

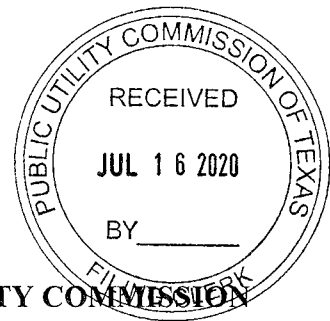


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DOCKET NO. 50271

**APPLICATION OF THE CITY OF
MIDLAND TO AMEND ITS
CERTIFICATES OF CONVENIENCE
AND NECESSITY IN MARTIN AND
MIDLAND COUNTIES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

AGREED MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL

COMES NOW the Staff of the Public Utility Commission of Texas (Staff) and files this Motion to Admit Evidence and Proposed Notice of Approval with agreement from the City of Midland (Midland) (collectively, the Parties). In support thereof, the Parties show the following:

I. BACKGROUND

On November 21, 2019, Midland filed an application to amend water certificate of convenience and necessity (CCN) No. 10221 and sewer CCN No. 20083 in Martin and Midland Counties. Midland is requesting an extension of its single certification for water and sewer service to include the entire area within the Midland city limits. The requested service area consists of approximately 24076 acres for water and 24279 acres for sewer and 44622 existing water customers and 40282 existing sewer customers. Order No. 5, issued May 21, 2020, directed the Parties to jointly file proposed findings of fact and conclusions of law by July 16, 2020. Therefore, this pleading is timely filed.

II. MOTION TO ADMIT EVIDENCE

The Parties request the entry of the following items into the record of this proceeding: (a) Midland’s application filed on November 21, 2019 (AIS Item No. 1); (b) Midland’s proof of notice filed on April 23, 2020 (AIS Item No. 9); (c) Midland’s consent form filed on June 17, 2020 (AIS Item No. 13); and (d) Commission Staff’s Final Recommendation and attachments, filed on July 1, 2020 (AIS Item No. 14).

III. JOINT PROPOSED NOTICE OF APPROVAL

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The Parties have agreed on the attached Proposed Notice of Approval, which would grant Midland's application to amend water CCN No. 10221 and sewer CCN No. 20083. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Notice of Approval.

IV. CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Notice of Approval be adopted.

Dated: July 16, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

/s/ Rashmin J. Asher
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DOCKET NO. 50271
CERTIFICATE OF SERVICE

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on July 16, 2020 in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher

DOCKET NO. 50271

APPLICATION OF THE CITY OF MIDLAND TO AMEND ITS CERTIFICATES OF CONVENIENCE AND NECESSITY IN MARTIN AND MIDLAND COUNTIES §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

PROPOSED NOTICE OF APPROVAL

This Notice of Approval addresses the application of City of Midland (Midland) to amend its water certificate of convenience and necessity (CCN) number 10221 and sewer CCN number 20083. The application is approved, the requested area is added to water CCN number 10221 and sewer CCN number 20083.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Midland is a municipally-owned utility.
2. Midland operates, maintains, and controls facilities that provide water service under CCN number 10221 in Martin and Midland Counties.
3. Midland operates, maintains, and controls facilities that provide sewer service under CCN number 20083 in Martin and Midland Counties

Application

4. On November 21, 2019, Midland filed an application to amend its water CCN number 10221 and sewer CCN number 20083 in Martin and Midland Counties.
5. The total requested area is 24076 acres for water and 24279 acres for sewer , is located approximately 0 miles from downtown Midland, Texas, and is generally bounded on the north by a rural area and oil field; on the east and south by rural area; and on the west by Odessa.
6. In Order No. 3 issued on January 22, 2020, the administrative law judge (ALJ) found the application administratively complete.

Notice

7. On April 23, 2020, Midland filed the affidavit of Carl Craigo, Midland's authorized representative, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on March 20, 2020.
8. On April 23, 2020 Midland filed the affidavit of Twila Denison attesting to publication of notice in the *Midland Reporter-Telegram*, a newspaper of general circulation in Martin and Midland Counties, on March 20, 2020 and March 27, 2020.
9. In Order No. 5 issued on May 21, 2020, the ALJ found the notice sufficient.

Map, Tariff, and Certificate

10. On June 12, 2020, Commission Staff emailed its proposed map and certificate to Midland. On June 15, 2020, Commission Staff emailed an additional certificate to Midland.
11. On June 17, 2020, Midland filed its consent to the proposed map, certificate, and tariff.
12. On July 1, 2020, Commission Staff filed the proposed map and certificates as attachments to its final recommendation.

Evidentiary Record

13. On March 4, 2020, the parties filed an agreed motion to admit evidence and proposed notice of approval.

In Order No. 6 issued on _____, 2020, the ALJ admitted the following into evidence: (a) Midland's application filed on November 21, 2019 (AIS Item No. 1); (b) Midland's proof of notice filed on April 23, 2020 (AIS Item No. 9); (c) Midland's consent form filed on June 17, 2020 (AIS Item No. 13); and (d) Commission Staff's Final Recommendation and attachments, filed on July 1, 2020 (AIS Item No. 14).

Adequacy of Existing Service—TWC § 13.246(c)(1), 16 TAC § 24.227(d)(1)

14. Additional construction is needed for Midland to serve the requested area.

Need for Additional Service—TWC § 13.246(c)(2), 16 TAC §24.227(d)(2)

15. There are 44622 existing water customers and 40,282 existing sewer customers and a potential 8000 new water customers and 7000 new sewer customers in the requested area.

Effect of Granting the Amendment—TWC § 13.246(c)(3), 16 TAC § 24.227(d)(3)

16. There will be no effect on retail public utilities serving the proximate area, and the requested area does not overlap with the service area of any other water CN.

17. The northeast water system improvements and northeast wastewater system improvements will improve service quality in the rapidly developing northeast area of Midland.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4); 16 TAC § 24.227(a), (d)(4)

18. Midland has a Texas Commission on Environmental Quality (TCEQ) Public Water System (PWS) Identification No. TX1650001 and Wastewater Discharge Permit No. WQ0010223001. 19. Midland does not have any violations listed in the TCEQ database.

20. Midland has the managerial and technical capability to provide continuous and adequate service to the requested area.

Service from Other Utilities—TWC § 13.246(c)(5); 16 TAC § 24.227(d)(5)

21. A significant portion of the requested area is already served by Midland.

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

22. Midland will extend its existing water system to serve the requested area and will not need to construct a physically separate water system.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 16 TAC § 24.11(e), 24.227(a), (d)(6)

23. Midland has a debt to equity ratio of 0.91, which meets the leverage test of less than one.

24. Midland's financial statements show that Applicant had a positive \$34,134,730 change in net position and \$213,759,195 in cash and cash equivalents as of September 30, 2018.

25. Midland has the financial ability and financial stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance—TWC § 13.246(d), 16 TAC § 24.227(e)

26. There is no need to require Midland 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(d)(7) and Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

27. The requested CCN amendment will have minimal effect on the environmental integrity of the land.

Improvement in Service and Lowering of Cost—TWC § 13.246(c)(8); 16 TAC § 4.227(d)(8)

28. Midland will continue to provide water and sewer service to existing customers in the area.

Informal Disposition

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

30. Jeff and Elizabeth Schwarzer filed a protest.

31. Midland and Commission Staff are the only parties to this proceeding.

32. No party requested a hearing and no hearing is needed.

33. Commission Staff recommended that the application be approved.

34. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under TWC §§13.241, 13.244, and 13.246.
2. Midland is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Notice of the application complies with TWC § 13.246 and 16 TAC § 24.235.

4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
5. Midland possesses the financial, managerial, and technical capability to provide continuous and adequate service to the requested service area and its current service area in Martin and Midland Counties as required by TWC § 13.241(a) and 16 TAC § 24.227.
6. The amendment to CCN numbers 10221 and 20083 are necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(c).
7. Midland must record a certified copy of the approved map for the certificate amendment, along with a boundary description of the service area, in the real property records of Martin and Midland Counties within 30 days of receiving this Notice of Approval and submit to the Commission evidence of the recording in accordance with TWC §§ 13.257(r) and (s).
8. The requirements for informal disposition in 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 amends Midland's water CCN number 10221 and sewer CCN number 20083 as described in this Notice of Approval and shown on the attached map.
2. The Commission grants the certificate and tariff attached to this Notice of Approval.
3. Midland must serve every customer and applicant for service within the approved area under CCN number 10221 who requests water service and meets the terms of Midland's water service, and such service must be continuous and adequate.
4. Midland must serve every customer and applicant for service within the approved area under CCN number 20083 who requests sewer service and meets the terms of Midland's sewer service, and such service must be continuous and adequate.

¹ Tex. Gov't Code § 2001.

5. Midland must comply with the recording requirements in TWC §§ 13.257(r) and (s) for the areas in Martin and Midland Counties affected by this application.
6. Midland must file in this docket proof of the recording required in ordering paragraph four no later than 45 days after the date this Notice of Approval is signed.
7. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted

Signed at Austin, Texas the _____ day of _____ 2020.

ADMINISTRATIVE LAW JUDGE