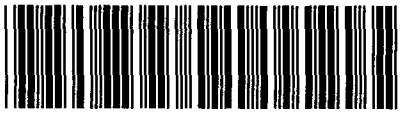

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APPLICATION OF DOUBLE DIAMOND UTILITY COMPANY, INC. FOR WATER AND SEWER RATE/TARIFF CHANGE	§ § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

WHITE BLUFF RATEPAYERS GROUP'S MOTION TO COMPEL DOUBLE DIAMOND UTILITY, INC. TO RESPOND TO WBRG'S SECOND DISCOVERY REQUESTS

White Bluff Ratepayers Group ("WBRG") files this motion to compel Double Diamond Utilities, Inc. ("Double Diamond"), to respond to WBRG's discovery requests and would show as follows.

I. INTRODUCTION

WBRG filed its Second Request for Information from Double Diamond on May 5, 2017. Pursuant to agreement of the parties, Double Diamond filed its objections to the RFIs on May 24, 2017. Pursuant to agreement of the parties, the deadline for this motion to compel was extended to June 7, 2017, and is, therefore, timely filed.

Counsel for WBRG conferred with counsel for Double Diamond regarding the objections with diligence and in good faith, but Double Diamond objected to the request. WBRG therefore asks the ALJ to enter an order compelling Double Diamond to respond to Tyler's RFIs.

II. MOTION TO COMPEL RESPONSES OVER OBJECTION

Pursuant to Commission rules, WBRG requested Double Diamond to respond to requests for information, including:

WBRG 2-21 Please provide tax returns, including all workpapers and supporting schedules for Double Diamond, Inc., and Double Diamond Utilities, Inc., for every year since 1996.

Double Diamond objects that this request as irrelevant and over broad because it relates to records of financial transactions that occurred prior to the test year, and that the information sought can be found in other sources.

WBRG asserts that the request is relevant because Double Diamond has asserted in its revised application that most of the initial assets of the utility were funded 80% by the developer, presumably Double Diamond Inc., and 20% by the utility. How these assets were funded is

critical to establishing the rate base in this case, particularly since the utility infrastructure was constructed by the developer and because the developer also controls the utility. If the flow of funds is not tracked properly, the utility customer/lot purchaser could pay for infrastructure twice – once in the purchase price of the lot, and a second time through water and sewer rates.[1] Information in a developer's tax returns can provide insight as to whether the price of the lot included the price of the utility assets.

> Water and sewer utilities serving suburban or rural areas normally acquire their facilities . . . from the developer of the subdivision. The developer will normally incur the original cost of installing pipe and setting up the system. More often than not, the developer will recoup the cost of installation of the system when he sells houses in the subdivision. For federal income tax purposes, the developer is also allowed to deduct the cost of the system from the income he receives from the sale of lots or homes. The developer will then sell or donate the in-place water and sewer system to a newly created utility company. Often, this utility company will be one of several affiliate companies owned by the developer or the development company.

Public Utility Commission of Texas v. Southwest Water Services, Inc., 636 S.W.2d 262, 263 fn. 1 (Tex. App. – Austin 1982 – writ ref'd n.r.e.).

If Double Diamond's assertions are accurate, the split of the assets between the developer and the utility should show up in the respective returns of each. WBRG has the right to discover information that might confirm or refute Double Diamond's assertions. Prior year tax returns are needed because DDI would have expensed its investment in utility plant in the years in which property sales were made, which could extend back to 1996.

WBRG has unsuccessfully tried to obtain this information from other sources. WBRG would like to discover the "life cycle" of the book entries for these assets. The expenses associated with the assets should have been entered into the books of the respective company (DDI or DDU) when the assets were purchased or constructed. A review of these entries should show the 80/20 split. Double Diamond has not yet produced records showing the accounting entries made at the time of the expenses. In response to WBRG 1-15, Double Diamond states that "No documentation exists that corresponding entries were made in the financial records of the developer or the utility." Based on that response, the only way to determine how the assets

[1] *Sunbelt Utilities v. Public Utility Commission,* 589 S.W. 2d 392, 394 (Tex. 1979) (If developer recovers cost of utility system through purchase price of lots, utility not entitled to include system in rate base).

were split between the developer and the utility may be to review the tax returns to see if some information can be gleaned from the underlying entries in the returns.

Without some documentation that the utility assets were actually paid for by the utility, WBRG believes that all assets should be presumed to have been paid for by the developer. This is an issue of burden of proof. The utility and the developer created and maintain these records, not the ratepayers. The ratepayers should not be penalized for the utility's inability to maintain adequate records or for the intentional comingling of funds between the developer and the utility. Moreover, the ratepayers should not be put to the task of having to force the utility to divulge this critical information.

WBRG will continue to work with Double Diamond to see if other documentation regarding the 80/20 split will be adequate to demonstrate to WBRG that the split was actually reflected in the utility's and the developers' books and, if not, whether the parties can agree on a reasonable rate base. Additionally, WBRG understands that review the tax returns will be pursuant to the protective order entered in this docket.

WBRG 2-22 For each tax return, please identify and outline the exact costs that are included as "Cost of Goods Sold" as claimed on tax returns, by subdivision and expenditure. Please specify exactly what the expenditure was for, including an itemization of all purchases included in the cost of goods sold for Double Diamond, Inc., Double Diamond-Delaware, Inc., and Double Diamond Utilities, Inc.

As with WBRG 2-21, the requested information is highly relevant. The information would help confirm or refute Double Diamond's claim that the initial assets of the utility were funded 80% by the developer and 20% by the utility. The demonstration of this fact should be easy for a corporate entity such as Double Diamond to make, but WBRG claims to have no documentation demonstrating how the assets were actually split for tax purposes. Based on Double Diamond's admission that no documentation exists in the books of the developer or the utility, the information sought by WBRG may be the only way that Double Diamond will be able to demonstrate that the split was actually reflected in the books of the developer and the utility, and that the ratepayers are not being charged twice for the same assets.

III. REQUESTED RELIEF

WBRG requests that the Administrative Law Judge enter an order granting WBRG's Motion to Compel and directing Double Diamond to provide substantive responses to all of WBRG's discovery requests for which Double Diamond has not previously provided such a response, including the production of all requested documents, not previously provided.

Dated: June 7, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served on all parties of record in this proceeding on June 7, 2017, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

C. Joe Freeland