

Control Number: 42919



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PUC DOCKET NO. 42919
SOAH DOCKET NO. 473-15-0372.WS

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APPLICATIONS OF DOUBLE
DIAMOND UTILITIES CO. FOR A
WATER RATE/TARIFF CHANGE

§ BEFORE THE STATE OFFICE
§ PUBLIC UTILITY COMMISSION
§ OF
§ ADMINISTRATIVE HEARINGS

SUPPLEMENT TO SETTLEMENT PACKAGE

On April 7, 2017, Double Diamond Utilities Company (Applicant) and Staff of the Public Utility Commission (Staff) jointly filed a proposed settlement package with the Commission and the State Office of Administrative Hearings (SOAH). On April 13, 2017, SOAH remanded the case to the Commission.

It has come to the parties' attention that some necessary documents, in whole or in part, were inadvertently not included with the filing that appears on the Commission's interchange. Therefore Staff, with the Applicant's consent, files this Supplement to Settlement Package. Attached are the documents necessary to complete the settlement package filed on April 7th.

If the Commission's Administrative Law Judge should need further clarification, the parties will gladly assist.

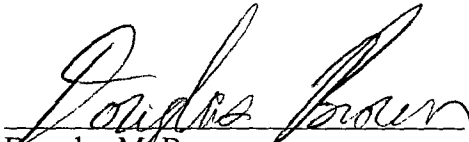
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Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director


Stephen Mack
Managing Attorney



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**PUC DOCKET NO. 42919
SOAH DOCKET NO. 473-15-0372.WS**

I certify that a copy of this document will be served on all parties of record on April 17, 2017 in accordance with 16 TAC § 22.74.



Douglas M. Brown

**SOAH DOCKET NO. 473-15-0372.WS
PUC DOCKET NOS. 42919**

APPLICATIONS OF DOUBLE	§	BEFORE THE STATE OFFICE
DIAMOND UTILITIES CO. FOR A	§	
WATER AND SEWER RATE/TARIFF	§	OF
CHANGE (37752-R AND 37753-R)	§	
	§	ADMINISTRATIVE HEARINGS

**JOINT NOTICE OF UNANIMOUS STIPULATION AND SETTLEMENT
AGREEMENT AND JOINT MOTION TO ADMIT EVIDENCE AND TO REMAND
THE PROCEEDING TO THE COMMISSION**

NOW COMES, Double Diamond Utilities Company (Applicant) and Staff of the Public Utility Commission (Staff), (collectively, Joint Parties), and file this Joint Notice of Unanimous Stipulation and Joint Motion to Admit Evidence and to Remand the Proceeding to the Commission (Joint Notice and Motion). Staff represents that it is authorized to file this Joint Notice and Motion on behalf of the Joint Parties. In support of the Joint Notice and Motion, the Joint Parties would show as follows:

I. BACKGROUND

On October 13, 2013, Applicant filed an application requesting to increase its water and sewer rates and change its water and sewer tariffs. The Texas Commission on Environmental Quality (TCEQ) accepted the application for filing on December 3, 2013, and designated it application Nos. 37752-R and 37753-R. The proposed rate increase had an effective date of January 1, 2014. The Application was assigned TCEQ Docket No. 2014-0619-UCR. The deadline for customer protests was April 1, 2014. Out of Applicant's 86 customers, more than 10% of the customers (protestants or hearing requesters) timely filed protests to the Application. Because at least ten percent of the affected ratepayers protested the proposed rate in accordance with 16 Tex. Admin. Code § 24.27(c), TCEQ staff referred this case to the State Office of Administrative Hearings (SOAH) on May 22, 2014. A prehearing conference was never held pursuant to TCEQ's referral.

On September 1, 2014, the Commission began the economic regulation of water and sewer utilities, and this case was transferred to the Commission. On September 24, 2014, the Commission issued an order of referral to SOAH requesting the assignment of a SOAH Administrative Law Judge (ALJ) to conduct a hearing. In the same order, the Commission requested that parties submit a list of issues to help develop a preliminary order to issue to SOAH.

On October 2, 2014, Staff filed a list of issues. On September 26, 2014, Applicant filed a notice of settlement and petition for withdrawal of protests and motion for remand. Applicant's motion revealed that in June 2014, all but five of the customers who initially protested Applicant's rates withdrew their protests and settled with the utility. Therefore, Applicant's proposed rates were no longer protested by ten percent or more of its affected ratepayers.

On October 2, 2014, the Applicant filed a joint motion to abate and remand with a settlement agreement and withdrawal letters attached. Staff was not a party to the settlement agreement or the motion to remand. On October 6, 2014, SOAH Order No. 2 dismissed and remanded the case to the Commission. On October 6, 2014, Staff filed a motion for reconsideration of SOAH Order No. 2, requesting that the case be abated and not remanded to the Commission to allow Staff time to review the settlement agreement before SOAH relinquished its jurisdiction. SOAH Order No. 3 granted Staff's request. On October 9, 2014, the Commission notified the parties that it would not consider a preliminary order for this matter at the October 17, 2014 Open Meeting, but said that it would consider a preliminary order in the future if one was needed. Subsequent to SOAH Order No. 3, Staff communicated with the Applicant to determine whether it could develop a final order.

On April 2, 2015, the Applicant filed a request for additional time to allow it and Staff time to resolve this matter. Staff communicated with the Applicant and encouraged it to identify and locate the few protestants who had not withdrawn and inquire whether they still had an interest in pursuing this case.

Staff filed a request for a hearing with SOAH on May 15, 2015 to determine whether any of the protestants who had not yet withdrawn were still interested in contesting this matter. SOAH scheduled a prehearing conference for June 16, 2015. On May 29, 2015, the Applicant filed with the Commission hearing request withdrawal letters for each individual in the record who originally requested a hearing. Staff reviewed the letters and was satisfied that no protestants of record continued to contest this matter. Staff and the Applicant requested that the June 16, 2015 prehearing conference be canceled. On June 8, 2015, SOAH issued Order No. 6 cancelling the prehearing conference.

II. NOTICE OF UNANIMOUS STIPULATION AND SETTLEMENT AGREEMENT

Parties are filing a Unanimous Stipulation and Settlement Agreement, with the agreed proposed tariffs and proposed final order attached, recommending a full and final resolution of all issues in this Docket.

III. MOTION TO ADMIT EVIDENCE

The Joint Parties request that the following evidence be admitted into the record for the purpose of supporting the Commission's final order in this proceeding:

- a. Application for a Water and Sewer Rate/Tariff Change of Double Diamond Utilities Company, Application Nos. 37752-R and 37753-R, PUC Docket No. 42919.
- b. Notice Documents
- c. Unanimous Stipulation and Settlement Agreement with Agreed Tariffs and Joint Proposed Final Order;
- d. Testimony in Support of Unanimous Stipulation and Settlement Agreement of Chris Ekrut on behalf of Applicant; and
- e. Direct Testimony in Support of Stipulation of Heidi Graham, Water Utilities Division on behalf of Staff.
- f. Revised Tariffs

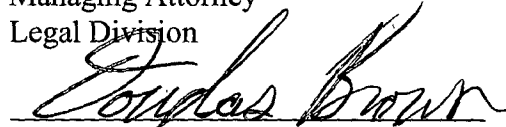
IV. MOTION TO REMAND PROCEEDING TO THE COMMISSION

As evidenced by the Unanimous Stipulation and Settlement Agreement, the Joint Parties have fully and finally resolved all issues among them in this proceeding and no hearing is necessary. Therefore, the Joint Parties request this Docket be remanded to the Commission to review and consider the Unanimous Stipulation and Settlement Agreement along with the agreed tariffs and Joint Proposed Final Order.

Respectfully submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

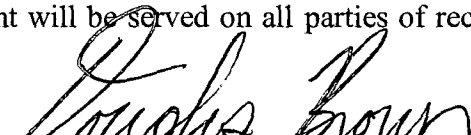
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Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 7, 2017 in accordance with 16 TAC § 22.74.


Douglas M. Brown, Attorney

**SOAH DOCKET NO. 473-15-0372.WS
PUC DOCKET NOS. 42919**

APPLICATIONS OF DOUBLE	§	BEFORE THE STATE OFFICE
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CHANGE (37752-R AND 37753-R)	§	
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UNANIMOUS STIPULATION AND SETTLEMENT AGREEMENT

This Unanimous Stipulation and Settlement Agreement is entered into by the parties in this case, who are the Staff (Staff) of the Public Utility Commission of Texas (Commission) and Double Diamond Utilities Company (Applicant) (collectively, Parties).

I. BACKGROUND

On October 13, 2013, Applicant filed an application requesting to increase its water and sewer rates and change its water and sewer tariffs. The proposed rate increase had an effective date of January 1, 2014. On May 29, 2015, the Applicant filed with the Commission hearing request withdraw letters for each individual in the record who originally requested a hearing. Staff reviewed the letters and was satisfied that no protestants of record continued to contest this matter. Staff and the Applicant requested that the June 16, 2015, prehearing conference be canceled.

The Parties believe that a resolution of this docket pursuant to the terms stated in the Unanimous Stipulation and Settlement Agreement, which is already on file in this Docket, is reasonable and in the public interest. Resolution of this case as stated will conserve the resources of the Parties and the Commission.

The Parties jointly request Commission approval of the Unanimous Stipulation and Settlement Agreement between the Applicant and The Retreat Homeowners Group, Attachment A, and this Stipulation and entry of orders, findings of fact and conclusions of law consistent with the approval.

II. STIPULATION AND AGREEMENT

1. Agreements as to Rate/Tariff Changes.

a. **Retail Water Utility Rates.** The Signatories agree that Applicant should be allowed to implement the retail water utility rates contained within the Settlement Agreement and in Section 1.0 of the tariff included as Attachment A to this Stipulation and Settlement Agreement.

b. **Tariff Provisions.** The Signatories agree that Applicant should be allowed to implement the other tariff provisions included in Attachment A to this Stipulation. The Signatories agree that Attachment A to this Stipulation should be the governing water utility rates, terms, treatments, and conditions for Applicant's ratepayer customers of the public water systems and service areas specified in Attachment A.

2. Agreements Regarding Additional Rate Matters.

a. **Rate Case Expenses.** The Signatories agree that Applicant shall not seek to recover and shall not collect any rate case expense that it has incurred or will incur in relation to this Application.

b. **Refunds/Credits.** The Signatories agree that Applicant shall not be required to issue any refunds or credits.

3. **Proposed Order.** The Signatories jointly propose that the Commission issue a final order in the form attached as Attachment B. The Signatories submit the stipulated and agreed upon Findings of Fact and Conclusions of Law included in the proposed order in Attachment B for the Commission's adoption of and inclusion in a final order in this case implementing the terms of this Unanimous Stipulation and Settlement Agreement.

4. **Commission Staff.** Commission Staff acknowledges and agrees that the rates that they will recommend for approval in the final order issued in this matter shall be consistent with the Unanimous Stipulation and Settlement Agreement and the rate schedules included in Attachment A.

III. Implementation of Agreement

1. **Obligation to Support this Stipulation.** The Signatories will support this Stipulation before the Commission and will take reasonable steps to support expeditious entry of orders fully consistent with this Unanimous Stipulation and Settlement Agreement. This provision shall not preclude any party from taking action that is mandatory and

nondiscretionary pursuant to a law enacted after the date of this Stipulation is filed at the Commission

2. Effect of Stipulation.

- a. The Stipulation does not adopt any particular methodology underlying the settlement rates or rate design reflected in the Stipulation.
- b. The failure to litigate any specific issue in this docket does not waive any Signatory's rights to contest that issue in any other current or future proceeding. The failure to litigate an issue cannot be asserted as a defense or estoppel, or any similar argument, by or against any Signatory in any other proceeding.
- c. The terms of this Stipulation may not be used either as an admission or concession of any sort or as evidence in any proceeding except to enforce the terms of this Stipulation. Oral or written statements made during the course of the settlement negotiations may not be used for any purposes other than as necessary to support the entry by the Commission of an order implementing this Stipulation. All oral or written statements made during the course of the settlement negotiations are governed by Tex. R. Civ. Evid. 408.
- d. The Signatories arrived at this Stipulation through negotiation and compromise. This Stipulation reflects a compromise, settlement and accommodation among the Signatories, and the Signatories agree that the terms and conditions herein are interdependent. The Signatories agree that this Stipulation is in the public interest. All actions by the Signatories contemplated or required by this Stipulation are conditioned upon entry by the Commission of a final order fully consistent with this Stipulation. If the Commission does not accept this Stipulation as presented or enters an order inconsistent with any term of this Stipulation, any Signatory shall be released from all commitments and obligations, and shall have the right to seek hearing on all issues, present evidence, and advance any positions it desires, as if it had not been a Signatory.
- e. This Stipulation is binding on each of the Signatories only for the purpose of settling the issues as set forth herein and for no other purposes. It is acknowledged that a Signatory's support of the matters contained in this Stipulation may differ from the position taken or testimony presented by it in this proceeding or other proceedings. To the extent that there is a difference, a Signatory does not waive its

position in any other proceedings. Because this is a stipulated resolution, no Signatory is under any obligation to take the same positions as set out in this Stipulation in other proceedings, whether those proceedings present the same or a different set of circumstances, except as may otherwise be explicitly provided in this Stipulation.

- f. There are no third party beneficiaries of this Stipulation. Although this Stipulation represents a settlement among the Signatories with respect to the issues presented in this docket, this Stipulation is merely a settlement proposal submitted to the Commission, which has the authority to enter an order resolving these issues.
- g. This Stipulation supersedes any prior written or oral agreement in this docket regarding the subject matter of this Stipulation.
- h. The final resolution of this docket does not impose any conditions, obligations or limitations on Applicant's right to file a rate application and obtain rate relief in accordance with the Texas Water Code except as specifically provided in this Stipulation.
- i. Except to the extent that the Stipulation expressly governs a Signatory's rights and obligations for future periods, this Stipulation shall not be binding or precedential upon a Signatory outside this docket, and Signatories retain their rights to pursue relief to which they may be entitled in other proceedings

3. **Execution.** The Signatories agree that this Stipulation may be executed in multiple counterparts and filed with facsimile or computer image signatures.

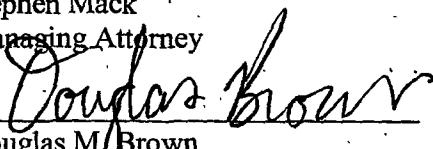
Executed as shown below:

Dated this 7th day of April, 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney



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DOUBLE DIAMOND UTILITIES COMPANY

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Attorney for Double Diamond Utilities Company

Executed as shown below:

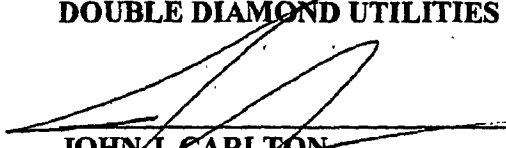
Dated this 24th day of February, 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**
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Stephen Mack
Managing Attorney

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JOINT PROPOSED ORDER

This Joint Proposed Order addresses the application of Double Diamond Utilities Company (Applicant) for an increase in its water and sewer rates and a change in its water and sewer tariffs charged to its customers, including The Retreat Homeowners Group (TRHG), effective on January 1, 2014. A Unanimous Stipulation and Settlement Agreement was executed that resolves all of the issues in this proceeding. Applicant’s application is approved solely to the extent consistent with the stipulation.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

Findings of Fact

Procedural History

1. On October 13, 2013, Applicant filed an application requesting to increase its water and sewer rates and change its water and sewer tariffs. The Texas Commission on Environmental Quality (TCEQ) accepted the application for filing on December 3, 2013, and designated it application Nos. 37752-R and 37753-R. The proposed rate increase had an effective date of January 1, 2014.
2. The Application was assigned TCEQ Docket No. 2014-0619-UCR. The deadline for customer protests was April 1, 2014.
3. Out of Applicant’s 86 customers, more than 10% of the customers (protestants or hearing requesters) timely filed protests to the Application. Because at least ten percent of the affected ratepayers protested the proposed rate in accordance with 16 Tex. Admin. Code § 24.27(c), TCEQ staff referred this case to the State Office of Administrative Hearings (SOAH) on May 22, 2014. A prehearing conference was never held pursuant to TCEQ’s referral.
4. On September 1, 2014, the Commission began the economic regulation of water and sewer utilities, and this case was transferred to the Commission. On September 24, 2014, the

Commission issued an order of referral to SOAH requesting the assignment of a SOAH Administrative Law Judge (ALJ) to conduct a hearing. In the same order, the Commission requested that parties submit a list of issues to help develop a preliminary order to issue to SOAH.

5. On September 26, 2014, Applicant filed a notice of settlement and petition for withdrawal of protests and motion for remand. Applicant's motion revealed that in June 2014, all but five of the customers who initially protested Applicant's rates withdrew their protests and settled with the utility. Therefore, Applicant's proposed rates were no longer protested by ten percent or more of its affected ratepayers.

6. On October 2, 2014, Staff filed a list of issues.

7. On October 2, 2014, the Applicant filed a joint motion to abate and remand with a settlement agreement and withdrawal letters attached. Staff was not a party to the settlement agreement or the motion to remand.

8. On October 6, 2014, SOAH Order No. 2 dismissed and remanded the case to the Commission.

9. On October 6, 2014, Staff filed a motion for reconsideration of SOAH Order No. 2, requesting that the case be abated and not remanded to the Commission to allow Staff time to review the settlement agreement before SOAH relinquished its jurisdiction. SOAH Order No. 3 granted Staff's request.

10. On October 9, 2014, the Commission notified the parties that it would not consider a preliminary order for this matter at the October 17, 2014 Open Meeting, but said that it would consider a preliminary order in the future if one was needed. Subsequent to SOAH Order No. 3, Staff communicated with the Applicant to determine whether it could develop a final order.

11. On April 2, 2015, the Applicant filed a request for additional time to allow it and Staff time to resolve this matter. Staff communicated with the Applicant and encouraged it to identify and locate the few protestants who had not withdrawn and inquire whether they still had an interest in pursuing this case.

12. Staff filed a request for a hearing with SOAH on May 15, 2015 to determine whether any of the protestants who had not yet withdrawn were still interested in contesting this matter. SOAH scheduled a prehearing conference for June 16, 2015.

13. On May 29, 2015, the Applicant filed with the Commission hearing request withdrawal letters for each individual in the record who had originally requested a hearing. Staff reviewed the

letters and was satisfied that no protestants of record continued to contest this matter. Staff and the Applicant requested that the June 16, 2015, prehearing conference be canceled.

14. On June 8, 2015, SOAH issued Order No. 6 cancelling the prehearing conference.

Description of the Settlement

15. The signatories agreed that Applicant should be allowed to implement the retail water and sewer utility rates contained in Section 1.0 of the agreed proposed tariff and included in Attachment A to the Unanimous Stipulation and Settlement Agreement.

16. The signatories stipulated that Applicant should be allowed to implement the other tariff provisions included in the agreed proposed tariff in Attachment A to the Unanimous Stipulation and Settlement Agreement.

17. The signatories stipulated that the proposed tariff included with the stipulation as Attachment A should be the governing water and sewer utility rates, terms, treatments, and conditions for Applicant's ratepayers.

18. The signatories stipulated that Applicant shall not recover or collect any rate case expenses incurred in connection with the application or this proceeding.

19. Applicant has not filed a rate change application to increase water and sewer rates effective before January 1, 2017, for customers of The Retreat's public water and sewer systems and service areas specified in the tariff.

20. The signatories stipulated that Applicant shall not be required to issue any refunds or credits or authorized to collect any surcharges.

Consistency of the Stipulation with the Texas Water Code and Commission Requirements

21. Considered in light of Applicant's application, and information exchanged through confidential privileged settlement negotiations, the stipulation is the result of compromise from each party, and these efforts, as well as the overall result of the stipulation, support the reasonableness and benefits of the terms of the stipulation.

22. The rates, terms, and conditions of the tariff resulting from the stipulation are just and reasonable and consistent with the public interest when the benefits of avoiding an expensive contested case hearing are considered.

Conclusions of Law

1. Applicant is a public utility as defined in TEX. WATER CODE ANN. § 13.002(23).

2. Prior to September, 1, 2014, the TCEQ had jurisdiction to consider Applicant's Application for a rate increase pursuant to TEX. WATER CODE ANN. §§ 13.181 and 13.187.
3. Pursuant to revised TEX. WATER CODE ANN., Chapter 13, effective September 1, 2014, jurisdiction over water and sewer utility ratemaking now vests in the Commission.
4. The Commission has jurisdiction to consider Applicant's application for a rate increase and conduct both formal and informal ratemaking hearings pursuant to TEX. WATER CODE ANN. §§ 13.041, 13.181, and 13.187 using procedures set forth in 30 TEX. ADMIN. CODE, Chapter 291 before September 1, 2014, now adopted by the Commission as P.U.C. Substantive Rule, Chapter 24.
5. This docket was processed in accordance with the requirements of the Texas Water Code and the Texas Administrative Procedure Act, and Commission rules.
6. Proper notice of the application was given by Applicant as required by TEX. WATER CODE § 13.187; 30 TEX. ADMIN. CODE §§ 291.22 and 291.28; and TEX. GOV'T CODE §§ 2001.051 and 2001.052.
7. This docket contains no remaining contested issues of fact or law.
8. The Unanimous Stipulation and Settlement Agreement, taken as a whole, is a just and reasonable resolution of all issues it addresses, results in just and reasonable rates, terms and conditions, is consistent with the relevant provisions of TEX. WATER CODE ANN., Chapter 13, is consistent with the public interest, and should be approved.
9. The rates agreed to in the stipulation are just and reasonable, comply with the ratemaking provisions in TEX. WATER CODE ANN., Chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.
10. The rates resulting from the stipulation are just and reasonable, and consistent with TEX. WATER CODE ANN., Chapter 13.
11. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. Applicant's application seeking authority to (a) change its rates and tariff, and (b) for other related relief is approved consistent with the above findings of fact and conclusions of law and the stipulation.
2. Rates, terms, and conditions consistent with the stipulation are approved.
3. The proposed tariff submitted with the stipulation as Attachment A and provided with this Order is approved.
4. Applicant has not filed a rate change application increasing water and sewer rates effective before January 1, 2017 for customers of the public water and sewer systems and service areas specified in Attachment A to the stipulation.
5. Applicant shall not seek to recover rate case expenses that it has incurred or will incur in relation to the application or this docket.
6. Applicant is not required to issue any refunds or credits or authorized to collect any surcharges for the difference between the rates it has collected and any of the rate schedules in Attachment A.
7. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the stipulation. Entry of this Order shall not be regarded as binding holding or precedent as to the appropriateness of any principle or methodology underlying the stipulation.
8. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted are denied.

SIGNED AT AUSTIN, TEXAS the ____ day of _____, 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

Donna Nelson, Chairman

Kenneth W. Anderson, Jr., Commissioner

Brandy Marty Marquez, Commissioner