

Control Number: 50059



Item Number: 23

Addendum StartPage: 0

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APPLICATION OF DOUBLE §  
DIAMOND UTILITIES COMPANY, §  
INC., DOUBLE DIAMOND §  
PROPERTIES CONSTRUCTION §  
COMPANY, AND MIDWAY WATER §  
UTILITIES, INC. FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN HILL, PALO PINTO, §  
JOHNSON, AND GRAYSON §  
COUNTIES §

PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**COMMISSION STAFF'S FINAL RECOMMENDATION ON APPROVAL  
OF THE SALE**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation. Staff recommends that the sale be approved. In support thereof, Staff would show the following:

**I. BACKGROUND**

On September 27, 2019, Midway Water Utilities, Inc. (Midway), Double Diamond Utilities Co., and Double Diamond Properties Construction Co. (Double Diamond) filed an application for a transfer of assets. Double Diamond seeks to sell the assets of water Certificate of Convenience and Necessity (CCN) Nos. 12087 and 13235 and sewer CCN No. 20705 and transfer the respective water and sewer CCNs to Midway. The application is filed pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Additionally, Midway proposes to consolidate water CCN Nos. 12087 and 13235 into CCN No. 12087.

On January 24, 2020, Order No. 6 was issued, requiring Staff to request a hearing or file a recommendation on approval of the sale by March 10, 2020. This pleading, therefore, is timely filed.

**II. RECOMMENDATION**

After review, and as supported by the attached memorandum of Nabaraj Pokharel from the Infrastructure Division, Staff recommends that the sale be approved to proceed and that the proposed transaction satisfies the criteria contemplated by TWC §§ 13.246, 13.201 and 16 TAC §

24.239. Staff further recommends that Midway be permitted to consolidate its water CCN Nos. 12087 and 13235 into CCN No. 12087.

**III. CONCLUSION**

Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

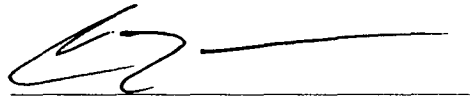
Dated: March 5, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 50059**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 5<sup>th</sup> of March 2020 in accordance with 16 TAC § 22.74.



Creighton R. McMurray

## PUC Interoffice Memorandum

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**To:** Creighton McMurray, Attorney  
Legal Division

**From:** Nabaraj Pokharel, Engineering Specialist  
Infrastructure Division

Maxine Gilford, Financial Analyst  
Rate Regulation Division

**Date:** March 5, 2020

**Subject:** **Docket No. 50059**, *Application of Double Diamond Utilities Company, Inc., Double Diamond Properties Construction Company, and Midway Water Utilities, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hill, Palo Pinto, Johnson, and Grayson Counties*

On September 27, 2019, Midway Water Utilities, Inc. (Midway or Purchaser) and Double Diamond Utilities Company, Inc., Double Diamond Properties Construction Company (Double Diamond or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Grayson, Hill, Johnson, and Palo Pinto Counties, Texas, pursuant to Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239. Applicants also filed the additional information on November 8, 2019 and November 18, 2019.

Specifically, Midway seeks approval to acquire facilities and to transfer Double Diamond's water Certificates of Convenience and Necessity (CCN) Nos. 12087, 13235 and sewer CCN No. 20705 and cancel CCN No. 13235. The requested areas include approximately 9,755 acres and 2,444 existing customers. The requested area includes four subdivisions: White Bluff, The Cliffs, The Retreat and Rock Creek. The table below lists the public water systems (PWS) and sewer systems (WQ Permit No.) registered with the Texas Commission on Environmental Quality (TCEQ) by CCN No. and subdivision:

CCN Nos.	Subdivision	PWS No.	WQ Permit No.
12087, 20705	White Bluff	1090073	13786002
12087, 20705	The Cliffs	1820061	2789000
12087, 20705	The Retreat	1260127	14373001
13235, 20705	Rock Creek	0910147	14783001

### **Notice**

The comment period ended January 10, 2020, and no protests, opt-out or hearing requests were received.

### **Criteria Considered**

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

*TWC § 13.246(c)(1) requires the commission to consider the adequacy of service currently*

***provided to the requested area.***

The White Bluff public water system has an active TCEQ violation for failure to maintain the ground storage tank according to the American Water Works Association standards. The Cliffs public water system has active TCEQ violations for failure to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system and failure to install water transmission and distribution lines adequately.

***TWC § 13.246(c)(2) requires the commission to consider the need for service in the requested area.***

The application seeks to transfer 2,444 existing customers from the Seller's CCN service areas, which demonstrates a need for service.

***TWC § 13.246(c)(3) requires the commission to consider the effect of granting an amendment on the recipient and on any other retail public utility servicing the proximate area.***

Purchaser's CCN will be amended to include the Seller's CCN service areas. No other retail public utilities are affected by this application.

***TWC § 13.246(c)(4) requires the commission to consider the ability of the Applicant to provide adequate service.***

Purchaser has a capital improvements plant to address the active TCEQ violations for the White Bluff and The Cliffs public water systems. Purchaser proposes to construct the improvements immediately after the application is approved. The Purchaser submitted wastewater permit transfer applications for all four of the wastewater plants that will be transferred. Once the STM application is approved, the TCEQ will process the transfer applications.

***TWC § 13.246(c)(5) requires the commission to consider the feasibility of obtaining service from an adjacent retail public utility.***

The sale and transfer is as a result of an agreement between the Applicants. Therefore, this criterion was not considered.

### **Financial Tests**

***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.***

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.<sup>a</sup> The Purchaser must demonstrate that it meets one of the five tests.<sup>b</sup> Purchaser meets one out of the five leverage tests. The test is met with a debt to equity ratio of 0.50 which is less than one.

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Purchaser meets the operations test and therefore has no shortages to cover. Calculations for the leverage test ratio and operations test are included on Attachment MG-1 which is filed confidentially.

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<sup>a</sup> See 16 TAC § 24.11(e)(2).

<sup>b</sup> *Id.*

***TWC § 13.246(d) allows the Commission to require an 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.***

Staff does not recommend that Purchaser provide a bond or other financial assurance.

***TWC §§ 13.246(c)(7) and (9) require the commission to consider the environmental integrity and the effect on the land to be included in the certificate.***

The environmental integrity of the land should not be affected in the requested areas because of the construction is required to bring the public water systems into compliance with TCEQ rules. The TCEQ has rules in place to protect the environmental integrity and the effect on the land during construction of water and sewer facilities.

***TWC § 13.246(c)(8) requires the commission to consider the probable improvement in service or lowering of cost to consumers.***

The Purchaser will continue to provide the same level of water and sewer service to the existing customers in the requested areas.

Staff recommends that Purchaser meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Approving the transaction for the sale of water and sewer facilities, the transfer of Double Diamond's water Certificate of Convenience and Necessity (CCN) Nos. 12087 and 13235 and sewer CCN No. 20705, and the cancellation of CCN No. 13235 is necessary for the service, accommodation, convenience and safety of the public.

**Recommendation on approval of sale**

Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes that there are no deposits held by the Seller for the customers being served by the Seller. Staff further recommends that a public hearing is not necessary. Additionally, the approval of the sale expires six months 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 the approval of the sale. Lastly, the CCN will remain in the name of the Seller until the transfer is complete and approved in accordance with the Commission's rules and regulations