



## **Filing Receipt**

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**Control Number - 53630**

**Item Number - 72**

**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>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**ORDER NO. 19  
GRANTING JOINT MOTION, REQUIRING SUPPLEMENTAL RECOMMENDATION  
ON FINANCIAL ASSURANCES, AMENDING PROCEDURAL SCHEDULE, AND  
MAKING DETERMINATION TO HOLD A HEARING**

This Order addresses Commission Staff and Undine Texas Environmental, LLC's joint request for an extension of deadlines in Order No. 17, Commission Staff's final recommendation, and deadlines and requirements established in Order No. 18.

**I. Joint Request for Extension**

On May 19, 2023, Commission Staff and Undine requested a two-week extension for the joint motion to admit evidence and proposed order. The administrative law judge (ALJ) grants this request.

**II. Clarification on Notice and Requiring Recommendation**

In Order No. 18 filed on May 18, 2023, the ALJ required Undine to provide a clarification on notice by May 31, 2023. The ALJ clarifies that supplemental evidence of proof of notice is necessary and requires the affidavit referenced in Order No. 19 and a copy of the applicable appraisal district maps overlaid with the requested area, a list of the landowners with properties wholly or partially in the requested area, and the acreage owned by each listed owner.

By June 14, 2023, Commission Staff must file a recommendation on the sufficiency of this supplemental notice.

**III. Financial Assurances**

On April 21, 2023, Commission Staff filed its final recommendation in this docket. Commission Staff notes that the costs to Undine's capital improvements are expected to exceed

\$100,000. Commission Staff also notes that Undine provided a written guaranty of coverage of temporary cash shortages and demonstrated adequate funding. As a result, Commission Staff recommends that Undine satisfies the requirements of 16 Texas Administrative Code (TAC) § 24.11(e)(5).

Under 16 TAC § 24.11(e)(5):

If *the applicant* is proposing service to a new [certificate of convenience and necessity (CCN)] area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000, *the applicant* must provide the following: (A) *The owner* must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger[.]<sup>1</sup>

Based on the foregoing and in light of the recent remands and memoranda from the Commissioners,<sup>2</sup> the administrative law judge (ALJ) declines to adopt Commission Staff's interpretation of 16 TAC § 24.11(e)(5). The Commission's rules are clear: applicants are required to demonstrate compliance with 16 TAC § 24.11(e)(5). Accordingly, the ALJ requires Commission Staff to file a supplemental recommendation addressing whether the evidence in the record is sufficient to demonstrate compliance with 16 TAC § 24.11(e)(5) or whether a good cause exception to the requirement to submit loan approval documents is necessary.

By June 14, 2023, Commission Staff must file a supplemental final recommendation addressing 16 TAC § 24.11(e)(5).

#### IV. Amended Procedural Schedule

The administrative law judge enters the following amended procedural schedule for continued processing of this application:

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<sup>1</sup> Emphasis added.

<sup>2</sup> See, e.g., *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management at 2 (Oct. 20, 2023) and *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Commissioner Jackson's Memo at 1-2 (May 10, 2023).

Event	Date
Undine deadline for supplemental notice	May 31, 2023
Commission Staff's recommendation on the supplemental notice and financial assurances under 16 TAC § 24.11(e)(5)	June 14, 2023
Deadline for the parties to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed	June 21, 2023

### V. Notice of Hearing

To give the parties time to make the supplemental filings required by this Order and Order No. 18 and to give Commission Staff the time to file a supplemental recommendation, and in accordance with Texas Water Code § 13.301(e), this Order serves as notice to the parties and to the Office of Public Utility Counsel that the Commission has determined that it will hold a hearing to determine if the transaction will serve the public interest. The determination to hold a hearing may be withdrawn following the consideration of the supplemental material.

**Signed at Austin, Texas the 19th day of May 2023.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**CHRISTINA DENMARK  
ADMINISTRATIVE LAW JUDGE**