



## **Filing Receipt**

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**Item Number - 66**

**DOCKET NO. 53630**

<b>APPLICATION OF ORBIT SYSTEMS, INC. AND UNDINE TEXAS, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZORIA COUNTY</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION**

**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.

On March 21, 2023, the administrative law judge (ALJ) filed Order No. 17, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on approval of the sale and on the certificate of convenience and necessity amendment by April 21, 2023. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ALLOWING TRANSACTION TO PROCEED**

Staff has reviewed the application and, as detailed in the attached memoranda of Patricia Garcia of the Infrastructure Division and of Ethan Blanchard of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and under 16 Texas Administrative Code (TAC) Chapter 24. Additionally, based upon its review, Staff recommends that Undine has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction will serve the public interest and should be allowed to proceed without a public hearing.

In addition, Staff recommends that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required under 16 TAC §§ 24.109(m)-(n).

If the Commission enters an order permitting the transaction to proceed, such approval expires 180 days from the date of the Commission's written approval of the sale. If the sale is not

effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

### III. CONCLUSION

For the reasons detailed above, Staff respectfully requests that an order be issued allowing the proposed transaction to proceed.

Dated: April 21, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 53630**

**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 April 21, 2023, in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ Ian Groetsch  
Ian Groetsch

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Forrest Smith, Attorney  
Legal Division

**FROM:** Patricia Garcia, Infrastructure Analysis Section Director  
Infrastructure Division

**DATE:** April 21, 2023

**RE:** 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*

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### **1. Application**

On May 20, 2022, Undine Texas Environmental, LLC (Undine Texas Environmental) and Orbit Systems, Inc. (Orbit) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Brazoria County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, Undine Texas Environmental, sewer Certificate of Convenience and Necessity (CCN) No. 20816, seeks approval to amend uncertificated area to CCN No. 20816, to acquire facilities, and to transfer all of the sewer service area from Orbit under sewer CCN No. 20682.

Based on the mapping review by Dave Babicki, Infrastructure Division:

- The requested area includes 195 customer connections and approximately 152 acres, comprised of:
  - 6 acres of uncertificated area;
  - 146 acres of transferred area from Orbit Systems, Inc. (CCN No. 20682) to Undine Texas Environmental (CCN No. 20816).
- The application proposes the subtraction of approximately 146 acres from CCN No. 20682 and the addition of approximately 152 acres to CCN No. 20816.

### **2. Notice**

Undine Texas Environmental provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was August 27, 2022; there was an intervention request submitted by a customer concerned about the proposed change in the rates.

On December 28, 2022, in Order No. 12, the ALJ withdrew the finding that notice was sufficient and required revised notice to be sent to customers. Undine Texas provided revised notice on February 21, 2023. The intervention deadline date was March 23, 2023. There were several ratepayers who submitted comments regarding concerns about the rate increase.

### **3. Factors Considered**

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

**3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC §13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).***

Orbit has a Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plant (WWTP) registered as Grasslands WWTP, Wastewater Discharge Permit No. WQ0012672001. The last TCEQ compliance investigation of the Grassland WWTP was on January 31, 2022. Orbit does not have any violations listed in the TCEQ database for the Grassland WWTP. The Commission's complaint records, which date back five years, show no complaints against Orbit.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).***

The purpose of the transaction is to transfer the Grassland WWTP to Undine Texas Environmental. The customers are currently receiving sewer service from Orbit's sewer system.

There are currently 195 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

**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 § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

Undine Texas Environmental will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place 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 §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

TCEQ rule, 30 TAC §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Undine Texas Environmental will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Undine Texas Environmental will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems. Specific information about the operators was provided in the docket confidentially as Item No. 3.

Undine Texas Environmental has the ability to provide adequate service in the requested area. Undine Texas Environmental has several TCEQ approved WWTPs. Undine Texas Environmental has violations listed in the TCEQ database and is actively working to resolve all violations. The Commission's complaint records, which date back five years, show 133 informal complaints against Undine Texas Environmental. The Commission's Customer Protection Division has evaluated and closed 130 complaints at this time. The three open complaints were received in April 2023. The complaints include complaints for Undine Development, LLC and Undine Texas, LLC.

**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)).***

The construction of a physically separate system is not necessary for Undine Texas Environmental to serve the requested 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) and 24.239(h)(5)(E)).***

Orbit is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**3.7. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).***

Undine Texas Environmental is proposing to make improvements to the Orbit's sewer system, see Attachment 1 (confidential). The proposed capital improvements are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

- 3.8. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *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), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.10. *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) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

- 3.11. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

If the transaction occurs, I expect that service will improve and costs to customers (consumers) will be lower compared to service and costs if the transaction does not occur. Undine Texas Environmental is a large and growing utility. This scale gives them the ability to operate their systems and comply with regulatory requirements more efficiently than smaller utilities.

As shown in Attachment 1 (confidential) of my memorandum, Undine Texas's evaluation shows that the Grasslands WWTP needs capital upgrades. As a result, if Orbit is not acquired, the current owner will need to make upgrades and those upgrades would support a substantial increase of Orbit's rates if it remains a standalone utility.

Attachment 2 of my memorandum includes excerpts from the tariff of Undine Texas Environmental that was in force when the application in this docket was filed on September 2, 2021.<sup>1</sup> Attachment 3 of my memorandum is a comparison of the rates of Orbit and Undine Texas Environmental. The current rates for the Orbit customers are \$34.73 per month plus \$3.48 per 1,000 gallons using a winter's month average water usage for the customer. The proposed rates are flat rates meaning there are no gallonage charges. The rates will be starting at phase 3 of Undine Texas Environmental's currently approved rates.

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<sup>1</sup> Since the filing of the application in the current docket, Undine Texas filed an application for a pass-through rate change for three subdivisions it serves. *Application of Undine Texas, LLC for a Pass Through Rate Change*, Tariff Control No. 53209 (pending).



#### **4. Recommendation**

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Orbit for some of the customers being served by the Grassland WWTP. I further recommend that a public hearing is not necessary.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Forrest Smith  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** April 21, 2022

**RE:** 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*

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On May 23, 2022, Undine Texas Environmental, LLC (Undine), CCN No. 20816, and Orbit Systems, Inc. filed an application for the sale and transfer of facilities and certificate rights in Brazoria County under the provisions of Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

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 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 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.<sup>1</sup>

My analysis is based on financial statements ending December 31, 2021. These financial statements contain an unqualified auditor's opinion from Plante & Moran, PLLC stating that the

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<sup>1</sup> Application, *Confidential Exhibit A*, item no. 24, at bates 37 (Sep. 21, 2022).

financial statements present fairly, in all material respects, the financial position of Undine Group, LLC as of December 31, 2021.<sup>2</sup>

Based upon my review of the financial statements of Undine Group, LLC, I calculate the debt-to-equity ratio equal to 0.46.<sup>3</sup> 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.<sup>4</sup> 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)(A).

The applicant has filed documentation demonstrating adequate funding of the planned system improvements for the Orbit sewer system alongside all of Undine's other planned system improvement this year.<sup>5</sup> Therefore, I recommend a finding that Undine satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

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<sup>2</sup> *Id.*, at 6.

<sup>3</sup> The calculations for which can be found in confidential Attachment EB-1.

<sup>4</sup> The calculations for which can be found in confidential Attachment EB-1.

<sup>5</sup> 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 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.

Attachment 2:  
UNDINE TEXAS ENVIRONMENTAL, LLC'S SEWER  
RATE PAGE

SECTION 1.0 - RATE SCHEDULE

Section 1.01 – Rates

Rate Year 1

Effective Date: August 1, 2020

Meter Size:

Monthly Minimum Charge

All Meters

\$75.00 Flat Rate

Rate Year 2

Effective Date: August 1, 2021

Meter Size:

Monthly Minimum Charge

All Meters

\$92.50 Flat Rate

Rate Year 3

Effective Date: August 1, 2022

Meter Size:

Monthly Minimum Charge

All Meters

\$110.00 Flat Rate

Volume charges are determined based on average consumption for winter period which includes the following months: N.A.

RATE CASE EXPENSES .....\$1.12 per month

Effective Date: August 1, 2020. The rate case expense surcharge will be collected for 36 months or until the full \$85,289.03 of rate case expenses related to Docket No. 50200 is collected, whichever occurs first.

FORM OF PAYMENT: The utility will accept the following forms of payment:

Cash X , Check X , Money Order X , Credit Card X , Other (specify Online Payment or Automatic Bank Draft)

THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS.

UNAFFILIATED THIRD PARTIES WHO ACCEPT AND PROCESS CREDIT CARD AND ELECTRONIC PAYMENTS FOR UTILITY BILLS MAY REQUIRE PAYMENT OF AN ADDITIONAL CONVENIENCE CHARGE FOR THIS SERVICE.

REGULATORY ASSESSMENT .....1.0%

PUBLIC UTILITY COMMISSION (COMMISSION) RULES REQUIRE THE UTILITY TO COLLECT AND REMIT TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL.

Section 1.02 - Miscellaneous Fees

TAP FEE .....\$865.00

TAP FEE COVERS THE UTILITY'S COSTS FOR MATERIALS AND LABOR TO INSTALL A STANDARD RESIDENTIAL CONNECTION. AN ADDITIONAL FEE TO COVER UNIQUE COSTS IS PERMITTED IF LISTED ON THIS TARIFF, INCLUDING COSTS RELATED TO ROAD BORES, ROCK CUTS, AND UNUSUALLY LONG TAPS.

SECTION 1.0 – RATE SCHEDULE (Continued)

TAP FEE (Large Connection Tap)..... Actual Cost

TAP FEE IS THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR METER SIZE INSTALLED.

RECONNECTION FEE

THE RECONNECT FEE MUST BE PAID BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS (OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF):

- a) Nonpayment of bill (Maximum \$25.00)..... \$25.00
- b) Customer's request that service be disconnected ..... \$50.00
- c) After hours reconnection ..... \$50.00

TRANSFER FEE ..... \$65.00

THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHEN THE SERVICE IS NOT DISCONNECTED.

LATE CHARGE (HIGHER OF \$5.00 OR 10% OF THE BILL) ..... \$5.00 or 10 %

COMMISSION RULES ALLOW A ONE-TIME PENALTY TO BE CHARGED ON DELINQUENT BILLS. A LATE CHARGE MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE ..... \$30.00

RETURNED CHECK CHARGES MUST BE BASED ON THE UTILITY'S DOCUMENTABLE COST.

CUSTOMER DEPOSIT RESIDENTIAL (Maximum \$50)..... \$50.00

COMMERCIAL & NON-RESIDENTIAL DEPOSIT..... 1/6TH OF ESTIMATED ANNUAL BILL

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE:

WHEN AUTHORIZED IN WRITING BY THE COMMISSION AND AFTER NOTICE TO CUSTOMERS, THE UTILITY MAY INCREASE RATES TO RECOVER INCREASED COSTS FOR INSPECTION FEES AND WATER TESTING. [16 TAC § 24.25(b)(2)(G)]

LINE EXTENSION AND CONSTRUCTION CHARGES:

REFER TO SECTION 3.0--EXTENSION POLICY FOR TERMS, CONDITIONS, AND CHARGES WHEN NEW CONSTRUCTION IS NECESSARY TO PROVIDE SERVICE.

Attachment 3:  
COMPARISON OF RATES AT 2,000, 5,000 AND  
10,000 GALLONS



Orbit Systems

Meter Size	Current Rate	Including ____ # of gallons	Tiered Rates	Gallonage Range		Gallons		
				Lowest	Highest	2,000	5,000	10,000
5/8"	\$34.73		\$3.48	1	1,000,000	\$41.69	\$52.13	\$69.53

**Phase 3**

20816 - Undine Texas Environmental, LLC

Meter Size	Proposed	Including ____ # of gallons	Tiered Rates	Gallonage Range		Gallons		
				Lowest	Highest	2,000	5,000	10,000
3/4"	\$110.00			0		\$110.00	\$110.00	\$110.00

Increase	\$68.31	\$57.87	\$40.47
	163.85%	111.01%	58.21%