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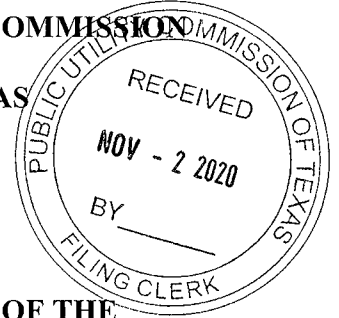
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DOCKET NO. 50895

**APPLICATION OF CHAMPS WATER §
COMPANY AND MIDWAY WATER §
UTILITIES, INC. FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN HARRIS AND §
MONTGOMERY COUNTIES §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**



**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE
TRANSACTION TO PROCEED**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Approval of the Transaction to Proceed. Staff recommends that the transaction be approved to proceed. In support thereof, Staff shows the following:

I. BACKGROUND

On June 1, 2020, Champs Water Company (Champs) and Midway Water Utilities, Inc. (Midway) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Harris and Montgomery Counties. Midway seeks approval to acquire facilities and to transfer all of Champs' water and sewer service area under Champs' water Certificate of Convenience and Necessity (CCN) Nos. 10972 and sewer CCN 20385, to Midway's water CNN No. 10972 and sewer CNN No. 20385. On August 3, 2020, August 4, 2020, August 10, 2020, and August 18, 2020 Applicants filed supplements to the application.

On October 16, 2020, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of November 2, 2020 for Staff to request a hearing or file a recommendation on approval of the sale and CCN amendment. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON THE TRANSACTION

Staff has reviewed the application and supplemental filings and, as supported by the attached memorandum of Patricia Garcia, Infrastructure Division, recommends that the proposed transaction be approved to proceed. Specifically, Staff recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including the factors identified in Texas

Water Code § 13.246(c) and 16 Texas Administrative Code (TAC) § 24.239, and that Midway has demonstrated the financial, technical, and managerial capability necessary to provide continuous and adequate service to the requested area.

Accordingly, Staff recommends that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated as required under 16 TAC § 24.239(l). Staff recommends that there are customer deposits currently held by Champs to be addressed in the closing documents as required under 16 TAC § 24.239(k).

III. CONCLUSION

Staff recommends that the proposed transaction be approved to proceed and that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated as required under 16 TAC § 24.239(l). Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

Dated: November 2, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Justin C. Adkins
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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 November 2, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Justin C. Adkins _____
Justin C. Adkins

Public Utility Commission of Texas

Memorandum

TO: Justin Adkins, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: November 2, 2020

RE: Docket No. 50895 – *Application of Champs Water Company and Midway Water Utilities, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties*

On June 1, 2020, Champs Water Company (Champs) and Midway Water Utilities, Inc. (Midway) filed an application for the approval of the sale, transfer, or merger (STM) of facilities and certificate rights in Harris and Montgomery Counties, Texas, in accordance with Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Background

Midway seeks approval to acquire facilities and to transfer water service area from Champs' water certificate of convenience and necessity (CCN) No. 10972 and sewer CCN No. 20385. The requested area includes approximately 708 acres of water service area with 1,500 water service connections and 543 acres of sewer service area and 1,273 sewer service connections.

Notice

The comment period ended October 19, 2020 and no protests or opt-out requests were received.

Factors Considered

TWC Chapter 13 and 16 TAC Chapter 24 require the Commission to consider certain factors when granting or amending a water or sewer 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.

Champs has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS), which are listed below:

PWS ID	PWS Name
1010028	Western Homes Subdivision
1010192	Parkland Estates
1010410	Aldine Forest Subdivision
1010517	Mading Lane Water System
1010670	West Montgomery Utility
1011708	Whisper Meadows Mobile Home Subdivision
1011999	North Belt Forest Subdivision Water System

Champs has several TCEQ approved Wastewater Discharge Permits, which are listed below:

Wastewater Permit No.	Wastewater Plant Name
11739-001	Aldine Forest
11005-001	West Montgomery Plant
12571-001	North Belt Forest Utility District
11158-001	Parkland Estates
10436-001	Western Homes WWTP
12730-001	Whisper Meadows

Each of these systems will be transferred to Midway. Champs has violations listed in the TCEQ databases for some of these systems. Midway has indicated in a confidential submission¹ that there is a plan in place to resolve these violations when the water and wastewater systems are transferred to Midway.

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

The purpose of the transaction is to transfer Champs' water and wastewater systems to Midway. The customers are currently receiving water and sewer service from the Champs water and sewer systems.

There are currently 1,500 water service connections and 1,273 sewer service connections, therefore, there is a need for service.

TWC § 13.246(c)(3) requires the Commission to consider 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.

Midway, as recipient of the certificate, will be required to provide continuous and adequate service to the customers in the requested area. There will be no effect on any retail public utility servicing the proximate area. There will be no effect on landowners, as the area is currently certificated.

¹ Attachment 8 (Jun. 1, 2020)

TWC §§ 13.241(b) and 13.246(c)(4) require the Commission to consider the ability of the applicant to provide adequate service.

Midway is in the process of purchasing water and wastewater systems from Double Diamond.² Additionally, Midway has stated it will be making needed improvements to Champs' water and sewer systems.

TWC § 13.241(d) requires the applicant to demonstrate to the Commission 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.

Midway will be purchasing the facilities and making improvements as necessary. Construction of a physically separate water or sewer system is not required to provide service to the requested areas; therefore, this was not considered.

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

Champs is currently serving customers and has sufficient capacity, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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.

Fred Bednarski, Rate Regulation Division, prepared the analysis and recommendation for this section.

The provisions of 16 TAC § 24.11 establish 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.² Midway must demonstrate that it meets one of the five tests.³

The following shows that Midway meets one of the five leverage tests. This analysis is based on confidential financial statements regarding periods ending December 31, 2019 and December 31, 2018. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers that the financial statements present fairly, in all material respects, the financial position of Midway as of December 31, 2019 and December 31, 2018. The audit and the related opinion indicate the transparency of Midway and indicate sound management capabilities.

Midway meets the second test under 16 TAC § 24.11(e)(2)(B), which requires that the owner or operator have a debt service coverage ratio of more than 1.25, using annual net operating income before depreciation and non-cash expenses, divided by annual combined long-term debt payments. As calculated in confidential Attachment FB-1, Midway's debt service

² *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*, Docket No. 50059 (pending).

² 16 TAC § 24.11(e)(2).

³ *Id.*

coverage ratio of 23.01 is greater than 1.25. The debt service coverage ratio indicates that the company has enough income to pay its debt service. It also indicates a company's financial stability and financial and managerial capability.

The provisions of 16 TAC § 24.11(e)(3) refer to the operations test, which requires that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Midway did not submit projected financial statements. However, Champs submitted historical financial statements for the years 2018 and 2019 in its application, which show positive water and sewer net income as indicated in confidential Attachment FB-1. Additionally, Midway maintains a significant cash and cash equivalent balance, as well as generates enough operating income before noncash expenses to pay for any shortages, should they occur, and capital improvements, as noted in confidential Attachment FB-1. Therefore, Midway meets the operations test. Sufficient cash and net income available to cover possible future shortages is an indicator of financial stability and financial and managerial capability.

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.

Midway meets the financial tests. Based on the financial and managerial review of the application and the recommendation of Fred Bednarski, I do not recommend that the Commission require additional 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 certificated area.

The environmental integrity of the land may be minimally affected when needed improvements are made to the systems.

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

Midway will continue to provide water and sewer service to the existing customers in the requested area. There will be no change in the cost to customers.

Champs and Midway meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area and the water service area of the water CCN No. 10972; and transfer sewer facilities in the requested area and the sewer service area of the sewer CCN No. 20385 to Midway; and amending Midway's water CCN No. 12087 and sewer CCN No. 20705 is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on Approval of Sale

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and allow Midway and Champs to proceed with the proposed transaction. I also note that deposits are held by Champs for some of the customers being served by Champs.