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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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**COMMISSION STAFF’S RECOMMENDATION ON SUFFICIENCY OF
SUPPLEMENTAL NOTICE AND FINANCIAL ASSURANCE**

I. INTRODUCTION

On May 23, 2022, Undine Texas Environmental, LLC (Undine) and Orbit Systems, Inc. (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Brazoria County.

On May 19, 2023, the administrative law judge filed Order No. 19, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file recommendations addressing the sufficiency of Applicants’ supplemental notice and 16 Texas Administrative Code (TAC) § 24.11(e)(5) by June 14, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON SUPPLEMENTAL NOTICE

Staff has reviewed the supplemental notice documentation filed by Undine on May 24, 2023 and has found it sufficient. Specifically, Undine filed an affidavit by Carey Thomas, Senior Vice President, stating that there are no owners of tracts of land that are at least twenty-five acres that are wholly or partially included in the area proposed to be certified. Therefore, Staff recommends that Undine’s supplemental notice be deemed sufficient.

III. SUPPLEMENTAL RECOMMENDATION ON FINANCIAL ASSURANCE

Staff has reviewed the application and supplemental information and, as supported by the attached memorandum of Ethan Blanchard of the Rate Regulation Division, recommends that Undine has satisfied the requirements of 16 TAC § 24.11(e)(5).

IV. CONCLUSION

For the reasons detailed above, Staff recommends that Undine's supplemental proof of notice be found sufficient and that the evidence in the record is sufficient to demonstrate compliance with 16 TAC § 24.11(e)(5). Staff respectfully requests the entry of an order consistent with these recommendations.

Dated: June 14, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Marisa Lopez Wagley
Division Director

John Harrison
Managing Attorney

/s/ Ian Groetsch
Ian Groetsch
State Bar No. 24078599
Forrest Smith
State Bar No. 24093643
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7465
(512) 936-7268 (facsimile)
Ian.Groetsch@puc.texas.gov

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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 June 14, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: June 14, 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*

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 § 13.301 and 16 Texas Administrative Code § 24.239.

If an applicant is proposing service to a new CCN area, the applicant must meet the requirements of 24.11(e)(5)(A), which states:

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;

Undine has submitted documentation demonstrating access to a line of credit that exceeds the projected, necessary capital improvements both to the Orbit sewer system in this Docket and the systems purchased by Undine between December 31, 2021 and the date this docket was filed.^{1 2}

¹ Application, *Confidential Exhibit A - LOC*, item no. 30, at bates 2 (Oct. 6, 2022).

² 53630 *confidential Attachment EB-1*, Docket No. 53630, item no. 68 (Apr. 21, 2023).

It may not be clear whether a line of credit can be considered a “loan” as described in 16 TAC § 24.11(e)(5)(B). A typical loan involves the lender delivering a lump sum of cash to the borrower who then must pay back the loan—with interest—over a specific period of time.³ If the borrower borrows too little, he may not increase the loan after he has already initially borrowed but would instead need to borrow a new loan from a lender (with a worse credit score from the first loan).

Whereas a line of credit is a “revolving” loan. The lender has agreed to a maximum amount of cash that the borrower can withdraw, but the borrower is free to borrow less than the maximum and, as the borrower repays his initial borrowings, he may withdraw again in perpetuity.⁴

The difference between a loan and a line of credit is that a line of credit is better. The borrower (in this case, Undine) may use operating profit to pay off the balance of their line of credit, and then withdraw again for further capital investment. As long as Undine is profitable, their line of credit will function as infinite loans. Even though, typically, a line of credit’s maximum is lower than the principal of a loan; Undine’s creditors have given Undine access to a large credit line.

Additionally, at the Open Meeting on October 6, 2022, Commissioner McAdams made statements regarding 16 TAC § 24.11(e)(5) and his interpretation of “loan approval documents or firm capital commitments”. In his statement of agreement with Commissioner McAdams, Chairman Lake add that he considers “a letter of credit, or any number of ways” to be sufficient demonstrations of compliance with 16 TAC § 24.11(e)(5).⁵

Therefore, since a letter of credit—which serves as collateral in case of default—is less similar to a “loan” than a line of credit, and a line of credit functions as a superior form of loan, it can be reasonably interpreted that a line of credit should be considered a “loan” for purposes of evaluating a utility’s compliance with 16 TAC § 24.11(e)(5)(B), as a line of credit clearly falls under the category of what the Chairman intended by “any number of ways”.

³ A typical household example of which would be a mortgage.

⁴ A typical household example of which would be a credit card.

⁵ Open Meeting at 34:20 (Oct. 6, 2022), Item No. 4 (*available at* https://www.adminmonitor.com/tv/puct/open_meeting/20221006/).

Consequently, I recommend a finding that Undine has demonstrated the financial capability need to provide continuous and adequate service as required by 16 TAC § 24.11(e)(5)(A).