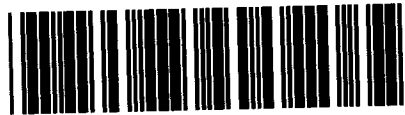


Control Number: 43922



Item Number: 23

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

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CHIEF CLERKS OFFICE

APPLICATION OF DOUBLE	§	BEFORE THE STATE OFFICE
DIAMOND UTILITIES COMPANY,	§	
INC. TO CHANGE WATER RATE	§	OF
TARIFF FOR SERVICE IN HILL,	§	
PALO PINTO, AND JOHNSON	§	ADMINISTRATIVE HEARINGS
COUNTIES	§	

**White Bluff Subdivision Ratepayers' Response to DDU's Objections to the Pre-filed
Testimony of Nelisa Heddin**

The White Bluff Subdivision Ratepayers (the "WBSR") hereby file this response to Double Diamond Utility Company's ("DDU") objections to the testimony of Nelisa Heddin. DDU's introductory language references objections to exhibits, as well; however, DDU's filing contains no specific objection to any WBSR exhibit. In support of this response, the WBSR shows the following:

GENERAL RESPONSE TO DDU'S OBJECTIONS

DDU has filed many unfounded objections to the WBSR's direct case as presented in the testimony of Nelisa Heddin. Throughout these objections, DDU ineffectively cites to reasons such as relevance and speculation due to lack of personal knowledge.

With respect to relevance, as the ED has already pointed out, a judge has broad discretion in determining whether to admit evidence.¹ If the information is helpful to the ALJ, it may be admitted. As you will see below, DDU is objecting to very relevant information, which is quite helpful in reviewing this case.

With respect to speculation due to lack personal knowledge, apparently DDU does not understand that an expert witness need not have personal knowledge of all the facts on which she bases her opinion. Texas Rule of Evidence 703 allows an expert the flexibility to rely on many forms of information, even evidence that would not normally be admissible. Ms. Heddin, as an

¹ *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002).

expert witness on ratemaking issues with prior TCEQ hearing experience, is perfectly capable of reading documents and making assessments about the issues she has identified with DDU's application and direct case. If DDU finds her opinion questionable, cross examination, not an objection to testimony, is as the ED cites, "the traditional and appropriate means of attacking" such evidence.²

The WBSR provides specific support for each section of testimony, to which DDU unreasonably objects, below.

RESPONSES TO SPECIFIC OBJECTIONS

DDU Objection # 1. Page 7, line 1, "DO YOU BELIEVE ... " - Page 7, line 4, " ... other."

DDU Objection # 2. Page 7, line 5, "IN WHAT WAYS ... " - Page 7, line 8, " ... service."

DDU Objection # 4. Page 7, line 24, "IN YOUR OPINION ... " - Page 8, line 19, " ... detail below."

DDU objects to the questions asked and Ms. Heddin's responsive testimony described above as irrelevant and speculative. Whether The Cliffs, The Retreat and White Bluff water systems are substantially similar IS relevant to this case because DDU's original application clearly showed subsidization of the Cliffs by White Bluff and the Retreat (see Attachment 12 of Exhibit DDU-1). That could be seen as tantamount to consolidation of the three systems. Also, given that DDU apparently considers the Cliffs dissimilar, a finding to that effect will demonstrate the need for separate rates, as proposed by DDU. Additionally, Ms. Heddin, as an expert witness, may give her opinion regarding why and how DDU's systems were built. Expert witnesses need not have personal knowledge of the facts upon which they base their opinions. She is not guessing, but rather basing her opinion on her experience with *many* other systems and review of many DDU documents and DDU testimony. Ms. Heddin does not need to be an engineer or a construction expert to understand a system's "age, size, type of development served, sources of water and cost of service." These are the type of considerations that any ratemaking analyst would consider in recommending rates for a system. Ms. Heddin is, therefore, qualified to discuss these items.

² *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713,727 (Tex. 1998) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993)).

DDU Objection #3. Page 7, line 9, "WHAT IS ... " - Page 7, line 13, " ... water."

DDU objects to the question asked and Ms. Heddin's responsive testimony described above as irrelevant. The findings, conclusion and order from DDU's prior rate application are relevant to the current application because DDU's systems exist over time and could not become similar overnight. As Ms. Heddin explains, *nothing has changed* since the last order regarding these systems; therefore, the systems are still dissimilar. If conditions were now different, then the last order would not be quite as instructive, but it is still relevant, nonetheless, because it deals with the same systems. Even *DDU's own witness*, Mr. Ekrut acknowledges the relevance of the prior application in citing the testimony of Brian Dickey (See Ekrut, page 12, lines 11-14; page 13, lines 4-6; page 14, lines 3-5) from DDU's prior rate case. Also, there is precedence for allowing facts of prior orders to be used in subsequent cases. The TCEQ, for example, allows the rate base, once set in a case, to continue for future cases. (Dickey, page 10, lines 18-22, *et seq.*) Finally, it is completely acceptable for Ms. Heddin to offer an opinion with respect to an order from the TCEQ, even though it is a legal document. As the ED cites in its own response to DDU objections, "Fairness and efficiency dictate that an expert may state an opinion on a mixed question of law and fact as long as the opinion is confined to the relevant issues and is based on proper legal concepts."³ This testimony should, therefore, be allowed.

DDU Objection #5. Page 10, line 24, "Generally, the ... " - Page 10, line 25, " ... connection."

DDU objects to Ms. Heddin's testimony regarding density of housing described above as speculation and complains that her lack of personal knowledge and experience precludes her from discussing this topic. *Even an attorney* could do the math to figure out that it takes more pipeline to serve houses which are spread further apart. Certainly, Ms. Heddin, as a rate analyst who deals with numbers on a daily basis, is qualified to give her opinion on this topic. This testimony should be allowed.

DDU Objection #6. Page 15, line 1, "Virtually every ... " - Page 15, line 3, " ... customers."

DDU objects to Ms. Heddin's testimony described above as speculation due to lack of personal knowledge. As an expert witness, Ms. Heddin does not need personal knowledge about the construction and operation of water systems in order to opine about the use of chemicals and

³ *Birchfield v. Texarkana Mem'l Hosp.*, 747 S.W.2d 361,365 (Tex. 1987).

electricity by utilities. Ms. Heddin, as a rate analysis, has seen these types of costs repeatedly in her examination of costs of utilities and is certainly capable of making generalizations about them. This testimony should be allowed.

DDU Objection #7. Page 21 [sic, should be p. 19], line 20, "Yes, if both systems ... " - Page 20, line 2, " ... investment."

DDU objects to Ms. Heddin's testimony described above as speculation due to lack of personal knowledge. As an expert witness, Ms. Heddin does not need personal knowledge about the construction of water systems in order to opine about costs associated with density of connections on the system. Again, this is simple math that even an attorney could calculate. Ms. Heddin, as a rate analysis who works with numbers every day in her work, is certainly qualified to opine about such things. This testimony should be allowed.

DDU Objection #8. Page 20, line 24, "Each System ... " - Page 21, line 3 , " ... connected."

DDU objects to Ms. Heddin's testimony described above as speculation due to lack of personal knowledge. As an expert witness, Ms. Heddin does not need personal knowledge about the construction of water systems in order to opine about how DDU's systems were built. As a rate analysis, Ms. Heddin is very aware of sizing issues in construction because costs per customer – a big concern to a rate analyst – are dramatically higher when a system is serving far less than the number of customers planned. This testimony should be allowed.

DDU Objection #9. Page 27, line 9, "DDU's systems ... " -line 13, " ... to one another."

DDU objects to Ms. Heddin's testimony described above as speculation and complains that Ms. Heddin does not have personal knowledge DDU's systems. Ms. Heddin is an expert witness who may base her opinion on sources outside her own personal knowledge. She is certainly capable of reading about DDU's systems in the documents provided to her and forming opinions about how they are different. This testimony should be allowed.

DDU Objection #10. Page 28, line 4, "It appears ... " -line 8 , " ... docket."

DDU objects to Ms. Heddin's testimony described above as speculation due to lack of personal knowledge and legal expertise. Ms. Heddin is capable of reading the facts presented in

the Aqua Texas case and the Texas Landing Utilities case and forming an opinion based on those facts. She has prior experience in TCEQ cases, as shown in her testimony, so she is familiar with TCEQ orders. Furthermore, to the extent she is considering legal subject matter, this is acceptable. As the ED cites, "Fairness and efficiency dictate that an expert may state an opinion on a mixed question of law and fact as long as the opinion is confined to the relevant issues and is based on proper legal concepts."⁴ Additionally, if the ALJ were to agree with DDU in striking Ms. Heddin's testimony on this topic, the ALJ would also need to strike page 8, line 16 to page 11, line 7 of Mr. Ekrut's testimony for the exact same reasons. Mr. Ekrut is certainly no more qualified than Ms. Heddin to give an opinion on the precedential value of the Aqua Texas and the Texas Landing Utilities cases. The testimony should, therefore, be allowed.

DDU Objection #11. Page 29, line 6, "It chose not ... " -line 7, " ...interest costs."

DDU objects to Ms. Heddin's testimony described above as speculation because Ms. Heddin has no personal knowledge of why DDU chose not to file a rate case. Ms. Heddin, as an expert witness, does not need personal knowledge of DDU's reasoning for not filing a rate case to opine on its failure to do so. Additionally, it is hard to see how those facts could be in dispute: DDU could have filed a rate case and it chose not to do so. If DDU tried to file a rate application and was somehow prevented from doing so, certainly DDU should have provided that information in its testimony. This testimony should, therefore, be allowed.

DDU Objection #12. Page 33, line 11, "This is why ... " -line 12 , " ... vendor/contractor."

DDU Objection #13. Page 33, line 25, "Often, a utility ... " -line 26, " ... supplier."

DDU objects to Ms. Heddin's testimony described above as speculation because it claims Ms. Heddin has no personal knowledge of how vendors price their products and services. Ms. Heddin, as an expert about utility costs, does not need personal knowledge of this and is quite familiar with vendor proposals. Ms. Heddin even uses examples from DDU's own documents in delivering her opinion regarding this topic. This testimony should be allowed.

DDU Objection #14. Page 41, line 16, "First, the information ... " -line 19 , " ... protest."

⁴ *Birchfield v. Texarkana Mem'l Hosp.*, 747 S.W.2d 361,365 (Tex. 1987).

DDU objects to Ms. Heddin's testimony described above as speculation claiming Ms. Heddin has no personal knowledge about the information DDU relied upon in setting its rates or what the rate payers relied upon in making their protest. If DDU did not rely upon the information presented in its application to set its rates; then DDU apparently is not following the rules of the TCEQ in providing correct information in its application. Given the affidavit requirements in the application, Ms. Heddin, as a reasonable person, would assume that DDU relied on the information in its application when setting its rates. If it did not, perhaps the whole application should be thrown out and the overages collected should be refunded without the need for anyone to expend additional cost in hearing – *if DDU did not rely on the numbers in its application in setting its rates, there is no basis for its rates.* Also, Ms. Heddin, as a consultant for the WBSR is also very aware of the information relied upon by the ratepayers in making a decision to the protest the application. Even if she were not, any reasonable person would rely on the information contained in the application in deciding to protest the application. This testimony should be allowed.

DDU Objection #15. Page 44, line 8, "In both ... " -line 19, " ... water."


DDU Objection #16. Page 45, line 6, "DDU has already ... " -line 8, " ... assets."

DDU objects to Ms. Heddin's testimony described above as irrelevant. The application, findings, conclusion and order from DDU's prior rate application are relevant to the determination of rate case expenses in this matter because the application references the rates in effect from the prior application as a comparison point for additional revenue generated. DDU's failure to achieve the rates it requested in the first case is DDU's own fault and DDU, should therefore be held to the comparison points presented in the second application. Because statute does not allow for ratepayers to recover their legal costs against the utility when the utility fails in its burden, the only recourse possible in a case like this is to hold the utility to the comparisons in its application, *especially* since the comparison is to a rate application that failed. Furthermore, DDU's prior applications are relevant for the reasons already set forth above. This testimony should, therefore, be allowed.

CONCLUSION

Wherefore, premises considered, based on the reasons provided above, the WBSR respectfully requests that DDU's objections to the testimony of Nelisa Heddin be overruled.

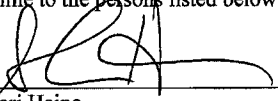
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2010, a true and correct copy of the foregoing document was sent by email, first class, agency mail and/or facsimile to the persons listed below.



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