 and remove the area from CCN No. 20682.

3. The Commission approves the map and tariff attached to this Notice of Approval.
4. The Commission issues the certificate attached to this Notice of Approval.
5. Undine must provide service to every customer or applicant for service within the approved area under sewer CCN 20816 that requests service and meets the terms of Undine's sewer service, and such service must be continuous and adequate.
6. Undine must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Smith County affected by the application and must submit to the Commission evidence of the recording no later than 45 days after receipt of the Notice of Approval.
7. Within ten days of the date of the 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.
8. 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 _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**