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APPLICATION OF DOUBLE
DIAMOND UTILITY COMPANY, INC.
FOR WATER AND SEWER
RATE/TARIFF CHANGE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

PUBLIC UTILITY COMMISSION
FILING CLERK

SOAH ORDER NO. 4
REQUIRING DOUBLE DIAMOND CERTIFICATION

On November 3, 2016, White Bluff Ratepayers Group (WBRG) filed a motion to declassify 3,592 pages of documents that Double Diamond Utility Company, Inc. (Double Diamond) filed as confidential under the Protective Order. WBRG indicates that the protected materials are Bates stamped DD000001 through DD003592, and they include tables from the rate change application form and workpapers, which support information contained in the application. WBRG indicates that most of the protected information is “simply account listing and invoices supporting the numbers included in the application.”¹ Moreover, WBRG notes that Double Diamond produced similar information on a non-confidential basis in three prior rate cases involving the utility at the Texas Commission on Environmental Quality (TCEQ). Double Diamond filed a response on November 10, 2016.

The undersigned Administrative Law Judge (ALJ) has reviewed the pleadings and the Protective Order. The Protective Order governs the use of confidential materials (labeled “Protected Materials”) and highly confidential materials. Double Diamond designated the material at issue in this dispute as confidential materials, which the Protective Order does not define but can be determined from the Public Information Act (PIA), Texas Government Code § 552.001-552.353. The Protective Order, Paragraph 4, requires the party claiming confidentiality (here Double Diamond) to file with the Public Utility Commission of Texas (PUC or Commission) a written statement, which may be in the form of an objection, indicating: (a) any PIA exemptions; (b) the reasons why the information is exempt under the PIA; and (c) that counsel has reviewed the information sufficiently to state in good faith that the

¹ WBRG motion to declassify at 1.

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information is exempt from public disclosure. On October 25, 2016, Double Diamond made a confidential filing but neither the ALJ nor the public can view such. If this contains the Paragraph 4 required information, a confidential filing is insufficient under the terms of Paragraph 4.

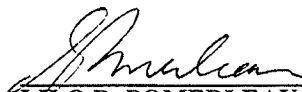
At the outset, Double Diamond, in its response to WBRG, makes some statements that the ALJ finds unpersuasive or troubling:

- Double Diamond is a privately-held company.
- The idea behind the Protective Order is to shield Double Diamond's private corporate information from public disclosure.
- The Interchange, which is a public domain, allows any individual to see and use the information.
- The PUC procedure in rate cases is different than that of TCEQ.

The fact that Double Diamond is privately held does not afford it special privilege. Double Diamond is a public utility seeking a rate change. Rate case information in rate cases conducted at the PUC/Commission is not given additional protection merely because the PUC has the Interchange, which allows for easy access of information. Rate case information provided publically at the TCEQ is public at the PUC/Commission—the fact that there is a standard protective order entered in this case does not change privilege or confidentiality. **An entity claiming that financial information is privileged or confidential by law must demonstrate, based on specific factual evidence, that disclosure would cause substantial competitive harm. Conclusory or generalized allegations are insufficient to maintain a privilege.**

The ALJ presumes that all financial information supporting Double Diamond's application is public absent specific, factual information demonstrating otherwise. Double Diamond shall, **within five working days** of receipt of this Order, file the information required in Paragraph 4 of the Protective Order. Any party may file a response to Double Diamond's filing within five days.

SIGNED November 16, 2016.



LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS