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DOCKET NO. 53630

APPLICATION OF ORBIT SYSTEMS, INC. AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**ORDER NO. 12
ADDRESSING PHASE-IN RATES, WITHDRAWING FINDING OF NOTICE
SUFFICIENCY, REQUIRING CLARIFICATION AND REVISED NOTICE, AND
ESTABLISHING DEADLINES**

This Order addresses Undine Texas Environmental, LLC’s request for phase-in rates, the sufficiency of notice of the application, and the need for clarification.

On May 23, 2022, Undine filed an application for approval of the sale, transfer, or merger of Orbit Systems, Inc.’s sewer facilities and certificated service area under Orbit’s certificate of convenience and necessity (CCN) number 20682 to Undine. In the application, Undine attached its current *sewer* tariff approved in Docket No. 50018,¹ which contains information regarding three phased-in rates.

On August 16, 2022, Undine filed the affidavit of Carey Thomas, senior vice president of Undine, attesting that notice was sent to current customers, landowners, neighboring utilities, and affected parties on July 28, 2022. The notice contains a link to its *water* tariff approved in Docket No. 50017,² which contains information regarding three phased-in rates applicable to Undine’s CCN number 13260. Page three of the linked tariff and pages at the end of the linked tariff are from the water tariff approved in Docket No. 50200.³

On November 4, 2022, Commission Staff filed its final recommendation in this docket. The memorandum of Patricia Garcia attached to Commission Staff’s final recommendation regarding the proposed tariff references that Undine’s proposed rates are flat rates and that there

¹ *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).*

² *Application of Pure Utilities, LC and Undine Texas, LLC for Sale, Transfer, or Merger of Water Facilities and Certificate Rights in Liberty, Polk, San Jacinto, and Tyler Counties, and to Decertify a Portion of Pure Utilities, LC’s Certificated Area and to Amend Uncertificated Water Service Area in Liberty and Polk Counties, Docket No. 50017, Notice of Approval (Mar. 4, 2021).*

³ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates, Docket No. 50200, Order (Nov. 5, 2020).*

are no gallonage charges “and they will be implemented in 3 phases.”⁴ The memorandum references attachment 2, which is portions of Undine’s *sewer* tariff approved in Docket No. 50018, which lists three phased-in rates.

I. Phased Rates

In the application at issue in this proceeding, Undine seeks approval of rates which were previously approved in Docket No. 50018 under Texas Water Code (TWC) § 13.3011, which states:

INITIAL RATES FOR CERTAIN WATER OR SEWER SYSTEMS AFTER PURCHASE OR ACQUISITION. (a) A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

(1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and

(2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

(b) The regulatory authority may not require a person who makes a request under Subsection (a) to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.

In Docket No. 50018, the Commission approved rates that would change over time. Specifically, the Commission approved three phases of rates for Undine, with the first phase being effective August 1, 2020 through July 31, 2021; the second phase being effective August 1, 2021 through July 31, 2022; and the third and final phase being effective on and after August 1, 2022.

The application was filed on July 21, 2022.⁵ As such, if the Commission were to approve the rates in force on July 21, 2022, from Docket No. 50018 (phase two) for this docket, the phase-in nature of the rates for Docket No. 50018 means that the phase three rates are in force and Undine can only be authorized to charge the phase three rates from Docket No. 50018 to the customers of the newly-acquired system.

⁴ Memorandum of Patricia Garcia at 4, attached to Commission Staff’s Final Recommendation on the Transaction.

⁵ Application of Orbit Systems, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger or Facilities and Certificate Rights in Brazoria County (May 23, 2022). Under 16 Texas Administrative Code § 24.8(d), “Applications under subchapter H of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete.” In Order No. 3 filed on July 21, 2022, the administrative law judge found the application administratively complete.

II. Revised Notice

On August 16, 2022, Undine filed affidavit of Mr. Thomas attesting that notice was sent to current customers, landowners, neighboring utilities, and affected parties on July 28, 2022. The notice contains a link to its *water* tariff approved in Docket Nos. 50017 and 50020, which contains information regarding three phased-in rates applicable to its water CCN number 13260.

After further review of the pleadings in this docket, the administrative law judge (ALJ) withdraws the finding that notice of the application is sufficient because Undine did not provide its sewer tariff with its notice. The attachment of its water tariff creates confusion and may limit meaningful participation.

Further, because a notice referencing all three phases of rates could be confusing and limit meaningful participation, the ALJ requires Undine to issue revised notice by February 3, 2023. By February 17, 2023, Undine must file proof of revised notice. By March 3, 2023, Commission Staff must file a recommendation on revised notice.

III. Clarification

In addition to the clarifications requested in Order No. 11, the ALJ requires clarification regarding the following issues:

1. Whether there are any violations, resolved or unresolved, associated with Undine in the Commission or the Texas Commission on Environmental Quality's databases;
2. Whether Undine is able to satisfy the leverage test while relying on a guaranty agreement between Undine Development, LLC and Undine Group, LLC; and
3. Whether environmental integrity or the land will be adversely affected based on the planned capital upgrades to the Grasslands sewer system.

By January 6, 2023, the parties must file clarification on the issues identified above.

Signed at Austin, Texas the 28th day of December 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**