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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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COMMISSION STAFF’S CLARIFICATION

I. INTRODUCTION

On May 23, 2022, Undine Texas Environmental, LLC (Undine) and Orbit Systems, Inc. (Orbit) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Brazoria County. Specifically, Undine, sewer Certificate of Convenience and Necessity (CCN) No. 20682, seeks approval to acquire utility assets from Orbit under sewer CCN No. 20682.

On February 3, 2023, the administrative law judge (ALJ) filed Order No. 15, directing the parties to clarify a number of issues by February 17, 2023. Therefore, this pleading is timely filed.

II. CLARIFICATION

In Order No. 11, the ALJ instructed Staff to clarify two issues. The first was to address enforcement actions, if any, against Undine. Specifically, the ALJ states that in Undine’s application, Undine stated that it has been under an enforcement action by the Commission, Texas Commission on Environmental Quality (TCEQ), Texas Department of Health, the Office of the Attorney General, or the Environmental Protection Agency.¹ Due to constraints imposed on Staff by a lack of resources and its significant docket load, the normal practice is for Staff to only inquire into the compliance history of the seller, and that inquiry is limited to the Commission and TCEQ databases. As stated in its final recommendation, Staff only checked for violations for Orbit under the PUC’s and TCEQ’s databases and noted that there were no violations listed for Grassland WWTP.² Nonetheless, after discussions with Undine, it is Staff’s understanding that Undine will

¹ Order No. 11 at 1 (Dec. 20, 2022).

² See Commission Staff’s Final Recommendation on the Transaction, Attachment 1 at 2 (Nov. 4, 2022).

soon be submitting a comprehensive account of the violations it referenced in its application. Staff will review the information when it is submitted and update its final recommendation if necessary.

Order No. 11 also instructs parties to clarify whether Tommy Green—an intervenor—was involved in the preparation of the proposed order and whether he approves of the proposed order. Staff is unaware as to whether Undine or Orbit involved Mr. Green in the preparation of the proposed order but can confirm that Staff had not communicated with Mr. Green prior to the proposed order being filed on December 5, 2022. Staff has since communicated with Mr. Green and shared a copy of the proposed order with him.

Order No. 12 requires clarification of three remaining issue. The first is whether there are any violations, resolved or unresolved, associated with Undine in the Commission's or Texas Commission on Environmental Quality's (TCEQ) databases. As stated above, due to a lack of resources and in order to maintain efficiency in processing applications, for STM transactions, Staff focuses its review of seller's compliance history and is unable to check all of the buyer's compliance history, especially when the buyer owns and operates multiple public water systems and sewer systems, like in this case. Thus, at this time, Staff can only clarify that there are no Commission or TCEQ enforcement actions, resolved or unresolved, against Grassland WWTP, the system being sold.

Next, Order No. 12 requires clarification on whether Undine is able to satisfy the leverage test while relying on a guaranty agreement between Undine Development and Undine Group, LLC. On February 16, 2023, Undine supplemented its application to include a guaranty agreement between Undine Group, LLC and Undine.³ Accordingly, Staff can confirm that Undine satisfies the leverage test.

Finally, Order No. 12 requires clarification on whether environmental integrity or the land will be adversely affected based on the planned capital upgrades to the Grasslands sewer system. In Staff's November 4, 2022 recommendation, Staff erroneously stated that "environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area."⁴ Instead, Staff should have recommended that environmental integrity or the land will be minimally affected as new facilities are built to upgrade the capacity at the water

³ Confidential Exhibit A (Feb. 16, 2023).

⁴ *Id.* at Attachment 1 at 3.

systems. The disruption, however, will be minimal and should not prevent the transaction from moving forward.

III. CONCLUSION

Staff respectfully requests that the foregoing information be taken into consideration by the ALJ.

Dated: February 17, 2023

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 via electronic mail on February 17, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch