



Control Number: 50059



Item Number: 29

Addendum StartPage: 0

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 §

PUBLIC UTILITY COMMISSION  
OF TEXAS

**JOINT MOTION TO ADMIT EVIDENCE AND  
PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

The Staff of the Public Utility Commission of Texas (Staff), the White Bluff Ratepayers Group (WBRG), Double Diamond Utilities Company, Inc. and Double Diamond Properties Construction Company (collectively, Double Diamond), and Midway Water Utilities (Midway) (collectively, the Parties) file this Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. In support thereof, the Parties show the following:

**I. BACKGROUND**

On September 27, 2019, Double Diamond and Midway (collectively, Applicants) filed an application seeking the Commission’s approval of the sale of certain facilities and certificate rights from Double Diamond to Midway.

On February 10, 2020, the WBRG filed its motion to intervene in this proceeding. The proposed transaction includes the water and sewer systems located at the White Bluff development serving the members of the WBRG as well as other water and sewer systems. Order No. 7, issued on March 13, 2020, granted WBRG’s intervention.

Staff filed a recommendation on March 5, 2020 requesting the entry of an order permitting the proposed transaction to proceed. Order No. 6, issued on January 24, 2020, requested the Parties submit a motion to admit evidence and a proposed order approving the sale. This pleading is therefore timely filed.

## **II. MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following items into the record of this proceeding:

- (a) the Application of Applicants for sale, transfer, or merger of facilities and certificate rights in Hill, Palo Pinto, Johnson, and Grayson counties, including confidential attachments, filed on September 27, 2019 (AIS Item Nos. 1 and 2);
- (b) the Applicants' errata and supplement to the Application, including confidential attachments, filed November 8, 2019 (AIS Item Nos. 8 and 9);
- (c) the Applicants' second errata to the Application filed November 18, 2019 (AIS Item No. 11);
- (d) Staff's recommendation on administrative completeness filed November 20, 2019 (AIS Item No. 12);
- (e) the Applicants' proof of notice and supporting documentation (AIS Item Nos. 13, 17, and 18);
- (f) Staff's recommendation on sufficiency of notice filed January 17, 2020 (AIS Item No. 19); and
- (g) Staff's Final Recommendation on Approval of Sale filed on March 5, 2020 (AIS Item No. 23).

## **III. JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

The attached Joint Proposed Order Approving Sale/Transfer to Proceed would authorize the proposed transaction and allow the sale to Midway to proceed. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs proposed in the Order.

## **IV. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Commission adopt the attached Proposed Order.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Eleanor D'Ambrosio  
Managing Attorney

/s/ Creighton R. McMurray \_\_\_\_\_

Creighton R. McMurray  
State Bar No. 24109536  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7275  
(512) 936-7268 (Fax)  
[creighton.mcmurray@puc.texas.gov](mailto:creighton.mcmurray@puc.texas.gov)

LLOYD, GOSSELINK,  
ROCHELLE & TOWNSEND, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5830  
Facsimile: (512) 472-0532

/s/ William A. Faulk, III \_\_\_\_\_

LAMBETH TOWNSEND  
State Bar No. 20167500  
[ltownsend@lglawfirm.com](mailto:ltownsend@lglawfirm.com)

WILLIAM A. FAULK, III  
State Bar No. 24075674  
[cfaulk@lglawfirm.com](mailto:cfaulk@lglawfirm.com)

REID BARNES  
State Bar No. 24101487  
[rbarnes@lglawfirm.com](mailto:rbarnes@lglawfirm.com)

**ATTORNEYS FOR MIDWAY WATER  
UTILITIES, INC.**

MATHEWS & FREELAND, LLP  
8140 N Mopac Expy, Ste 4-200  
Austin, Texas 78759  
Telephone: (512) 404-7800  
Facsimile: (512) 703-2785

/s/ C. Joe Freeland

C. JOE FREELAND  
State Bar No. 07417500

BENJAMIN MATHEWS  
State Bar No. 24086987

**ATTORNEYS FOR WHITE BLUFF  
RATEPAYER GROUP**

**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 April 13, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III

**DOCKET NO. 50059**

|  |  |  |
|--|--|--|
| <b>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</b> | <b>§<br/>§<br/>§<br/>§<br/>§<br/>§<br/>§<br/>§<br/>§</b> | <b>PUBLIC UTILITY COMMISSION<br/><br/><br/><br/><br/><br/><br/><br/><br/><br/>OF TEXAS</b> |
|--|--|--|

**JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the September 27, 2019 application of Double Diamond Utilities Company, Inc. and Double Diamond Properties Construction Company (collectively, Double Diamond or Seller) and Midway Water Utilities, Inc. (Midway or Purchaser) (collectively, Applicants) for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Hill, Palo Pinto, Johnson, and Grayson counties. Specifically, Midway seeks to acquire water and wastewater systems owned by Double Diamond and held under water CCN numbers 12087 and 13235 and sewer CCN number 20705 and to consolidate CCN numbers 12087 and 13235.

On March 5, 2020, Commission Staff recommended that the transaction be approved to proceed. This Order issues an approval of the sale and authorizes the transaction proposed in this application to proceed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Both Double Diamond Utilities Company, Inc. and Double Diamond Properties Construction Company are Texas corporations registered with the secretary of state under Filing Nos. 142717100 and 142738600, respectively. Both corporations are wholly-owned subsidiaries of Double Diamond Delaware, Inc.

2. Seller is an investor-owned company that provides water and sewer utility service in Texas under water CCN numbers 12087 and 13235 and sewer CCN number 20705 in Hill, Palo Pinto, Johnson, and Grayson counties.
3. Seller owns and operates public water systems (PWS) in Hill, Palo Pinto, Johnson, and Grayson counties registered with the Texas Commission on Environmental Quality (TCEQ) under PWS Identification numbers 090073 (White Bluff), 1820061 (The Cliffs), 1260127 (The Retreat), and 0910147 (Rock Creek).
4. Purchaser is a direct, wholly-owned subsidiary of Monarch Utilities, Inc, which is an indirect, wholly-owned subsidiary of SouthWest Water Company, registered with the Texas secretary of state under File No. 0111387200.
5. Purchaser does not currently provide water service in Texas under a CCN.

**Application**

6. On September 27, 2019, Applicants filed an application for the approval of the sale of PWS numbers 1090073, 1820061, 1260127, and 0910147, and transfer of the corresponding portions of service area held under water CCN numbers 12087 and 13235 and sewer CCN number 20705 from Seller to Purchaser and consolidation of CCN numbers 12087 and 13235 (Application).
7. Seller currently owns the following water and sewer utilities in Texas: White Bluff (water CCN number 12087, sewer CCN number 20705), The Cliffs (water CCN number 12087, sewer CCN number 20705), Rock Creek (water CCN number 13235, sewer CCN number 20705), and The Retreat (water CCN number 12087, sewer CCN number 20705).
8. The requested service areas subject to this transaction consist of:
  - a. Approximately 3,276 acres located in the White Bluff subdivision approximately 5.8 miles northwest of downtown Whitney, Texas and generally bounded on the north by County Road 1145, on the east by Farm to Market Road 933, on the south by Lake Whitney and Farm to Market Road 2604, and on the west by Lake Whitney;
  - b. Approximately 1,241 acres located in the Cliffs subdivision approximately 11 miles southwest of downtown Graford, Texas and generally bounded on the north by

Possum Kingdom Lake, on the east by State Highway 16, on the south by the intersection of State Highway 16 and Gaines Bend Drive, and on the west by Possum Kingdom Lake;

- c. Approximately 2,604 acres located in the Retreat subdivision approximately 6.5 miles southwest of downtown Rio Vista, Texas and generally bounded on the north by Farm to Market Road 1434, on the east by Ham Creek, on the south by County Road 1108, and on the west by Farm to Market Road 1434; and
  - d. Approximately 1,415 acres located in the Rock Creek subdivision approximately 2.8 miles west of Gordonville, Texas and generally bounded on the north by Lake Texoma and Paw Creek Road, on the east by the intersection of Liberty Road and Pine Grove Road, and on the south and west by Farm to Market Road 901.
9. The total area affected by the transfer comprises approximately 8,536 acres and 2,260 current customers.
10. In Order No. 4 issued on December 2, 2019, the administrative law judge (ALJ) deemed the Application administratively complete.

**Notice**

11. Notice was mailed to affected entities on December 2, 2019, and January 10, 2020 and published on December 7, 2019, December 9, 2019, December 11, 2019, December 13, 2019, December 16, 2019, December 18, 2019, and December 20, 2019 in *The Reporter Newspaper*, *The Graham Ledger*, *The Cleburne Times Review*, and the *Whitesboro News-Record*, newspapers having general circulation in Hill, Palo Pinto, Johnson, and Grayson counties, respectively.
12. On December 2, 2019, January 8, 2020, and January 10, 2020, Applicants filed affidavits attesting that notice was provided to all current customers of Seller, neighboring utilities, and affected parties on the above-referenced dates.
13. In Order No. 6 issued on January 24, 2020, the ALJ deemed the notice sufficient.

**Evidentiary Record**

14. On April 13, 2020, the Parties filed a Joint Motion to Admit Evidence and Proposed Order.



15. In Order No. \_\_\_\_ issued on \_\_\_\_\_, 2020, the Honorable Administrative Law Judge admitted the following into evidence: (a) the Application of Applicants for sale, transfer, or merger of facilities and certificate rights in Hill, Palo Pinto, Johnson, and Grayson counties, including confidential attachments, filed on September 27, 2019; (b) the Applicants' errata and supplement to the Application, including confidential attachments, filed November 8, 2019; (c) the Applicants' second errata to the Application filed November 18, 2019; (d) Staff's recommendation on administrative completeness filed November 20, 2019; (e) the Applicants' proof of notice and supporting documentation; (f) Staff's recommendation on sufficiency of notice filed January 17, 2020; and (g) Staff's Final Recommendation on Approval of Sale filed on March 5, 2020.

**System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)**

16. Seller's PWS number 1090073 is not currently in compliance with the drinking water rules of the TCEQ. Upon completion of the acquisition, Purchaser intends to address all outstanding non-compliance issues.
17. Seller's PWS numbers 1820061, 1260127, and 0910147 are reported to be in compliance with the drinking water rules of the TCEQ.
18. Purchaser does not have any violations listed in the TCEQ database.
19. Purchaser has not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.
20. Seller and Purchaser have demonstrated a compliance status that is adequate for approval of the proposed transaction.

**Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)**

21. Seller has been providing adequate service to the area being transferred.

**Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(1)(5)(C)**

22. The Application is to transfer only existing facilities, customers, and service area.
23. Purchaser has received no new requests for service and is not requesting to add additional uncertificated area.

24. Seller's approximately 2,260 existing customers in the requested area have a continuing need for service.

**Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)**

25. Seller and Purchaser are the only utilities affected by this sale and transfer.
26. The landowners in the requested area will likely experience an improved level in the quality of service.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)**

27. Purchaser has a sufficient number of licensed water operators and the managerial and technical capability to provide adequate and continuous service to the requested water service area.
28. Purchaser and Seller have sufficient capacity to serve the customers, and no additional construction is necessary to provide continuous and adequate service.
29. Sufficient capacity exists with Seller's existing water facilities, which will be transferred to Purchaser; therefore, no additional construction is necessary to serve the requested area.

**Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)**

30. Purchaser meets the leverage test with a debt to equity ratio of less than one.
31. Purchaser has demonstrated that it has sufficient cash available to cover any projected operation and maintenance shortages in the first five years of operations, thus meeting the operations test.
32. Purchaser has demonstrated the financial capability and stability to provide continuous and adequate water service.

**Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)**

33. Purchaser's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.

34. There is no need to require Purchaser to provide a bond or other financial assurance to ensure continuous and adequate service.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(d) (5), 24.239(j) (5) (F)**

35. The requested area has existing facilities and is currently being served by Seller.
36. Utilities within a two-mile radius were noticed, and no protests or requests to opt out were received regarding the proposed transaction.
37. It is not feasible for an adjacent utility to provide service to the requested area.

**Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)**

38. Because no new public water system is proposed to be constructed, concerns of regionalization or consolidation are not applicable.

**Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)**

39. The environmental integrity of the land will not be affected because no additional construction is needed to provide service to the requested area.

**Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)**

40. The transfer does not require additional construction and, therefore, should have no adverse effect on the land.

**Improvement of Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)**

41. Purchaser intends to improve both the water service and customer service with the transfer of the requested water service area.
42. All customers will be charged the same rates as they were before the transaction.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice of the Application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.

2. After consideration of the factors in TWC § 13.246(c), Purchaser has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
3. Seller and Purchaser have demonstrated that transferring TCEQ PWS numbers 1090073, 1820061, 1260127, and 0910147 and the corresponding water service area held under CCN numbers 12087 and 13235 and sewer service area held under CCN number 20705 from Seller to Purchaser and consolidation of CCN numbers 12087 and 13235 will serve the public interest and are necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between the Applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the Applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. The Applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the Applicants will have to reapply for approval.
5. The Applicants are advised that PWS numbers 1090073, 1820061, 1260127, and 0910147 and the corresponding service area will remain under CCN numbers 12087, 13235, and 20705 and held by Seller until the sale and transfer transaction is complete in accordance with Commission rules.
6. Purchaser will be bound by all Commission decisions issued prior to, and subsequent to, the closing of the transaction affecting Seller, including those relating to rates in Docket No. 46245 and refunds and surcharges in Docket No. 48916.

7. In an effort to finalize this case as soon as possible, the Applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
8. Within 15 days following the filing of the Applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

**Signed at Austin, Texas the \_\_\_\_\_ day of April 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**ADMINISTRATIVE LAW JUDGE**