

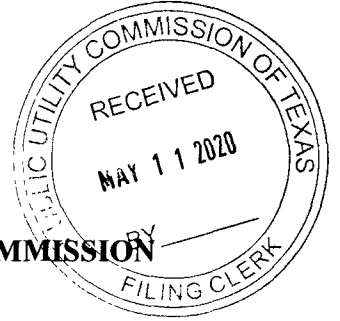
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DOCKET NO. 50059



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

**ORDER NO. 9
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the September 27, 2019, application of Double Diamond Utilities Company, Inc., Double Diamond Properties Construction Company, and Midway Water Utilities, Inc. (collectively, applicants) for approval of the sale, transfer, or merger of facilities and certificate rights in Hill, Palo Pinto, Johnson, and Grayson counties. Midway seeks to acquire water systems owned by Double Diamond Utilities, held under certificate of convenience and necessity (CCN) number 12087, a wastewater system owned by Double Diamond Utilities, held under CCN number 20705, and a water system owned by Double Diamond Properties, held under CCN number 13235. The applicants also seek to consolidate CCN numbers 12087 and 13235 and to cancel CCN number 13235. This Order only addresses the proposed transaction. On April 13, 2020, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction between applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Double Diamond Utilities Company is a domestic for-profit corporation registered with the Texas secretary of state under file number 142717100.
2. Double Diamond Utilities owns three public water systems (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification numbers

1090073 (serving the White Bluff subdivision), 1260127 (serving the Retreat subdivision), and 1820061 (serving The Cliffs subdivision).

3. Double Diamond Utilities operates, maintains, and controls facilities that provide water and sewer service in Hill, Palo Pinto, Johnson, and Grayson counties under water CCN number 12087 and sewer CCN number 20705.
4. Double Diamond Properties is a domestic for-profit corporation registered with the Texas secretary of state under file number 142738600.
5. Double Diamond Properties owns one PWS registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 0910147 (serving the Rock Creek subdivision).
6. Double Diamond Properties operates, maintains, and controls facilities that provide water service in Hill, Palo Pinto, Johnson, and Grayson counties under water CCN number 13235.
7. Midway is a domestic for-profit corporation registered with the Texas secretary of state under filing number 111387200.
8. Midway does not currently provide water service.

Application

9. On September 27, 2019, the applicants filed an application for approval to sell Double Diamond Utilities and Double Diamond Properties' water facilities and transfer of the corresponding portions of service areas held under water CCN numbers 12087 and 13235 and sewer CCN number 20705 to Midway as well as the consolidation of water CCN numbers 12087 and 13235.
10. On November 8 and 18, 2019, the applicants supplemented the application.
11. The portion of the requested area that includes the White Bluff subdivision (PWS identification number 1090073) is in Hill County, comprises approximately 3,276 acres, is located approximately 5.8 miles northwest of downtown Whitney, Texas, and is 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.

12. The portion of the requested area that includes the Cliffs subdivision (PWS identification number 1820061) is in Palo Pinto County, comprises approximately 1,241 acres, is located approximately eleven miles southwest of downtown Graford, Texas, and is 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.
13. The portion of the requested area that includes the Retreat subdivision (PWS identification number 1260127) is in Johnson County, comprises approximately 2,604 acres, is located approximately 6.5 miles southwest of downtown Rio Vista, Texas, and is 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.
14. The portion of the requested area that includes the Rock Creek Resort subdivision (PWS identification number 0910147) is in Grayson County, comprises approximately 1,415 acres, is located approximately 2.8 miles west of Gordonville, Texas, and is 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.
15. The total requested area comprises approximately 8,536 acres and 2,260 current customers.
16. In Order No. 4 filed on December 2, 2019, the ALJ found the application administratively complete.

Notice

17. On December 2, 2019, the applicants filed an affidavit attesting that notice was provided to all current customers of Double Diamond Utilities, Double Diamond Properties, neighboring utilities, and affected parties on the above-referenced dates.
18. On January 10, 2020, the applicants filed an affidavit attesting that notice was mailed that day to the Aquilla Hackberry Creek Conservation District, a potentially affected party whose address was previously unknown.
19. On January 10, 2020, the applicants filed publishers' affidavits reflecting that notice of the application was published on December 9 and 16, 2019 in *The Reporter Newspaper*, a

newspaper of general circulation in Hill county, on December 7 and 11, 2019 in *The Graham Ledger*, a newspaper of general circulation in Palo Pinto county, on December 11 and 18, 2019 in *The Cleburne Times Review*, a newspaper of general circulation in Johnson county, and on December 13 and 20, 2020 in the *Whitesboro News Record*, a newspaper of general circulation in Grayson county.

20. In Order No. 6 filed on January 24, 2020, the ALJ found the notice sufficient.

Intervention

21. On February 10, 2020, the White Bluff Ratepayers Group filed a motion to intervene.
22. In Order No. 7 filed on March 13, 2020, the ALJ granted the motion to intervene.
23. In its motion to intervene, the White Bluff Ratepayers Group does not request a hearing, but requests that Midway be accountable for unpaid refunds and surcharges ordered by the Commission against Double Diamond Utilities and Double Diamond Properties.
24. Midway agrees to be bound by all Commission decisions issued prior to, and subsequent to, the closing of the transaction affecting Double Diamond Utilities and Double Diamond Properties, including those relating to rates in Docket No. 46245¹ and refunds and surcharges in Docket No. 48916.²
25. White Bluff Ratepayers Group consented to the proposed order approving the sale to proceed filed on April 13, 2020.

Evidentiary Record

26. On April 13, 2020, the parties filed an agreed motion to admit evidence.
27. In Order No. 8 filed on May 11, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on September 27, 2019; (b) the applicants' errata and supplement to the application, including confidential attachments, filed on November 8, 2019; (c) the applicants' second errata to the application filed on November 18, 2019; (d) Commission Staff's recommendation on administrative completeness filed on

¹ *Application of Double Diamond Utility Company, Inc. for a Water and Sewer Rate/Tariff Change*, Docket No. 46245, Order on Rehearing (Dec. 12, 2019).

² *Compliance Filing of Double Diamond Utility Company, Inc. Related to Refunds and Surcharges in Docket No. 46245*, Docket No. 48916 (pending).

November 20, 2019; (e) the applicants' proof of notice and supporting documentation filed on December 2, 2019, and January 8 and 10, 2020; (f) Commission Staff's recommendation on sufficiency of notice filed on January 17, 2020; and (g) Commission Staff's final recommendation on approval of the sale filed on March 5, 2020.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(1)(3)(A), (j)(5)(A)

28. Double Diamond Utilities' PWS identification number 1090073 is not currently in compliance with the drinking water rules of the TCEQ. Upon completion of the acquisition, Midway intends to address all outstanding non-compliance issues.
29. Double Diamond Utilities' PWS identification numbers 1820061, 1260127, and Double Diamond Properties' PWS number 0910147 are reported to be in compliance with the drinking water rules of the TCEQ.
30. Midway does not have any violations listed in the TCEQ database.
31. Midway 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.
32. Double Diamond Utilities, Double Diamond Properties, and Midway 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(e)(1), 24.239(j)(5)(B)

33. Double Diamond Utilities and Double Diamond Properties have been providing adequate service to the areas being transferred.

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

34. There are 2,260 customers in the requested area; therefore, there is a continuing need for service.
35. Midway has received no new requests for service and is not requesting to add additional uncertificated area.
36. This application is to transfer only existing facilities, customers, and service area.

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

37. Double Diamond Utilities, Double Diamond Properties, and Midway are the only utilities affected by this sale and transfer.
38. The landowners in the requested area will experience an improved level in the quality of service.
39. Utilities within a two-mile radius of the requested area were notified; no protests or adverse comments were received from any other utility.

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

40. Midway 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.
41. Sufficient capacity exists with Double Diamond Utilities and Double Diamond Properties existing water facilities, which will be transferred to Midway; therefore, no additional construction is necessary to serve the requested area.
42. Midway has access to an adequate supply of water and is capable of providing drinking water that meets the requirements of Chapter 341 of the Texas Health and Safety Code, Chapter 13 of the TWC, and the TCEQ's rules.
43. Midway is capable of meeting the TCEQ's criteria for sewer treatment plants and the requirements of Chapter 13 of the TWC.
44. Midway has the managerial and technical ability to provide continuous and adequate service to the requested area.

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

45. The requested areas have existing facilities and are currently being served by Double Diamond Utilities and Double Diamond Properties.
46. It is not feasible for an adjacent utility to provide service to 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), (e)(6), 24.239(j)(2), (j)(5)(G)

- 47. Midway meets the leverage test with a debt to equity ratio of less than one.
- 48. Midway 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.
- 49. Midway 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(f), 24.239(h)

- 50. There is no need to require Midway to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(e)(7), 24.239(1)(5)(H)

- 51. The environmental integrity of the land will not be affected as 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)

- 52. The transfer does not require additional construction and, therefore, will have no adverse effect on the land.

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

- 53. Midway intends to improve both the water service and customer service with the transfer of the requested water service area.
- 54. All customers will be charged the same rates as they were charged before the transaction.

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

- 55. No new physically separate water system will be constructed as a result of the transaction; therefore, regionalization or consolidation is not applicable.

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), Midway has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area. TWC § 13.301(b).
3. Double Diamond Utilities, Double Diamond Properties, and Midway have demonstrated that transferring TCEQ PWS identification 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 Double Diamond Utilities and Double Diamond Properties to Midway will serve the public interest and is 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. Under 16 TAC § 24.109(o), if the transaction is not consummated within 180 days following the date of this Order, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
3. The applicants are advised that the water facilities, requested areas, and CCNs will continue to be held by Double Diamond Utilities and Double Diamond Properties until the sale and transfer is complete in accordance with Commission rules.
4. In an effort to finalize this case as soon as possible, the applicants must file, within 30 days of this Order and every 30 days thereafter, updates regarding the status of the transaction until the transaction is complete.
5. Not later than 30 days after the effective date of the transaction, the applicants must file proof that the transaction has been consummated and customer deposits have been addressed in satisfaction of 16 TAC § 24.239(m).

6. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits 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 11th day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'S. Leary', written over a horizontal line.

**STEVEN LEARY
ADMINISTRATIVE LAW JUDGE**