



## **Filing Receipt**

**Filing Date - 2023-09-14 12:00:14 PM**

**Control Number - 53827**

**Item Number - 58**

**DOCKET NO. 53827**

<b>APPLICATION OF NITSCH AND SON</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITY COMPANY, INC., AND</b>	<b>§</b>	
<b>UNDINE TEXAS, LLC, 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, TEXAS</b>	<b>§</b>	

**JOINT MOTION TO ADMIT EVIDENCE AND  
PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED**

**I.**

**INTRODUCTION**

On May July 14, 2022, Nitsch and Son Utility Company, Inc. (Nitsch) and Undine Texas, LLC (Undine) (Nitsch and Undine collectively, the Applicants) filed an application with the Public Utility Commission of Texas (Commission) for approval of the sale, transfer, or merger of facilities and certificate rights in Harris County. Supplemental information was filed on July 25, September 15 and 22, October 6, and November 9 and 10, 2022, and June 19, 22, and 29, and August 14, 2023.

Applicants seek approval to acquire facilities and to transfer all of Nitsch's water service area under water CCN No. 11124 to Undine, and charge new initial rates. Additionally, Undine seeks to amend uncertificated area to CCN No. 13260. The application reflects a requested area of approximately 322 acres and 710 customer connections.

On August 10, 2023, the ALJ filed Order No. 14, establishing a deadline of September 13, 2023, for the Applicants and staff of the Commission (Staff) (Applicants and Staff collectively, the Parties) to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed. Therefore, this pleading is timely filed.

**II.**

**JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- A. The application for sale, transfer, or merger of facilities and certificate rights, filed on July 14, 2022 (AIS Item Nos. 1-7);
- B. Applicant's supplement to application, filed on July 25, 2022 (AIS Item No. 9);

- C. Applicant's supplement to application, filed on September 15, 2022 (AIS Item Nos. 12-13);
- D. Applicant's supplement to application, filed on September 22, 2022 (AIS Item Nos. 14 & 16);
- E. Applicant's supplement to application, filed on October 6, 2022 (AIS Item Nos. 17-18);
- F. Applicant's supplement to application, filed on November 9 and 10, 2022 (AIS Item Nos. 22 and 25);
- G. Joint request for abatement, filed on March 24, 2023 (AIS Item No. 35);
- H. Joint request to life abatement, filed on April 20, 2023 (AIS Item No. 37);
- I. Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on May 8, 2023 (AIS Item No. 39);
- J. Applicant's supplement to application, filed on June 19, 2023 (AIS Item Nos. 41-42);
- K. Undine's response to Order No. 11, filed on June 22, 2023 (AIS Item Nos. 43-44);
- L. Applicant's supplement to application, filed on June 29, 2023 (AIS Item No. 45);
- M. Staff's recommendation on sufficiency of notice, filed on July 5, 2023 (AIS Item No. 46);
- N. Applicant's supplement to application, filed on August 14, 2023 (AIS Item No. 52);
- O. Staff's recommendation on the transaction with Confidential Attachment EB-1, filed on August 23, 2023 (AIS Item Nos. 53-54); and
- P. Undine's response to staff recommendation, filed on August 23, 2023 (AIS Item No. 55).

### **III.**

#### **JOINT PROPOSED ORDER APPROVING THE SALE AND TRANSFER TO PROCEED**

The Parties move for the adoption of the attached Proposed Order Approving the Sale and Transfer to Proceed. The undersigned counsel for Undine represents that Nitsch has authorized them to file this Joint Motion to Admit Evidence on Nitsch's behalf.

#### **IV. CONCLUSION**

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Order Approving the Sale and Transfer to Proceed.

Respectfully submitted,

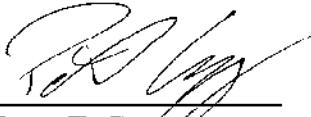
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**Attorneys for Undine Texas, LLC**

**CERTIFICATE OF SERVICE**

As indicated by my signature above, I, Peter Gregg, 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 September 14, 2023 in accordance with the Order Suspending Rules, issued in Project No. 50664.

**DOCKET NO. 53827**

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<b>UTILITY COMPANY, INC., AND</b>	<b>§</b>	
<b>UNDINE TEXAS, LLC, 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, TEXAS</b>	<b>§</b>	

**JOINT PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Nitsch and Son Utility Company, Inc. (Nitsch) and Undine Texas, LLC (Undine) (collectively, the Applicants), for the sale, transfer, or merger of facilities and certificate rights, and the amendment of certificate rights in Harris County. Applicants seek approval to acquire facilities and to transfer all of Nitsch's water service area under its certificate of convenience and necessity (CCN) No. 11124 to Undine. Additionally, Undine seeks to amend its CCN No. 13260 to add water service area. The administrative law judge (ALJ) grants that this sale is approved and the transaction between Applicants may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. Nitsch and Son Utility Company, Inc. is a for-profit corporation registered with the Texas secretary of state under file number 0036927100.
2. Undine is a for-profit corporation registered with the Texas secretary of state under file number 802339329.
3. Undine operates, maintains, and controls facilities for providing water service under CCN No. 13260 in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

**Application**

4. On July 14, 2022, Nitsch and Undine filed an application for the approval of the sale, transfer or merger of facilities and certificate rights, and the amendment of certificate rights in Harris County.

5. The sale and transfer affect approximately 275 acres and 710 total customer connections in Harris County, Texas.
6. The amendment to add water service area affects approximately 47 acres.
7. The area subject to this transaction is located approximately 8 miles north/northwest of downtown Houston, Texas, and is generally bounded on the north by 125 north of Hartwick Road; on the east by Airline Drive; on the south by Tomlin Road; and on the west by Berwyn Drive in Harris County.
8. Applicants agreed to the sale and transfer of all of Nitsch's water service area under water CCN No. 11124. Undine will amend the water CCN number 13260 to incorporate the 275 acres of water service area previously under water CCN number 11124 and an additional 47 acres of uncertificated area.
9. In Order No. 11 issued on May 10, 2023, the administrative law judge (ALJ) found the application and amended application, as supplemented, administratively complete.

**Notice**

10. On June 22, 2023, Undine filed the affidavits of Carey A. Thomas and Vance Tillman, Authorized Representatives of Undine, attesting that notice was provided to all current customers, landowners, neighboring utilities, and affected parties on May 17, 2023, and that there are no owners in the proposed area of a tract of land of at least 25 acres.
11. In Order No. 12, filed on July 10, 2023, the ALJ found the notice of the application sufficient.

**Evidentiary Record**

12. On September 14, 2023, the parties filed a joint motion to admit evidence.
13. In Order No. \_\_, issued on \_\_\_\_\_, 2023 the ALJ admitted the following evidence into the record:
  - a. The application for sale, transfer, or merger of facilities and certificate rights, filed on July 14, 2022;
  - b. Applicant's supplement to application, filed on July 25, 2022;
  - c. Applicant's supplement to application, filed on September 15, 2022;
  - d. Applicant's supplement to application, filed on September 22, 2022;
  - e. Applicant's supplement to application, filed on October 6, 2022;
  - f. Applicant's supplement to application, filed on November 9 and 10, 2022;

- g. Joint request for abatement, filed on March 24, 2023;
- h. Joint request to life abatement, filed on April 20, 2023;
- i. Staff's recommendation on administrative completeness and notice and proposed procedural schedule, filed on May 8, 2023;
- j. Applicant's supplement to application, filed on June 19, 2023;
- k. Undine's response to Order No. 11, filed on June 22, 2023;
- l. Applicant's supplement to application, filed on June 29, 2023;
- m. Staff's recommendation on sufficiency of notice, filed on July 5, 2023;
- n. Applicant's supplement to application, filed on August 14, 2023;
- o. Staff's recommendation on the transaction with Confidential Attachment EB-1, filed on August 23, 2023; and
- p. Undine's response to staff recommendation, filed on August 23, 2023.

**Adequacy of Existing Service and System Compliance**

- 14. Nitsch holds Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) No. TX1010145, registered as Nitsch & Son Utility.
- 15. No additional construction is necessary for Undine to serve the requested area.
- 16. The last TCEQ compliance investigation of the Nitsch system was on December 21 31, 2022. Nitsch has multiple violations listed in the TCEQ database.
- 17. The Commission's complaint records, which date back to 2017, show 2 complaints against Nitsch, which have been reviewed and closed.

**Need for Service**

- 18. There is no need for additional service, as the existing customers are currently receiving water service from the Nitsch water system.
- 19. The Nitsch water system is currently in operation.

**Effect of Approving the Transaction and Granting the Amendment**

- 20. Undine will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.
- 21. 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 will be able to request water service from Undine.



22. 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.

**Ability to Serve: Managerial and Technical**

23. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
24. The Commission's complaint records, which date back five years, show no complaints against Undine.
25. Undine demonstrated a compliance history that is adequate for approval of the sale to proceed.

**Ability to Serve: Financial Ability and Stability**

26. Undine has a debt-to-equity ratio of less than one, satisfying the leverage test.
27. Undine demonstrated that an affiliated interest is capable, available, and willing to cover temporary cash shortages.
28. Undine has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction and possesses the cash and leverage ability to pay for capital improvements and necessary equity investments, satisfying the operations test.
29. Undine demonstrated has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

**Financial Assurance**

30. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

31. The feasibility of obtaining service from an adjacent retail public utility was not considered because Nitsch was adequately serving the existing customers and its facilities offer sufficient capacity.
32. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation**

33. The construction of a physically separate water system is not necessary for Undine to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

**Environmental Integrity and Effect on the Land**

34. Granting the transaction will not adversely impact the integrity of the land because the requested area is already being served.

**Improvement of Service or Lowering Cost to Consumers**

35. Undine, using the water system already in place, will continue to provide water service to the existing customers in the area.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Public notice of the application was provided as required by Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2) and 16 TAC § 24.239 (c).
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC §§ 13.301(b) and 16 TAC § 24.239(e).
3. It is not necessary for Undine to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
4. The applicants have demonstrated that the sale and transfer of Nitsch's certificated service area and existing facilities under CCN No. 11124 to Undine and amend uncertificated area to CCN No. 13260 will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public. TWC §§ 13.301(d) and (e).

**III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the sale and transfer of all of Nitsch's water facilities and service area held under water CCN number 11124 to Undine, and the amendment of Undine's water CCN number 13260 to include the area previously included in Nitsch's water CCN number 11124 and remove the area from CCN number 11124.

2. The Commission approves the amendment of Undine's water CCN number 13260 to add 47 acres of uncertificated area.
3. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
4. The applicants have 180 days to complete the transaction.
5. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
6. The applicants are advised that the requested area and associated facilities will remain under CCN number 11124 and will be held by Nitsch until the final order or notice of approval is issued in this matter, in accordance with Commission rules.
7. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
8. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

**Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2023.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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ADMINISTRATIVE LAW JUDGE