



## **Filing Receipt**

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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 §**

**ORDER NO. 16**  
**APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Undine Texas Environmental, 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 all the facilities and service area held under Nitsch and Son's certificate of convenience and necessity (CCN) number 20446 to Undine Texas's CCN number 20816; and (b) the amendment of Undine Texas's CCN number 20816 to add 83 uncertificated acres.<sup>1</sup> The administrative law judge (ALJ) approves the transaction between Undine Texas and Nitsch and Son and the transaction may be completed as proposed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. Nitsch and Son is a Texas corporation registered with the Texas secretary of state under filing number 0036927100.
2. Nitsch and Son holds CCN number 20446 which obligates it to provide retail sewer service in its certificated service area in Harris County
3. Undine Texas a Texas corporation registered with the Texas secretary of state under filing number 801768069.

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<sup>1</sup> This Order only addresses the proposed sale and transfer of facilities and certificate rights from Nitsch and Son to Undine. At this time, the Commission takes no action on Undine's request for the addition of 83 uncertificated acres.

4. Undine holds CCN number 20816 which obligates it to provide retail sewer service in Brazoria, Brazos, Burleson, Chambers, Fort Bend, Harris, Jackson, Johnson, Liberty, Matagorda, Montgomery, Polk, Robertson, San Jacinto, Tarrant, Tyler, and Walker counties.

#### Application

5. On July 14, 2022, the applicants filed the application at issue in this proceeding.
6. The applicants filed supplemental information on July 25, September 15 and 22, October 6, and November 9 and 10, 2022, and March 16, 2023, June 19 and 29, 2023.
7. In the application, as supplemented, Nitsch and Son and Undine seek approval of the following: (1) the sale and transfer of all the facilities and service area held under Nitsch and Son's CCN number 20446 to Undine Texas's CCN number 20816; and (b) the amendment of Undine Texas's CCN number 20816 to add 83 uncertificated acres.
8. The requested area totals approximately 278 acres, composed of the following:
  - (a) 195 acres of area that is singly certificated under Nitsch and Son's CCN number 20446;
  - (b) 83 acres of uncertificated area; and
  - (c) 605 customer connections.
9. The requested area is located 8 miles north of downtown Houston, Texas, 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. 5 filed on November 28, 2022, the ALJ found the application and amended application, as supplemented, administratively complete.

#### Notice

11. On January 4, 2023, Undine filed the following: (1) the affidavit of Carey Thomas, senior vice president of Undine, attesting that notice was mailed to current customers, landowners, neighboring utilities, and affected parties on December 21, 2022; and (2) a publisher's affidavit attesting to the publication of notice in the *Houston Business Journal*, a newspaper of general circulation in Harris, Chambers, Liberty, Montgomery, Waller, Fort Bend, Brazoria, and Galveston counties, on December 2 and 9, 2022.

12. On March 16, 2023, Undine filed the affidavit of Vance Tillman, Undine's chief financial officer, attesting that Undine provided notice to Texas Water Utilities, LP on March 14, 2023.
13. On April 6, 2023, Undine filed clarification regarding the maps that were included with the notices that were mailed on December 21, 2022.
14. In Order No. 11 filed on April 17, 2023, the ALJ found the notice sufficient.
15. On June 8, 2023, Undine responded to Order No. 13, and provided the affidavit of Carey A. Thomas, senior vice president of Undine, confirming that there are no owners of a tract of land that is at least 25 acres and is wholly or partially included in the requested area.
16. In Order No. 14 filed on June 27, 2023, the ALJ found the supplemental information on notice sufficient.

**Evidentiary Record**

17. In Order No. 15 filed on July 10, 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 September 15, 2022;
  - (c) Applicant's supplement to application, filed on September 22, 2022;
  - (d) Applicant's supplement to application, filed on October 6, 2022;
  - (e) Applicant's supplement to application, filed on November 9 and 10, 2022;
  - (f) Commission Staff's supplemental recommendation on administrative completeness and notice and proposed procedural schedule, filed on November 21, 2022;
  - (g) Undine's response to Order No. 5, filed on January 4, 2023;
  - (h) Undine's supplemental response to Order No. 5, filed on March 16, 2023;
  - (i) Undine's clarification on notice, filed on April 6, 2023

- (j) Commission Staff's supplemental recommendation on and notice and proposed procedural schedule, filed on April 14, 2023;
- (k) Commission Staff's recommendation on the transaction, filed on June 1, 2023;
- (l) Undine's response to Order No. 13, filed on June 8, 2023;
- (m) Applicants' supplement to application, filed on June 19, 2023; and
- (n) Commission Staff's recommendation on sufficiency of supplemental notice, filed on June 26, 2023.

### **Undine's Compliance History**

- 18. Undine has not been under an enforcement action by the Commission, Texas Commission on Environmental Quality (TCEQ), Texas Health and Human Services, the Office of the Texas Attorney General, or the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
- 19. The Commission's complaint records, which date back to 2017, show no complaints against Undine.
- 20. Undine does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 21. Undine has demonstrated a compliance history that is adequate for approval of the transaction to proceed.

### **Adequacy of Existing Service**

- 22. Nitsch and Son currently provide retail sewer service in the requested area through its TCEQ-permitted Durkee Manor Plant, wastewater permit number WQ-0010419001, and such service has been continuous and adequate.
- 23. Nitsch and Son has no unresolved violations listed in the TCEQ database.
- 24. The Commission's complaint records, which date back to 2017, show two complaints against Nitsch and Son. The complaints have been reviewed and closed by the Commission's Customer Protection Division.

**Need for Additional Service**

25. There are currently 605 existing customers in the requested area that are receiving sewer service from Nitsch and Son and have an ongoing need for service.
26. There is no evidence in the record indicating a need for additional service.

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

27. Approving the sale and transfer to proceed and granting the CCN amendment will obligate Undine to provide continuous and adequate sewer service to current and future customers in the requested area.
28. All retail public utilities in the proximate area were provided notice of the application and no protests, adverse comments, or motions to intervene were filed.
29. There will be no effect on any other retail public utility providing service in the proximate area.
30. There will be no effect on landowners as the requested area is already receiving service from Nitsch and Son.

**Ability to Serve: Managerial and Technical**

31. Undine owns and operates numerous TCEQ-registered wastewater systems in Texas
32. Undine employs or contracts with TCEQ-licensed sewer system operators who will operate the facilities being transferred.
33. Undine has the technical and managerial capability to provide continuous and adequate service.

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

34. Nitsch and Son is currently serving customers in the 195 acres currently held under its CCN number 20446, and such service has been continuous and adequate.
35. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed and, 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 sewer system to continue serving the requested area.
38. Because the requested area will not require construction of a physically separate sewer system, consideration of regionalization or consolidation with another retail public utility is not required.

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

39. Undine's affiliate, Undine Group, LLC, has a debt-to-equity ratio of less than one, satisfying the leverage test.
40. Undine demonstrated that its affiliate, Undine Group, LLC, is capable, available, and willing to cover temporary cash shortages.
41. 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**

42. 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**

43. 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 of Cost**

44. Reliability and quality of service in the requested area should improve as Undine is more experienced and has more available wastewater operators.

**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(a) and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).<sup>2</sup>

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<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.

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 all of Nitsch and Son's facilities and service area held under CCN 20446 to Undine will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 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.

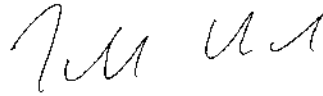
1. The Commission approves the transaction between Nitsch and Sons and Undine in this proceeding and authorizes it to be completed as proposed.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that 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 20446 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 cancels or transfers Nitsch and Son's CCN.



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 the 12th day of July 2023.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**JEFFREY J. HUHN**  
**ADMINISTRATIVE LAW JUDGE**