



## Filing Receipt

**Received - 2023-03-08 02:47:54 PM**

**Control Number - 53765**

**ItemNumber - 401**

**DOCKET NO. 53765**

<b>APPLICATION OF CRYSTAL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SYSTEMS TEXAS, LLC AND UNDINE</b>	<b>§</b>	
<b>TEXAS, LLC FOR SALE, TRANSFER,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OR MERGER OF FACILITIES AND</b>	<b>§</b>	
<b>CERTIFICATE RIGHTS IN SMITH</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	

**COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION**

**I. INTRODUCTION**

On July 6, 2022, Crystal Systems Texas, LLC (Crystal Systems) and Undine Texas, LLC (Undine) (jointly, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Smith County. Applicants seek approval to sell and transfer Crystal System’s facilities and all of Crystal System’s certificated area under CCN No. 10804 to Undine.

On February 24, 2023, the administrative law judge filed Order No. 10, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) request a hearing or file a recommendation on the approval of sale by March 8, 2023. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON APPROVAL OF THE TRANSACTION**

Staff has reviewed the application, and as supported by the attached memoranda by Jolie Mathis of the Infrastructure Division and Ethan Blanchard of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including factors identified in Texas Water Code (TWC) Chapter 13 and 16 Texas Administrative Code Chapter 24. However, as identified in Ms. Mathis’s memorandum, Undine has not demonstrated that the City of Hideaway has ceded its ratemaking authority. Since the requested area is located entirely within the City of Hideaway’s city limits, Staff recommends that the Commission does not have the authority to change the rates and thus cannot approve Applicants’ requested rate change under TWC 13.3011. Nevertheless, based on its review, Staff still recommends that Undine has demonstrated it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

**III. CONCLUSION**

For the reasons detailed above, Staff respectfully requests the entry of an order permitting the transaction to proceed with the previous rates.

Dated: March 8, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Keith Rogas  
Division Director

John Harrison  
Managing Attorney

/s/ Ian Groetsch  
Ian Groetsch  
State Bar No. 24078599  
Bradley Reynolds  
State Bar No. 24125839  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7465  
(512) 936-7268 (Fax)  
Ian.Groetsch@puc.texas.gov

**DOCKET NO. 53765**

**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 on March 8, 2023 in accordance with the 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:** March 8, 2023

**RE:** Docket No. 53765 – *Application of Crystal Systems Texas, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Smith County*

---

On July 1, 2022, Undine Texas, LLC (Undine), CCN No. 13260, and Crystal Systems Texas, Inc. filed an application for the sale and transfer of facilities and certificate rights in Smith County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 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 Texas Administrative Code (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

---

<sup>1</sup> Application, *Confidential Exhibit A*, item no. 19, at bates 37 (Sep. 12, 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 purchase price and planned system improvements for the Crystal water system alongside all of Undine's other planned system improvements and purchases this year.<sup>5</sup> Therefore, I recommend a finding that Undine satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

---

<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.

# *Public Utility Commission of Texas*

---

## **Memorandum**

**TO:** Ian Groetsch, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** March 8, 2023

**RE:** Docket No. 53765 – *Application of Crystal Systems Texas, LLC and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Smith County*

---

### **1. Application**

Undine Texas, LLC (Undine Texas) and the Crystal Systems Texas, Inc. (Crystal Systems) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Smith 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, Certificate of Convenience and Necessity (CCN) No. 13260, seeks approval to acquire facilities and to transfer all of the water service area from Crystal Systems under water CCN No. 10804.

Based on the mapping review by Tracy Montes, Infrastructure Division:

- The requested area includes 2,234 customer connections and approximately 10,528 acres, comprised of:  
288 acres of uncertificated area;  
10,240 acres of transferred area from CCN No. 10804.
- The application proposes the subtraction of approximately 10,240 acres from CCN No. 10804 and the addition of approximately 10,528 acres to CCN No. 13260.

### **2. Notice**

Undine Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was January 3, 2023; protests to the application regarding the proposed rate change were submitted and the Office of Public Utility Counsel requested to intervene. Many of Crystal

Systems affected customers stated the rates should remain as is considering the affected area is completely inside the City of Hideaway and therefore any rate changes must be approved by the City of Hideaway. No protesters requested a hearing or to intervene in the docket.

### **3. Factors Considered**

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11I, 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)(D)).***

Crystal Systems has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Crystal Systems, PWS ID No. TX2120015. The last TCEQ compliance investigation of the Crystal Systems system was on May 29, 2020. Crystal Systems has violations listed in the TCEQ database that have since been resolved. The Commission's complaint records, which date back to 2017, show 1 complaint against Crystal Systems.

**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)).***

There are currently 2,234 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 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 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 § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Undine Texas will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.



Undine Texas will have licensed operators to run the system operations. A Class A operator will be the responsible operator for the system.

Undine Texas has the ability to provide adequate service in the requested area. Undine Texas has several TCEQ approved public water systems

The Commission's complaint records, which date back to 2017, show 130 complaints against Undine Texas.

- 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 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)).***

Crystal Systems 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. ***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.

- 3.8. ***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.

- 3.9. ***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. The 288 acres of uncertificated area being requested consists of parcels where there are current customers of Crystal Systems

receiving service, intermediate parcels, and parcels that are partially inside the current Crystal Systems' CCN service area.

**3.10. *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)).***

The customers' rates will not change from the current rates for the individual subdivisions being transferred as the rates are under the jurisdiction of the City of Hideaway. Reliability and quality of water service is expected to improve under CSWR-Texas's management.

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.

**4. Recommendation**

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 no deposits held by Crystal Systems for the customers being served by the subdivisions. I further recommend that a public hearing is not necessary.