



## **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>	

**ORDER NO. 18**  
**APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas, LLC and Nitsch and Son Utility Company, Inc. for approval of the sale, transfer, or merger of facilities and certificate rights in Harris County. The applicants seek approval of the following: (1) the sale and transfer of the facilities and service area held under Nitsch and Son's certificate of convenience and necessity (CCN) number 11124 to Undine; (2) the cancellation of Nitsch and Son's CCN number 11124; (3) the amendment of Undine's CCN number 13260 to include the facilities and service area previously included in Nitsch and Son's CCN number 11124; and (4) the amendment of Undine's CCN number 13260 to add 47 acres of uncertificated area. This Order addresses only the proposed sale and transfer of facilities and certificate rights from Nitsch and Son to Undine. This Order does not address Undine's request for the addition of 47 uncertificated acres. The administrative law judge (ALJ) approves the transaction between Nitsch and Son and Undine and the transaction may be completed as proposed.

**I. Finding of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Undine is a Delaware limited liability company registered with the Texas secretary of state under filing number 802339329.
2. Undine holds CCN number 13260, which obligates it to provide retail water service in its certificated service area in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

3. Nitsch and Son is a Texas corporation registered with the Texas secretary of state under filing number 0036927100.
4. Nitsch and Son holds CCN number 11124 which obligates it to provide retail water service in Harris County.

### **Application**

5. On July 14, 2022, Undine and Nitsch and Son filed an application for the approval of the sale, transfer or merger of facilities and certificate rights in Harris County.
6. The applicants filed supplemental information on July 25, September 15 and 22, October 6, November 9 and 10, 2022, and June 19 and 29, and August 14, 2023.
7. In the application, as supplemented, the applicants seek approval of the following transaction:
  - a. Undine will acquire all of Nitsch and Son's facilities and certificated service area under CCN number 11124;
  - b. Nitsch and Son's CCN number 11124 will be cancelled;
  - c. Undine's CCN number 13260 will be amended to include the facilities and area previously included in Nitsch and Son's CCN number 11124; and
  - d. the amendment of Undine's CCN number 13260 to add 47 acres of uncertificated area.
8. The requested area includes approximately 275 acres and 710 current customers.
9. The requested area is located approximately eight miles north of downtown Houston and is generally bounded on the north by Gulf Bank Road; on the east by Airline Drive; on the south by Little York Road; and on the west by Berwyn Drive.
10. In Order No. 11, filed on May 10, 2023, the ALJ found the application, as supplemented, administratively complete.

### **Notice**

11. On June 22, 2023, Undine filed the affidavit of Vance Tillman, chief financial officer of Undine, attesting that there are no landowners owning tracts of land that are at least

twenty-five acres that are wholly or partly included in the requested CCN area, and the affidavit of Carey Thomas, senior vice president of Undine, attesting that notice was provided to all current customers, landowners, neighboring utilities, and affected parties on May 17, 2023.

12. On June 22, 2023, Undine filed a publisher's affidavit, attesting that notice was published in the *Houston Business Journal*, a newspaper of general circulation in Harris County, on May 19 and 26, 2023.
13. In Order No. 12 filed on July 10, 2023, the ALJ found notice sufficient.

**Evidentiary Record**

14. In Order No. 17 filed on October 20, 2023, the ALJ admitted the following evidence into the record of this proceeding:
  - a. The application and all attachments filed on July 14, 2022;
  - b. Undine's supplement to the application filed on July 25, 2022;
  - c. Undine's supplement to the application filed on September 15, 2022;
  - d. Undine's supplement to the application filed on September 22, 2022;
  - e. Undine's supplement to the application filed on October 6, 2022;
  - f. Undine's supplement to the application filed on November 9, 2022;
  - g. Undine's supplement to the application filed on November 10, 2022;
  - h. Joint request for abatement filed on March 24, 2023;
  - i. Joint request to lift abatement filed on April 20, 2023;
  - j. Commission Staff's recommendation on administrative completeness and notice and proposed procedural schedule filed on May 8, 2023;
  - k. Undine's supplement to the application filed on June 19, 2023;
  - l. Undine's response to Order No. 11 filed on June 22, 2023;
  - m. Undine's supplement to the application filed on June 29, 2023;
  - n. Commission Staff's recommendation on notice filed on July 5, 2023;

- o. Undine's supplement to the application filed on August 14, 2023;
- p. Commission Staff's recommendation on the transaction and all attachments filed on August 23, 2023;
- q. Undine's response to Commission Staff's recommendation filed on August 23, 2023;
- r. Undine's response to Order No. 15 filed on September 27, 2023; and
- s. Commission Staff's supplemental recommendation filed on October 9, 2023.

**Purchaser's Compliance History**

- 15. Undine Texas has been subject to enforcement actions by the Commission, the TCEQ, the Texas Department of State Health Services, the Texas Office of the Attorney General, or the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or statutes.
- 16. Undine does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 17. Undine has demonstrated a compliance status that is adequate for approval of the transaction.

**Adequacy of Existing Service**

- 18. There are currently 710 connections in the requested area that are being served by Nitsch and Son through public water system number 1010145 and such service has been continuous and adequate.
- 19. The Commission's complaint records, which go back to 2017, show two complaints against Nitsch and Son. All the complaints have been closed by the Commission's Customer Protection Division.
- 20. The last TCEQ compliance investigation of the Nitsch and Son system was on December 21, 2022.
- 21. Nitsch and Son has multiple violations listed in the TCEQ database. Undine plans to make operations and maintenance improvements that will address the violations.

22. Capital improvements are not necessary for Undine to continue providing continuous and adequate service to the requested area.
23. There is no evidence in the record that Nitsch and Son has failed to comply with any Commission or TCEQ order.

**Need for Additional Service**

24. There are 710 existing customer connections in the requested area that are receiving service from Nitsch and Son and have an ongoing need for service.
25. This is an application to transfer only existing facilities, customers, and service area.
26. There have been no specific requests for additional service within the requested area.

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

27. Undine will be the sole certificated water utility for 275 acres of the requested area.
28. 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 and Son will be able to request water service from Undine.
29. All retail public utilities in the proximate area were provided notice of the application, and no protests or adverse comments were filed.
30. Because this application is to transfer only existing facilities, customers, and service area, there will be no effect on any other retail public utility servicing the proximate area.

**Ability to Serve: Managerial and Technical**

31. Undine owns and operates numerous TCEQ-registered public water systems in Texas.
32. Undine employs or contracts with TCEQ-licensed operators who will be responsible for operation of the public water system being transferred.
33. Undine has the technical and managerial capability to provide continuous and adequate service to the requested area.

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

34. Nitsch and Son is currently serving customers throughout the requested area, and such service has been continuous.

35. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed to connect to a neighboring retail public utility.
36. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation**

37. It will not be necessary for Undine to construct a physically separate public water system to serve the requested area.
38. Because the requested area will not require construction of a physically separate public water system, evaluation of regionalization or consolidation with another retail public utility is not required.

**Ability to Serve: Financial Ability**

39. Undine's affiliate, Undine Group, LLC, is capable, available and willing to cover temporary cash shortages, and has a debt-to-equity ratio of less than one, satisfying the leverage test.
40. Undine Group provided a written guarantee of coverage of temporary cash shortages and has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, satisfying the operations test.
41. No capital improvements are necessary for Undine to continue providing continuous and adequate service to the requested area following the transaction.
42. Undine demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

**Financial Assurance**

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

**Environmental Integrity and Effect on the Land**

44. There will be no effect on environmental integrity or the land as a result of the transaction as the requested area will continue to be served by existing facilities.

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

45. Undine will continue to provide water service to Nitsch and Son's existing customers in the requested area.
46. Reliability and quality of water service is expected to improve under Undine's management.
47. Undine requested authorization to charge the customers served by the public water systems being acquired its rates that are currently in force, which were approved in Docket No. 50017.<sup>1</sup>
48. If authorization is granted, rates for customers in the requested area will be higher than the rates currently charged by Nitsch and Son because Undine will charge its current water utility tariff's rates.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239(c).<sup>2</sup>
2. After consideration of the factors in TWC § 13.246(c), Undine demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
3. Undine demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. The applicants demonstrated that the sale and transfer of all of Nitsch and Son's facilities and service area to Undine will serve the public interest and is necessary for the continued

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<sup>1</sup> *Application of Pure Utilities, LC and Undine Texas, LLC for Sale, Transfer, or Merger of Water Facilities and Certificate Rights in Liberty, Polk, San Jacinto, and Tyler Counties, and to Decertify a Portion of Pure Utilities, LC's Certificated Area and to Amend Uncertificated Water Service Area in Liberty and Polk Counties*, Docket No. 50017, Notice of Approval (Mar. 4, 2021).

<sup>2</sup> After this application was filed, 16 TAC § 24.239 was amended, effective March 29, 2023. Accordingly, all references and citations to 16 TAC § 24.239 in this Order are made to the version in effect at the time the application was filed.



service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d).

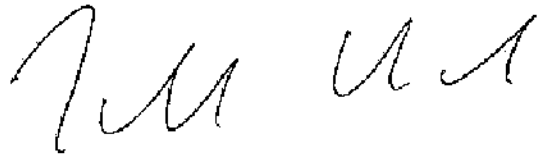
### **III. Ordering Paragraphs**

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

1. The Commission approves the transaction between Nitsch and Son and Undine in this proceeding and authorizes it to be completed as proposed.
2. 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 completed and customer deposits, if any, have been addressed.
3. The applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants must reapply for approval.
5. This Order does not transfer CCN number 11124 and the associated service area from Nitsch and Son or authorize Undine to provide service in Nitsch and Son's certificated service area. Nitsch and Son must provide continuous and adequate service in its certificated service area until a final order or notice of approval issued by the Commission transfers the requested water service area.
6. 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 completed.
7. Within 15 days following the filing of the applicants' proof that the transaction has been completed 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 on the 7th day of November 2023.

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read 'J. Huhn', is written above a horizontal line.

**JEFFREY J. HUHN**

**ADMINISTRATIVE LAW JUDGE**