



Filing Receipt

Filing Date - 2024-05-24 08:34:55 AM

Control Number - 53828

Item Number - 79

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	§	

NOTICE OF APPROVAL

This Notice of Approval 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 Commission approves the following: (a) the sale and transfer of all the facilities and certificated service area included in Nitsch and Son's certificate of convenience and necessity (CCN) number 20446 to Undine; (b) the amendment of Undine's CCN number 20816 to include the facilities and service area previously included in Nitsch and Son's CCN number 20446; (c) the cancellation of Nitsch and Son's CCN number 20446; and (d) the amendment of Undine's CCN number 20816 to add 83 acres of uncertificated service area.

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 36927100.
2. Nitsch and Son operates, maintains, and controls facilities for providing retail sewer service in Harris County under CCN number 20446.
3. Nitsch and Son owns and operates a sewer system permitted with the Texas Commission on Environmental Quality (TCEQ), under the name Durkee Manor Plant, under permit number WQ0010419001.
4. Undine is a Texas limited liability company registered with the Texas secretary of state under filing number 801768069.

5. Undine operates, maintains, and controls facilities for providing retail sewer service in multiple counties, including Harris County, under CCN number 20816.
6. Undine owns and operates multiple sewer systems permitted with the TCEQ.

Application

7. On July 14, 2022, the applicants filed the application at issue in this proceeding.
8. The applicants filed supplemental information on July 25, September 15 and 22, October 6, and November 9 and 10, 2022, and June 19 and 29, 2023.
9. In the application, as supplemented, the applicants seek approval of the following:
 - a. the sale and transfer to Undine of all facilities and service area included in Nitsch and Son's CCN number 20446;
 - b. the cancellation of Nitsch and Son's CCN number 20446;
 - c. the amendment of Undine's CCN number 20816 to include the facilities and service area previously included in Nitsch and Son's CCN number 20446; and
 - d. the addition of 83 acres of uncertificated service area to Undine's CCN number 20816.
10. The requested area includes approximately 278 acres and 605 customer connections.
9. The requested area is located approximately eight 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 administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

11. On January 4, 2023, Undine filed the following:
 - a. 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

- b. a publisher's affidavit attesting to the publication of notice in the *Houston Business Journal*, a newspaper of general circulation in Harris County, 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 notice was sent 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, as clarified, sufficient.
15. On June 8, 2023, Undine filed the affidavit of Mr. Thomas attesting 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 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 and all attachments filed on July 14, 2022;
 - b. Applicants' supplement to application filed on September 15, 2022;
 - c. Applicants' supplement to application filed on September 22, 2022;
 - d. Applicants' supplement to application filed on October 6, 2022;
 - e. Applicants' 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.
18. In Order No. 21 filed on May 1, 2024, the ALJ admitted the following evidence into the record:
- a. Undine's application supplement filed on June 29, 2023;
 - b. Undine's September status report filed on September 5, 2023;
 - c. Undine's October status report filed on October 11, 2023;
 - d. Undine's November status report filed on November 13, 2023;
 - e. Undine's December status report filed on December 12, 2023;
 - f. Undine's notice of closing filed on December 26 and 27, 2023;
 - g. Commission Staff's recommendation on sufficiency of closing documents and proposed procedural schedule filed on January 29, 2024;
 - h. Applicants' consent forms filed on March 7, 2024;
 - i. the proposed final map, certificate, and tariff filed as attachments to the joint motion to admit supplemental evidence and joint proposed notice of approval filed on April 4, 2024.
19. In Order No. 23 filed on May 24, 2024, the ALJ admitted as evidence Commission Staff's supplemental recommendation filed on May 15, 2024.

Sale

20. In Order No. 16 filed on July 12, 2023, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had been completed and that customer deposits, if any, had been addressed.

21. On December 26 and 27, 2023, the applicants filed proof that the transaction had been completed and the affidavit of Mr. Tillman attesting that the customer deposits held by Nitsch and Son were transferred to Undine on December 15, 2023.
22. In Order No. 19 filed on January 30, 2024, the ALJ found the closing documentation sufficient.

Purchaser's Compliance History

23. Undine has been under an enforcement action by the TCEQ in the past five years for non-compliance with rules, orders, or statutes.
24. The Commission's complaint records, which date back five years, show no complaints against Undine.
25. Undine does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
26. Undine demonstrated a compliance history that is adequate for approval of the transaction.

Adequacy of Existing Service

27. There are currently 605 sewer connections in the requested area that are being served by Nitsch and Son through the Durkee Manor Plant, permit number WQ0010419001, and such service has been continuous and adequate.
28. Nitsch and Son has no unresolved violations listed in the TCEQ database.
29. The Commission's complaint records, which date back five years, show two complaints against Nitsch and Son. The complaints have been reviewed and closed by the Commission's customer protection division.
30. Capital improvements are not necessary for Undine to continue providing continuous and adequate service to the requested area.
31. 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

32. There are 605 customer connections in the requested area that are receiving service from Nitsch and Son and have an ongoing need for service.

33. The requested area includes uncertificated area with existing facilities owned by Nitsch and Son and existing customers served by Nitsch and Son.
34. The requested area includes intermediate parcels that are uncertificated.
35. There is no evidence of specific requests for additional service within the requested area.

Effect of Approving the Transaction and Granting the Amendment

36. Undine will be obligated to provide continuous and adequate sewer service to current and future customers in the requested area.
37. All retail public utilities in the proximate area were provided notice of the application and none filed a protest, adverse comment, or motion to intervene.
38. There will be no effect on any retail public utility providing service in the proximate area.
39. Landowners in the requested area will be able to obtain sewer service from Undine.

Initial Rates

40. Undine requested approval to charge acquired customers initial rates and service charges that are shown in the sewer tariff issued to Undine at the time the application was filed.
41. The application was considered filed on November 28, 2022, when it was found to be administratively complete.
42. On the date this application was filed, Undine's tariff in force for its sewer systems was approved in Docket No. 50018.¹
43. Undine's sewer tariff rates, as shown in the tariff filed in Docket No. 50018, are just and reasonable initial rates for Undine to charge to customers served by Nitsch and Son's sewer system, the Durkee Manor Plant, permit number WQ0010419001.

Ability to Serve: Managerial and Technical

44. Undine owns and operates numerous TCEQ-permitted sewer systems in Texas.
45. Undine employs or contracts with TCEQ-licensed operators who will operate the sewer system being transferred.

¹ *Application of Pure Utilities, LLC and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Sewer Facilities and Certificate Rights and to Decertify a Portion of Pure Utilities, LLC's Certificated Area, and to Amend Uncertificated Sewer Service Area in Polk County*, Docket No. 50018, Notice of Approval (Mar. 12, 2021).

46. 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

47. Nitsch and Son is currently serving customers and has sufficient capacity.
48. 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.
49. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

50. The construction of a physically separate sewer system is not necessary for Undine to serve the requested area.
51. 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 Capability and Stability

52. Undine's affiliate, Undine Group, LLC, is capable, available, and willing to cover temporary cash shortages, and has a debt-to-equity ratio that is less than one. Therefore, Undine satisfies the leverage test.
53. Undine Group, LLC provided a written guarantee of coverage of temporary cash shortages and demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction. Therefore, Undine satisfies the operations test.
54. 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

55. 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

56. There will be no effect on environmental integrity or the land because no additional construction is necessary for Undine to provide continuous and adequate service to the requested area.

Improvement of Service or Lowering of Cost

57. Sewer service in the requested area is expected to improve because Undine intends to make improvements to customer service, operations, and maintenance.

58. Undine requested authorization to charge the customers served by the sewer system being acquired the rates that are in force for Undine's other sewer systems.

59. 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 sewer utility tariff's rates.

Map, Certificate, and Tariff

60. On February 29, 2024, Commission Staff emailed the applicants the final proposed map, certificate, and tariff related to this docket.

61. On March 7, 2024, Undine and Nitsch and Son filed their consent forms concurring with the final proposed map, certificate, and tariff.

62. On April 4, 2024, Undine filed the final proposed map, certificate, and tariff as attachments to the joint motion to admit supplemental evidence and joint proposed notice of approval.

Informal Disposition

63. More than 15 days have passed since the completion of notice provided in this docket.

64. No person filed a protest or motion to intervene.

65. Undine, Nitsch and Son, and Commission Staff are the only parties to this proceeding.

66. Commission Staff recommended approval of the application.

67. No party request a hearing, and no hearing is needed.

68. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.
2. Undine and Nitsch and Son are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Nitsch and Son and Undine provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2) and 16 TAC §§ 24.235 and 24.239.²
4. The application meets the requirements of TWC § 13.244 and 16 TAC §§ 24.227 and 24.233.
5. The Commission processed this application as required by the TWC, the Administrative Procedure Act,³ and Commission rules.
6. Undine and Nitsch and Son completed the sale and transfer within the time required by 16 TAC § 24.239(m).
7. Undine and Nitsch and Son complied with the requirements of 16 TAC § 24.239(k) and (l) with respect to customer deposits.
8. 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 areas, as required by TWC § 13.251.
9. 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).
10. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate sewer system is not required.

² 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 Notice of Approval are made to the version in effect at the time the application was filed.

³ Tex. Gov't Code §§ 2001.001–.903.

11. It is not necessary for Undine to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
12. The extension of Undine's sewer utility rates and tariff to customers served by Nitsch and Son's sewer system, the Durkee Manor Plant, permit number WQ0010419001, complies with TWC §§ 13.182 and 13.3011.
13. The applicants demonstrated that the sale and transfer of Nitsch and Son's facilities and certificated service area 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).
14. Under TWC § 13.257(r) and (s), Undine must record a certified copy of the certificate and the map approved by this Notice of Approval, along with a boundary description of the service areas, in the real property records of Harris County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording.
15. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

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 facilities and service area included in Nitsch and Son's CCN number 20446 to Undine, as shown on the attached map.
2. The Commission cancels Nitsch and Son's CCN number 20446.
3. The Commission amends Undine's CCN number 20816 to include the facilities and service area previously included in Nitsch and Son's CCN number 20446.
4. The Commission amends Undine's CCN number 20816 to add 83 acres of uncertificated service area.
5. The Commission approves the map attached to this Notice of Approval.
6. The Commission approves the tariff attached to this Notice of Approval, effective for usage on and after the date of this Notice of Approval.

7. The Commission issues the certificate attached to this Notice of Approval.
8. Undine must provide service to every customer or qualified applicant for service within the approved area under CCN number 20816 that requests sewer service and meets the terms of Undine's sewer service policies, and such service must be continuous and adequate.
9. Undine must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Harris County affected by the application and file in this docket proof of the recording no later than 45 days after receipt of the Notice of Approval.
10. Within ten dates of the date of the Notice of Approval, Commission Staff must provide the Commission with a clean copy of Undine's sewer tariff approved by this Notice of Approval to be stamped *Approved* and retained by Central Records.
11. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas on the 24th day of May 2024.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**