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DOCKET NO. 55378

APPLICATION OF GUADALUPE-	§	PUBLIC UTILITY COMMISSION
BLANCO RIVER AUTHORITY AND	§	
UNDINE TEXAS, LLC FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN CALHOUN COUNTY	§	

**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE AND
CCN AMENDMENT IN RESPONSE TO ORDER NO. 6**

On August 16, 2023, Guadalupe-Blanco River Authority (GBRA) and Undine Texas, LLC (Undine Texas) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Calhoun County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

On February 29, 2024, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale and certificate of convenience and necessity (CCN) amendment by March 6, 2024. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON THE TRANSACTION

Staff has reviewed the application and supplemental information and, as supported by the attached memoranda of James Harville, Infrastructure Division, and Ethan Blanchard, 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 under 16 Texas Administrative Code Chapter 24. Additionally, based upon its review, Staff recommends that Applicants have demonstrated that they possess the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction will serve the public interest and should be allowed to proceed without a public hearing.

If the transaction is permitted to proceed, Staff further requests that Mansfield be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits has been addressed as soon as possible, as required by 16 TAC § 24.239(*I*).

If the Commission enters an order permitting the transaction to proceed, such approval expires 180 days from the date of the Commission's written approval of the sale. If the sale is not effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that the sale be approved.

Date: March 6, 2024

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Marisa Lopez Wagley
Division Director

Jena Abel
Deputy Division Director

/s/ Bradley Reynolds
Bradley Reynolds
State Bar No. 24125839
1701 N. Congress Ave.
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7307
(512) 936-7268 (Fax)
Brad.Reynolds@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on March 6, 2024 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Bradley Reynolds
Bradley Reynolds

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: March 6, 2024

RE: Docket No. 55378 – *Application of Guadalupe-Blanco River Authority and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Calhoun County*

1. Application

On August 16, 2023, Undine Texas Environmental, LLC (Undine T.E.) and the Guadalupe-Blanco River Authority (GBRA) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Calhoun 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 T.E., Certificate of Convenience and Necessity (CCN) No. 20816, seeks approval to acquire only facilities and customers from GBRA and to amend uncertificated area to Undine T.E.'s CCN No. 20816.

Based on the mapping review by Dave Babicki, Infrastructure Division:

- The requested area includes 68 customer connections and approximately 60 acres, comprised of uncertificated area to amend (add) to Undine T.E. (CCN No. 20816).
- The application proposes the addition of approximately 60 acres to CCN No. 20816.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and that there are no landowners owning 25 acres partially or wholly located in the requested area.

Undine T.E. provided notice consistent with 16 TAC § 24.239(e). The deadline to intervene was January 19, 2024; 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)).

GBRA has several Texas Commission on Environmental Quality (TCEQ) wastewater treatment plants (WWTP) registered with the TCEQ as Crestview Subdivision, Permit No. WQ0013954001. The last TCEQ compliance investigation of the Crestview Subdivision system was on November 30, 2023. GBRA has two violations listed in the TCEQ database for this system which are being addressed. The Commission's complaint records, which date back 5 years, show 4 complaints against GBRA. All the complaints have been reviewed and closed by the Commission's Consumer 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)).

There are currently 68 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 T.E. 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 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 T.E. will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Undine T.E. will have licensed operators to run the system operations as depicted in Attachment M of the application. Class A to D operators will be the responsible operators for the system.

Undine T.E. has the ability to provide adequate service in the requested area. Undine T.E. has several TCEQ approved WWTPs. Undine T.E. has violations listed in the TCEQ database which are being addressed. In addition, the Commission's complaint records, which date back 5 years, show 2 complaints against Undine T.E. All the complaints have been reviewed and closed by the Commission's Consumer Protection Division.

- 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 T.E. 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)).***

GBRA 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)).***

There are no improvements necessary to the current system to provide continuous and adequate service to the requested area, therefore a capital improvements plan is not necessary. Undine provided additional information in Attachment(s) A and P of the application.

- 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)).*

The customers' rates will not change from the current rates for the Crestview Subdivision. Reliability and quality of water service is expected to improve under Undine T.E.'s management.

4. Recommendation

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

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 no deposits held by GBRA for the customers being served by GBRA in the Crestview Subdivision. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: February 28, 2024

RE: Docket No. 55378 *Application of Guadalupe-Blanco River Authority and Undine Texas Environmental, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Calhoun County*

On August 16, 2023, Undine Texas Environmental, LLC (Undine), CCN No. 20816, and Guadalupe-Blanco River Authority filed an application for the sale and transfer of facilities and customers in Calhoun County under the provisions of Texas Water Code (TWC) § 13.301. Undine must demonstrate financial capability under 16 TAC § 24.11.

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, 2022. These financial statements contain an unqualified auditor's opinion from Plante & Moran, PLLC stating that the financial statements present fairly, in all material respects, the financial position of Undine Group, LLC as of December 31, 2022.²

Based upon my review of the financial statements of Undine Group, LLC, I calculate a debt-to-equity ratio that is less than one.³ Therefore, I recommend a finding that Undine Group, LLC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A) and that—through their

¹ Application, *Confidential - Attachment I*, item no. 7, at bates 42-43 (Aug. 16, 2023).

² *Id.*, at bates 13-14.

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

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 net operating cash losses during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

Undine projects no operating cash shortages in the first five years of operations.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 any improvements necessary to provide continuous and adequate service per 16 TAC § 24.11(e)(5).

Undine has filed documentation demonstrating adequate funding of the purchase price and planned system improvements.⁵ Therefore, I recommend a finding that Undine satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

Fair Market Valuation

Undine has filed notice with the Commission of its intent to use a fair market value process to determine the ratemaking rate base of the system in this application, therefore TWC § 13.305(g) shall apply.

Because the average of the three appraisals yields a fair market value which is more than the sales price, the ratemaking rate base is the sales price amount, as prescribed by the provisions of TWC § 13.305(g).⁶

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 capability needed to provide continuous and adequate service to the area subject to this application.

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.

⁶ The calculations for which can be found in confidential Attachment EB-1.