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DOCKET NO. 53765

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

ORDER NO. 14
MAKING A DETERMINATION TO HOLD A HEARING,
REQUIRING SUPPLEMENTAL INFORMATION AND
RECOMMENDATIONS FROM COMMISSION STAFF,
AND ESTABLISHING DEADLINES

This Order addresses Commission Staff's June 9, 2023 request to extend the time to file either a revised recommendation on the transaction or a joint proposed order. Commission Staff states that it only just finalized its map and needs additional time to complete its analysis. Commission Staff represents that it has conferred with counsel for Undine Texas, LLC, the Office of Public Utility Counsel, and John Garrett, the president of Crystal Systems Texas, LLC, and is authorized to represent they are unopposed to the extension request.

The administrative law judge grants Commission Staff's request for additional time to file its revised recommendation on the transaction. In addition, the ALJ requires Commission Staff to address certain additional information in its revised recommendation on the transaction.

During the Commission's discussion of Docket No. 52391¹ at its October 6, 2022 open meeting and its discussion of Docket No. 51646² at the May 11, 2023 open meeting and the orders remanding Docket No. 52391³ and Docket No. 51646⁴ to docket management for further processing, the Commission clarified its requirements regarding three issues: (1) the requirements of 16 Texas Administrative Code (TAC) § 24.11(e)(5)(B) and what is required to demonstrate a

¹ Open Meeting at 32:38 (Oct. 6, 2022), Item No. 7 (available at https://adminmonitor.com/tx/puct/open_meeting/202210060/).

² Open Meeting at 1:22 (May 11, 2023), Item 2 (available at https://adminmonitor.com/tx/puct/open_meeting/202305112/).

³ *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 (Oct. 20, 2023).

⁴ *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, Order Remanding Proceeding to Docket Management (May 11, 2023)

firm capital commitment, (2) the requirements of Texas Water Code (TWC) § 13.244(d)(3) and what constitutes a capital improvement plan, and (3) 16 TAC § 24.235(b)(2) and the requirement to provide notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. The administrative law judge (ALJ) does not see these issues addressed in the application or in Commission Staff's recommendation on the proposed transaction; therefore, clarification and supplemental information is required and these issues must be addressed in Commission Staff's revised recommendation on the transaction.

Firm Capital Commitment

Under 16 TAC § 24.11(e)(5)(b), if an applicant is proposing to purchase an existing system and service area in which the cost to purchase the existing system plus any improvements necessary to provide continuous and adequate service to existing and projected customers exceeds \$100,000, the proposed owner or operator of such a retail public utility must provide additional financial assurance in the form of loan approval documents or firm capital commitments affirming that all funds are available. A financial guarantee letter does not satisfy the Commission's rules.⁵

In this case, Undine is seeking to acquire and transfer Crystal System's facilities and certificated service area held under CCN number 10804, to Undine's CCN number 13260. The cost to acquire the system exceeds \$100,000 and Undine has submitted financial information. Therefore, by July 25, 2023, Commission Staff shall provide its recommendation regarding the sufficiency of the applicant's capital commitment.

Capital Improvement Plan

Under TWC §13.244(d)(3) and 16 TAC §24.233(a)(6), an applicant for an amendment to a CCN must contain a capital improvement plan, which must include a budget and estimated timeline for construction of all facilities necessary to provide full service to the proposed service area and must be keyed to a map showing where the facilities will be located to provide service. A pro forma budget is not a capital improvement plan under the TWC or the Commission's rules.

In this case, Undine is acquiring an existing system and certificated service area from Crystal Systems. It is unclear whether any new or improved facilities will be necessary to provide full service to the requested service area. This application results in an amendment to a CCN

⁵ Docket No. 52391, Order Remanding Proceeding to Docket Management at 2.

therefore an appropriate capital improvement plan is required and the ALJ does not see a capital improvement plan in the application package.

By, June 26, 2023, the applicants shall provide an appropriate capital improvement plan.

By July 25, 2023, Commission Staff shall provide a recommendation regarding the sufficiency of Undine's capital improvement plan.

Notice

Under 16 Texas Administrative Code (TAC) § 24.239(e)(1), notice of a STM application must be provided to affected customers and other affected parties. Under Texas Water Code § 13.246(a-1) and 16 TAC § 24.235(b)(2), notice of an application for an amendment to a CCN must be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area.

Attached to the proof of notice filed by the applicants is a list of persons and entities who received notice of the application. However, there is insufficient evidence in the record to support a finding that notice has been provided to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the amendment. Specifically, the record does not identify the tracts of land that are at least 25 acres and are wholly or partially in the requested area nor does the record show who owns those tracts of land. Further, there is no affidavit attesting that notice was mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. Therefore, the record does not show that notice has been mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area. For these reasons, the ALJ rescinds the finding in Order No. 9 that the notice of this application provided by Undine is sufficient.

By June 26, 2023, the applicants must supplement their proof of notice by providing a copy of applicable appraisal district maps overlaid with the requested area, a list of the landowners with properties wholly or partially in the requested area, the acreage owned by each listed owner, and an affidavit attesting that notice was provided to any owner of a tract of land that is at least 25 acres and is wholly or partially included in the requested area.

By July 25, 2023, Commission Staff must file a recommendation on the applicants' supplemented notice.

Notice of Hearing

To give the parties time to make the supplemental filings required by this Order and to give Commission Staff the time to file a supplemental recommendation, and in accordance with TWC § 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 12th day of June 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON

ADMINISTRATIVE LAW JUDGE