



## **Filing Receipt**

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**DOCKET NO. 53827**

<b>APPLICATION OF UNDINE TEXAS,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC AND NITSCH AND SON UTILITY</b>	<b>§</b>	
<b>COMPANY, INC FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN HARRIS COUNTY</b>	<b>§</b>	

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

On July 14, 2022, Undine Texas, LLC (Undine) and Nitsch and Son Utility Company, Inc. (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Harris County.

On August 10, 2023, the administrative law judge filed Order No. 14, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the approval of sale by August 23, 2023. Therefore, this pleading is timely filed.

**I. RECOMMENDATION ON THE TRANSACTION**

Staff has reviewed the application and supplemental information and, as supported by 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 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 Texas Administrative Code §§ 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.

## II. CONCLUSION

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

Dated: August 23, 2023

Respectfully submitted,

### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

Marisa Lopez Wagley  
Division Director

/s/ Ian Groetsch  
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**DOCKET NO. 53827**

### **CERTIFICATE OF SERVICE**

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on August 23, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Ian Groetsch  
Ian Groetsch

# *Public Utility Commission of Texas*

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## **Memorandum**

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

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

**DATE:** August 23, 2023

**RE:** Docket No. 53827 – *Application of Undine Texas, LLC and Nitsch and Son Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

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### **1. Application**

On July 14, 2022, Undine Texas, LLC (Undine) and Nitsch & Son Utility Company, Inc. (Nitsch & Son) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Harris 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, Certificate of Convenience and Necessity (CCN) No. 13260, seeks approval to acquire facilities and to transfer all of the water service area from Nitsch & Son under water CCN No. 11124 and to amend uncertificated area to CCN No. 13260.

As allowed by the statute TWC § 13.3011, Undine has requested that the customers' rates be changed to match Undine's currently effective approved rates. Undine's currently approved rates have been in effect since August 1, 2022 (Rate Year 3)<sup>1</sup> which is the most recent date prior to the date the application was deemed administratively complete, May 10, 2023.<sup>2</sup>

Based on the mapping review by Hank Journeay, Infrastructure Division, the maps submitted with Item 9 on July 25, 2022 are sufficient.

- The requested area includes 710 customer connections and approximately 322 acres, comprised of:

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<sup>1</sup> Attachment No. 1 – Undine tariff rate pages

<sup>2</sup> In Order No. 11 filed on May 10, 2023, the administrative law judge found the application administratively complete.

47 acres of uncertificated area;  
275 acres of transferred area from Nitsch & Son (CCN No. 11124) to Undine (CCN No. 13260).

- The application proposes the subtraction of approximately 275 acres from CCN No. 11124 and the addition of approximately 322 acres to CCN No. 13260.

A portion of the requested area is inside the City of Houston city limits. Under 16 TAC § 24.233(a)(4), if a requested CCN amendment is inside the corporate boundaries of a municipality the applicant must provide evidence that approvals have been obtained from the necessary parties. Undine has contacted the City of Houston to receive their consent. Under 16 TAC § 24.233(c)(4), if a municipality with a population of 500,000 or more has not consented to a formal request for service from a landowner or retail public utility within 180 days of receiving the request the Commission may grant the CCN under the following conditions:

- A. The Commission finds the municipality does not have the ability to provide service or has failed to make a good faith effort to provide service,
- B. The municipality has not entered into an agreement with the landowner or retail public utility before the 180<sup>th</sup> day after the formal request was made, and
- C. The landowner or retail public utility have not unreasonably refused to comply with the municipality's service extension and development process or refused or to enter into a contract with the municipality.

Based on the date Undine provided the request for consent to the City of Houston, November 3, 2022, the Commission may grant the CCN under 16 TAC § 24.233(c)(4). Therefore, I recommend moving forward with this application.

## **2. Notice**

Undine provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was June 25, 2023; there were no motions to intervene, protests, or opt-out requests received.

Undine provided an affidavit stating that no landowners owning 25 acres or more are located in the requested area.

## **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)).*

Nitsch & Son has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Nitsch & Son Utility, PWS ID No. 1010145. The last TCEQ compliance investigation of the Nitsch & Son system was on December 21, 2022. Nitsch & Son has multiple violations listed in the TCEQ database. Undine will make the

operations and maintenance improvements necessary to properly operate the water system. The Commission's complaint records, which date back 5 years, show 2 complaints against Nitsch & Son. The complaints have been reviewed and closed by the Commission's Customer Protection Division.

**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 Nitsch & Son Utility public water system to Undine. The customers are currently receiving water service from the Nitsch & Son Utility water system.

There are currently 710 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 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 in the area that is currently uncertificated. Those landowners in the area not currently receiving service from Nitsch & Son will be able to request water service from Undine.

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 will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Undine has the ability to provide adequate service in the requested area. Undine has several TCEQ approved public water systems. In addition, the Commission's complaint records, which date back 5 years, show no complaints against Undine.

**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 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)).***

Nitsch & Son 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 is not proposing to make improvements to the Nitsch & Son's water system. Therefore, the need for firm capital commitment under 16 TAC § 24.11(e)(5) is not required.

***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)).***

Attachment No. 2<sup>3</sup> shows Nitsch & Son's current rate. As shown in Attachment No. 3<sup>4</sup> to this memo, Undine's Rate Year 3 rates are appreciably higher than the current rates for the Nitsch & Son customers. Reliability and quality of sewer service is expected to improve under Undine's management as Undine is more experienced and has more available water operators.

#### **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 deposits held by Nitsch & Son for some customers being served by the public water system. I further recommend that a public hearing is not necessary.

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<sup>3</sup> Attachment No. 2 – Nitsch & Son Tariff Rate Page

<sup>4</sup> Attachment No. 3 – Rate comparison worksheet



# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Ian Groetsch  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** August 23, 2023

**RE:** Docket No. 53827 *Application of Undine Texas, LLC and Nitsch and Son Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

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On July 14, 2022, Undine Texas, LLC (Undine), CCN No. 13260, and Nitsch and Son Utility Company, Inc. filed an application for the sale and transfer of facilities and certificate rights in Harris 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

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<sup>1</sup> Application, *Confidential - Exhibit A*, item no. 13, at bates 37 (Sep. 15, 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).

Undine has filed documentation demonstrating adequate funding of the purchase price and planned system improvements for the water system in this application 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.