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Item Number: 26

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  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**WHITE BLUFF RATEPAYERS GROUP'S  
RESPONSE TO COMMISSION STAFF'S RECOMMENDATION**

TO THE HONORABLE COMMISSION ALJ:

COMES NOW White Bluff Ratepayers Group ("WBRG") and files this Response to Commission Staff's Recommendation. Order No. 6 in this proceeding established a deadline of March 24, 2020, for parties to file a response to Commission Staff's recommendation on the approval of the sale. This response is, therefore, timely filed.

**I. INTRODUCTION**

On September 27, 2019, Double Diamond Utilities Company, Inc. (Double Diamond) and Midway Water Utilities, Inc. (Midway) (collectively, "Applicants") filed an application seeking the sale of certain facilities and certificate rights from Double Diamond to Midway. The proposed transaction includes the water and sewer systems located at the White Bluff development serving the members of WBRG.

On December 12, 2019, the Commission entered its Order on Remand in Commission Docket No. 46245. That order set significantly lower water and sewer rates for Double Diamond's customers in the White Bluff development. Additionally, the order in Docket No. 46245 requires Double Diamond to refund all rates collected since February 21, 2018 that exceed the rates allowed under the order. The amount of refunds owed to ratepayers in White Bluff potentially exceeds \$650,000. The Commission ordered implementation of these refunds to occur in Docket No. 48916. To date, Double Diamond has not made a substantive filing in Docket No. 48916 and has not refunded any of the overcollections.

WBRG filed a motion to intervene in this docket on February 10, 2020. No objections were raised to WBRG's motion, but no order has yet been issued granting intervention. Pursuant to 16 TAC § 22.104(c), WBRG has all the rights and obligations of a party pending the ALJ's ruling on its motion to intervene. WBRG's stated position for seeking intervention was to ensure that its interests are protected, particularly with regard to refunds, and that the Commission's orders in Dockets Nos. 46245 and 48916 are not adversely affected by any order in this docket.

On March 5, 2020, Commission Staff filed a recommendation on the approval of the sale that is the subject of this docket. Commission Staff recommends that the sale of the utility assets and certificate rights be allowed to proceed. This recommendation is based on Commission Staff's conclusion that the proposed transaction will serve the public interest. The recommendation, however, does not address Double Diamond's as-yet-unfulfilled obligation to refund overcollections to the White Bluff ratepayers.

## **II. RESPONSE TO COMMISSION STAFF'S RECOMMENDATION**

The agreement pursuant which Double Diamond is selling its facilities to Midway does not adequately address the issue of which entity is responsible for refunding Double Diamond's overcollections after closing. The terms of the agreement are ambiguous in this regard, in particular with regard to a situation where the amount of the overcollection has not been determined prior to the date of closing of the transaction.

WBRG's position is that this transaction is in the public interest only if the obligation to make the refunds ordered by the Commission in Docket Nos. 46245 and 48916 transfers to Midway as part of the transaction or as a matter of law. WBRG does not believe that a hearing is needed on this issue because WBRG believes that this is the intention of the Applicants. If the Applicants do not object, this issue can be resolved by the Commission including language in its order authorizing the sale to proceed—making it clear that Midway will become responsible for all refunds on and after closing.

## **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, WBRG respectfully requests that the Commission order, as part of its authorization for the sale to proceed, that Midway become responsible for all refunds ordered in Docket Nos. 46245 and 48916 on and after the closing of the sale from Double Diamond to Midway.

**Dated: March 11, 2020**

Respectfully submitted,



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C. Joe Freeland  
State Bar No. 07417500

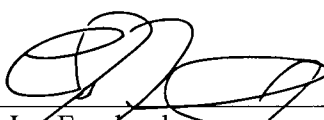
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ATTORNEYS FOR WHITE BLUFF  
RATEPAYER GROUP

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record in this proceeding on March 11, 2020, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.



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C. Joe Freeland