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DOCKET NO. 53828

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

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

I. INTRODUCTION

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

On May 15, 2023, the administrative law judge (ALJ) filed Order No. 12, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a final recommendation on approval of the sale and CCN amendment by June 1, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the application and, as detailed in the attached memoranda of Patricia Garcia of the Commission’s Infrastructure Division and of Ethan Blanchard of the Commission’s 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 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 the entry of an order permitting the proposed transaction to proceed.

III. CONCLUSION

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

Dated: June 1, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 via electronic mail on June 1, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: June 1, 2023

RE: Docket No. 53828 – *Application of Undine Texas Environmental, LLC and Nitsch and Son Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

1. Application

Undine Texas Environmental, 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. 20816, seeks approval to acquire facilities and to transfer all of the sewer service area from Nitsch & Son under sewer CCN No. 20446 and to add uncertificated area to CCN No. 20816.

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)¹ which is the most recent date prior to the date the application was deemed administratively complete, November 28, 2022.²

Based on the mapping review by Hank Journey, Infrastructure Division:

- The requested area includes 605 customer connections and approximately 278 acres, comprised of:
83 acres of uncertificated area; and

¹ Attachment No. 1 – Nitsch & Son and Undine tariff rate pages

² In Order No. 5 filed on November 28, 2022, the administrative law judge found the application administratively complete.

195 acres of transferred area from Nitsch & Son (CCN No. 20446) to Undine (CCN No. 20816).

- The application proposes the subtraction of approximately 195 acres from CCN No. 20446 and the addition of approximately 278 acres to CCN No. 20816.

2. Notice

Undine provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was April 13, 2023; there were no motions to intervene, protests, or opt-out requests received.

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 wastewater treatment plant (WWTP) registered as Durkee Manor WWTP, Wastewater Discharge Permit No. WQ 10419-001. The last TCEQ compliance investigation of the Nitsch & Son system was on August 20, 2008. Nitsch & Son does not have any violations listed in the TCEQ database. 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 Nitsch & Son's Durkee Manor WWTP to Undine. The customers are currently receiving sewer service from the Durkee Manor WWTP.

There are currently 605 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 sewer 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 §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Undine will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems. Undine has several licensed operators who will be responsible for the system operations.

Undine has the ability to provide adequate service in the requested area. Undine has several TCEQ approved WWTPs. Undine's WWTPs do not have any violations listed in the TCEQ database. 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 sewer 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)).*

As shown in Attachment No. 2³ to this memo, Undine's Rate Year 3 rates are appreciably higher than the current rates for the Nitsch and 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 wastewater operators.

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Due to the probable improvement of service 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 deposits held by Nitsch & Son for some customers being served by the Durkee Manor WWTP. I further recommend that a public hearing is not necessary.

³ Attachment No. 2 – Rate comparison worksheet

Nitsch & Son Utility Co., Inc.
(Utility Name)

Sewer Utility Tariff Page No. 2.

SECTION 1.0 – RATE SCHEDULE

Section 1.01 - Rates

<u>Meter Size</u>	<u>Monthly Minimum Charge</u>	<u>Gallonage Charge</u>
5/8" or 5/8"x 3/4"	\$27.50 (Includes 0 gallons)	\$3.95 per 1,000 gallons for all usage
3/4"	\$27.50	
1"	\$27.50	
1½"	\$27.50	
2"	\$27.50	
3"	\$27.50	
4"	\$27.50	
6"	\$27.50	

Residential charges based on average monthly water usage for months November, December, and January. Commercial charges based on actual monthly water usage.

RATE CASE EXPENSE SURCHARGE: \$1.00 per month for 36 months
(Docket 46069)

FORM OF PAYMENT: The utility will accept the following forms of payment:
Cash , Check , Money Order , Credit Card , Other (specify) _____
THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS. AT THE CUSTOMER'S OPTION, ANY BILLING TRANSACTION OR COMMUNICATION MAY BE PERFORMED ON THE INTERNET. THIS INCLUDES THE UTILITY SENDING PAPERLESS BILLS BY EMAIL.

REGULATORY ASSESSMENT 1.0%
PUBLIC UTILITY COMMISSION (PUC) RULES REQUIRE THE UTILITY TO COLLECT A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL AND TO REMIT FEE TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).

Section 1.02 - Miscellaneous Fees

TAP FEE \$750.00
TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION OF 5/8" METER PLUS UNIQUE COSTS AS PERMITTED BY PUC RULE AT COST.

COMMERCIAL TAP FEE Actual Cost
TAP FEE IS THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR CONNECTIONS OTHER THAN RESIDENTIAL

RECONNECTION FEE
THE RECONNECT FEE MUST BE PAID BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS (OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF):

- a) Non-payment of bill (Maximum \$25.00)..... \$25.00
- b) Customer's request that service be disconnected \$200.00

or other reasons listed under Section 2.0 of this tariff

SECTION 1.0 - RATE SCHEDULE

Section 1.01 – Rates

Rate Year 1

Effective Date: August 1, 2020

Meter Size:

Monthly Minimum Charge

All Meters

\$75.00 Flat Rate

Rate Year 2

Effective Date: August 1, 2021

Meter Size:

Monthly Minimum Charge

All Meters

\$92.50 Flat Rate

Rate Year 3

Effective Date: August 1, 2022

Meter Size:

Monthly Minimum Charge

All Meters

\$110.00 Flat Rate

Volume charges are determined based on average consumption for winter period which includes the following months: N.A.

RATE CASE EXPENSES\$1.12 per month

Effective Date: August 1, 2020. The rate case expense surcharge will be collected for 36 months or until the full \$85,289.03 of rate case expenses related to Docket No. 50200 is collected, whichever occurs first.

FORM OF PAYMENT: The utility will accept the following forms of payment:

Cash X , Check X , Money Order X , Credit Card X , Other (specify Online Payment or Automatic Bank Draft)

THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS.

UNAFFILIATED THIRD PARTIES WHO ACCEPT AND PROCESS CREDIT CARD AND ELECTRONIC PAYMENTS FOR UTILITY BILLS MAY REQUIRE PAYMENT OF AN ADDITIONAL CONVENIENCE CHARGE FOR THIS SERVICE.

REGULATORY ASSESSMENT1.0%

PUBLIC UTILITY COMMISSION (COMMISSION) RULES REQUIRE THE UTILITY TO COLLECT AND REMIT TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL.

Section 1.02 - Miscellaneous Fees

TAP FEE\$865.00

TAP FEE COVERS THE UTILITY'S COSTS FOR MATERIALS AND LABOR TO INSTALL A STANDARD RESIDENTIAL CONNECTION. AN ADDITIONAL FEE TO COVER UNIQUE COSTS IS PERMITTED IF LISTED ON THIS TARIFF, INCLUDING COSTS RELATED TO ROAD BORES, ROCK CUTS, AND UNUSUALLY LONG TAPS.

SECTION 1.0 – RATE SCHEDULE (Continued)

TAP FEE (Large Connection Tap)..... Actual Cost
TAP FEE IS THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR METER SIZE INSTALLED.

RECONNECTION FEE

THE RECONNECT FEE MUST BE PAID BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS (OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF):

- a) Nonpayment of bill (Maximum \$25.00)..... \$25.00
- b) Customer's request that service be disconnected \$50.00
- c) After hours reconnection \$50.00

TRANSFER FEE \$65.00
THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHEN THE SERVICE IS NOT DISCONNECTED.

LATE CHARGE (HIGHER OF \$5.00 OR 10% OF THE BILL) \$5.00 or 10 %
COMMISSION RULES ALLOW A ONE-TIME PENALTY TO BE CHARGED ON DELINQUENT BILLS. A LATE CHARGE MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE \$30.00
RETURNED CHECK CHARGES MUST BE BASED ON THE UTILITY'S DOCUMENTABLE COST.

CUSTOMER DEPOSIT RESIDENTIAL (Maximum \$50)..... \$50.00

COMMERCIAL & NON-RESIDENTIAL DEPOSIT..... 1/6TH OF ESTIMATED ANNUAL BILL

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE:
WHEN AUTHORIZED IN WRITING BY THE COMMISSION AND AFTER NOTICE TO CUSTOMERS, THE UTILITY MAY INCREASE RATES TO RECOVER INCREASED COSTS FOR INSPECTION FEES AND WATER TESTING. [16 TAC § 24.25(b)(2)(G)]

LINE EXTENSION AND CONSTRUCTION CHARGES:
REFER TO SECTION 3.0--EXTENSION POLICY FOR TERMS, CONDITIONS, AND CHARGES WHEN NEW CONSTRUCTION IS NECESSARY TO PROVIDE SERVICE.

Rate comparison - Sewer

20446 - Nitsch & Son Utility Company, Inc.

Meter Size	Current Rate	Including ____ # of gallons	Gallage rate	Gallage Range		Gallons		
				Lowest	Highest	2,000	5,000	10,000
All	\$27.50		\$3.95	0	1,000,000	\$35.40	\$47.25	\$67.00

Phase 3

20816 - Undine Texas Environmental, LLC

Meter Size	Proposed	Including ____ # of gallons	Tiered Rates	Gallage Range		Gallons		
				Lowest	Highest	2,000	5,000	10,000
All	\$110.00			0		\$110.00	\$110.00	\$110.00

Increase \$74.60 \$62.75 \$43.00
 210.73% 132.80% 64.18%

The following files are not convertible:

53828 - Undine Comparison of Rates.xlsx

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: June 1, 2023

RE: Docket No. 53828 *Application of Undine Texas Environmental, LLC and Nitsch and Son Utility Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

On July 14, 2022, Undine Texas Environmental, LLC (Undine), CCN No. 20446, 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.¹

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

¹ 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, 2021.²

Based upon my review of the financial statements of Undine Group, LLC, I calculate the debt-to-equity ratio equal to 0.46.³ 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.⁴ 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 Nitsch and Son sewer system alongside all of Undine's other planned system improvement this year.⁵ Therefore, I recommend a finding that Undine satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

² *Id.*, at 6.

³ The calculations for which can be found in confidential Attachment EB-1.

⁴ The calculations for which can be found in confidential Attachment EB-1.

⁵ 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.