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Addendum StartPage: 0

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

BEFORE THE STATE OFFICE
OF PUBLIC UTILITY COMMISSION
FILING CLERK
ADMINISTRATIVE HEARINGS

**THE CLIFFS UTILITY COMMITTEE'S
INTERVENOR DIRECT TESTIMONY AND STATEMENT OF POSITION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE (ALJ), THE
STAFF OF THE PUBLIC UTILITY COMMISSION ("Staff"), WHITE
BLUFF RATEPAYERS GROUP ("WBRG") and DOUBLE DIAMOND
UTILITY COMPANY, INC. ("DDU") :**

**COMES NOW, The Cliffs Utility Committee ("TCUC") and files this Intervenor Direct
Testimony and Statement of Position per Exhibit "A" – Proposed Procedural Schedule due
on or before September 8, 2017.**

Responses should be provided to: Byrom J. Smith, III, 200 Oyster Bay, Graford,
Texas 76449.

Dated: September 1, 2017

Respectfully submitted,

Byrom J. Smith,

III

Byrom J. Smith, III
Director, Intervenor & Ratepayer
The Cliffs Utility Committee
200 Oyster Bay
Graford, Texas 76449
(940) 779-4325
juds@adventsupply.com

REPRESENTATIVE FOR
THE CLIFFS UTILITY COMMITTEE

580

CERTIFICATE OF SERVICE

I certify that a copy of this Intervenor Direct Testimony and Statement of Position was served on all parties of record in this proceeding on September 1, 2017, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

**Byrom J. Smith,
III**

Byrom J. Smith, III

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TCUC'S INTERVENOR DIRECT TESTIMONY AND
STATEMENT OF POSITION TO DOUBLE DIAMOND UTILITY COMPANY, INC.

Page 19 Line 9 Acct. # 664 – Other Plant Maintenance

2013 = \$ 61,358

2014 = \$ 109,897 + 79.11 % vs. 2013

2015 = \$ 123,059.00 + 11.98 % vs. 2014 and + 100.56 % vs 2013

No explanation provided even though explanation required if over 10 % increase from previous year. Comment was that this was R&M for water and sewer plants but what were these repairs? Was any of this expense for the multiple water line breaks suffered during the test year and previous years?

TCUC Statement of Position:

The water supply lines, and, I assume the sewer lines here at The Cliffs, were not installed from the beginning using any of the accepted practices for laying pipe in the ground. I have photographic evidence on a couple of line breaks and several more from my own observation to prove this (see photos inserted below). The water lines were laid over the existing ground conditions at a depth of around two and a half to three feet. There is no cushion sand under the pipes, not even soft soil. The pipes run over expansive clay, hard limestone rock (not crushed) and clumpy dirt with air pockets. I have seen a six plus foot section of pipe with the break in the middle where half the pipe is on solid rock and the other half on clay. It doesn't take a geologist to know that clay expands and contracts depending on moisture levels and rock does not expand. So when we have excessive rains or prolonged periods of draught, which is pretty much the cycle here in North Texas, the expected result is evident: Line breaks and lots of them.





There have been twelve major breaks in Test Year 2015 documented on DDU work orders alone. I have reviewed them all and in 2015, in addition to the major line breaks, there were two repairs/equipment replacements at the water plant, two repairs to lines at the Marina, five repairs to lines at the condos, seventeen repairs involving private residence sewer lines, mostly involving grinder pump failures, and two repairs to water lines at the No. 2 pool. In addition, there were an amazing twenty (20) complaints reporting incorrect meter readings, all indicating abnormally high water usage, and it appeared all were decided in the homeowner's favor. We

can only imagine how many incorrect readings there really are that homeowners don't catch or don't challenge.



Page 24 Line 18 Acct. # 682 – Professional Services

2013 = \$ 8,341.00

2014 = \$ 19,800.00 + 137 % vs. 2013

2015 = \$ 24,259.00 + 190 % vs. 2013 and + 22.52 % vs. 2014

No explanation – N/A What are these charges and why is the response N/A when the year over year increase is well above 10 %?

Page 28 Line 22 Acct. # 675 – Miscellaneous

2013 = \$ 1,256.00

2014 = \$ 42,497.00 + 328 % vs. 2013

2015 = \$ 41,113.00 + 317 % vs. 2013

No explanation – N/A What are these charges and why is the answer N/A when the year over year increase is dramatically in excess of 10 %?

TCUC Statement of Position:

On the above two referenced items, DDU has failed to adequately respond to TCUC RFI's and explain the reason for double and triple digit increase in expenses. The PUC needs to require an adequate response and full disclosure.

Page 34 – III-4 – Average Construction Work in Progress

Reported Amount: \$ 0.00. Why would there be no long-term construction scheduled on a water delivery system that had over a dozen water line breaks in the Test year alone? Why is DDU allowed to continue to put patches on a system, thus increasing their expenses which they pass on through to ratepayers, which obviously has so many flaws in its infrastructure that require major renovation work? Why is DDU allowed to get by without a major capital improvement program in place?

TCUC Statement of Position:

There is nothing in the historical financials or any kind of forward-looking budget that shows a plan for long-term replacement of this flawed and failing system. DDU continues to keep putting Band-Aids® on the problem, forcing the expense into a Repairs & Maintenance line item so ratepayers end up footing the expense, as opposed to establishing a plan for replacement which would make it a capital expense that must be depreciated. That capital expense would need to be funded by one, or a combination of, five principle ways: additional capital investment by DDU from cash reserves, cap ex investment from other Double Diamond sources, borrowed funds, a special assessment of the ratepayers or an increase of W&S rates over time. If I understand it correctly, the last two require P.U.C. approval. DDU knows that if they use one or more of the first three funding options mentioned above, they can then claim depreciation and amortization expense (not a real expense, just an offset to profits) but, if they use the ratepayer's money to fund this, they do not get to depreciate it. So they have apparently decided to keep it a real expense using the Band-Aid approach and collect it back through higher rates to maintain their current or better R.O.I. This leaves the ratepayers with the expense and the headaches caused from low water pressure, loss of water service for extended periods, unsafe and hazardous water, boil water notices and dirt and residue in the system (see photos below). More often than not, no notice is given when a line breaks or water is shut off to make the required repairs. DDU has been in violation of regulations that require boil notices to be given when water pressure decreases below a minimum standard. This regulation is being ignored on a regular basis. At a minimum, the ALJ and the P.U.C. needs to be aware of the deplorable condition of the DDU system and question them about their choices for dealing with it.

Page 36 – Long-term Debt and Notes Payable

In this chart the debt is listed as \$ 2,619,493.00. The original note was issued for \$ 3,000,000.00 on 3/7/13 and had a maturity date of 4/7/17. Why has only \$ 380,507.00 been paid on this note? Is this an “on demand” note? Who is responsible for these payments? Is the cost reflected in the rate basis?

TCUC Statement of Position:

The ratepayers have a right to know where these borrowed funds were used. For accurate ROI numbers to be calculated we need to know the utility’s cost of debt (bank credit) to acquire plant, equipment and infrastructure vs. actual cost of capital (investor contributions). This has not been clearly disclosed by DDU and neither has customer contributions been accurately disclosed. The utility should only be able to depreciate capital assets derived from their own contributions, not customer contributions.

Page 55 – Metered Active Connections for Water

5/8” and ¾” Lines = 258

1” Lines = 13 Who are on these lines? Provide customer information.

1 ½” Lines = 1 Who is this line for?

2” Lines = 15 Who are these customers?

Page 58 – Water Production

Total water pumped/produced = 104,068,000 gallons

Total water SOLD = 24,724,000 gallons

Total unaccounted for water = 79,345,000 gallons

How could 76 % of the water produced be unsold and unaccounted for? Where did the 79 million gallons of water go? Who pays for the production of the unaccounted for water? Could this much water be involved in the multiple line breaks and leaks experienced in the DDU water system? Is the cost to produce the unaccounted for water included in the rate increase design?

TCUC Statement of Position:

If the cost of water production for all water removed from Possum Kingdom Lake is born by the ratepayers, then an adequate accounting of where all that water is used needs to be forthcoming. If the unaccounted for water is used for irrigation of the golf course, the cost of that water should not be charged to ratepayers. In addition, if the unaccounted for water is due to water leaks, DDU should be required to establish a long-term plan for infrastructure repair that promptly, systematically and sufficiently addresses these egregious system inadequacies. It is important to note that the Cliff has two (2) water systems; potable and golf course. The golf course water is not treated at this time. We suspect DDU is charging ALL expenses (salaries, maintenance etc.) into the potable system to help justify their huge rate increase. We see nothing in the

documentation that separates the two systems and it might explain the “unaccounted” for water production in addition to the numerous water leaks. Actual potable system expenses could be reduced significantly if golf course system expenses aren't included.

Pages 66,71 and 75 – Once again in the Water Only section of information from the income statement “Other Plant Maintenance” (+ 11.9%), “Professional Services” (+ 759 %), and “Miscellaneous Expenses) (+ 3068 %) accounts experienced huge increases over previous years with no explanation provided. Why would these increases have a N/A response? What are the expenses included in these accounts and why are they so high?

Page 148 – Notice of Proposed Rate Change and
Page 95 – The Requested Water Rates and Water Revenue Proof

The base meter charge being requested takes the rate for residential customers (3/4” or less lines” from a current rate of \$ 36.14 to \$ 40.00. This is hefty + 10.68 % rise in rates. However, the real damage is done in the proposed volumetric rate increases. 0-3000 gallons goes from \$ 2.60 per 100 gallons to \$ 3.50; a + 34.6 % increase. 3001-10000 gallons goes from \$ 3.00 to \$ 4.00 per 100 gallons; a + 33.3 % increase. And 10001-15000 gallons goes from \$ 5.07 to \$ 6.50 per 100 gallons for a + 28.2 % increase.

The proposed sewer rate increase is even more punitive. The base rate, which include the first 3001 gallons, goes from \$ 49.37 to \$ 72.00; a + 45.8 % increase. If over 3001 gallons is processed, the rate goes from \$ 8.25 to \$ 12.00; an increase of + 45.45 %.

The problem is that these rate increases, as onerous as they are, really don't tell the whole story. Taking my last bill for usage from 7/4/17 to 8/3/17 where, because of landscape watering and guests in the house, usage came to 13,950 gallons. Under the current rate structure my total water bill was \$ 149.13. Under the new rate structure, my bill would have been \$ 307.89 or an incredible + 106.5 % increase! The water usage went from \$ 84.97 to \$ 104.50, a bad enough + 18.7 % increase. But the sewer would have gone from the flat rate \$ 64.16 to and incredible \$ 203.39; a + 217 % increase. And this is for water usage for which an estimated 40 % was never introduced into the sewer system for processing because it was landscape watering.

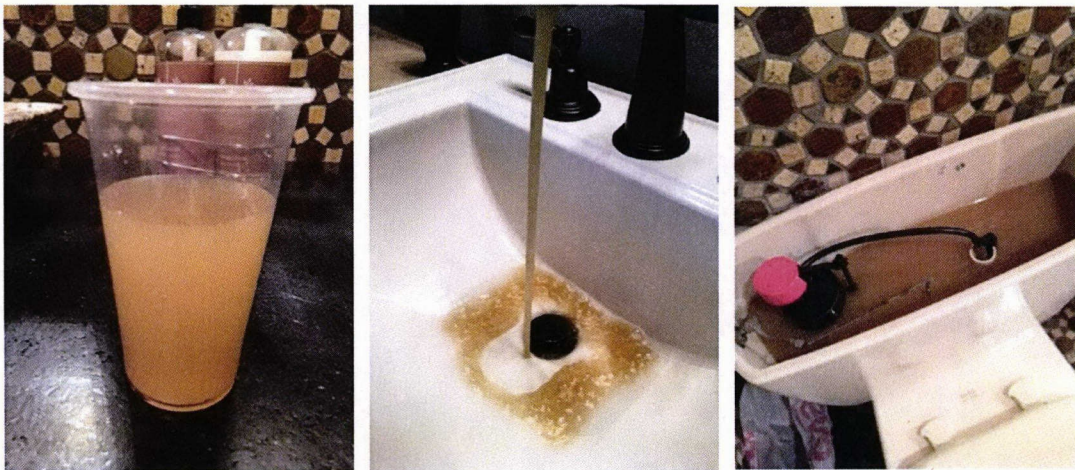
TCUC Statement of Position:

It is interesting to note in the Staff Responses in DDU-3 that five items impact The Cliffs ratepayers unfairly as it relates to the proposed increases:

- 1.) The Cliffs water customer base is very small. For instance, The Cliffs has only 287 customers while White Bluffs has 2.23 times more customers at 640.
- 2.) The Cliffs waste water system is very small. For instance, The Cliffs system services only 2,518 lots over 1,094 acres. The White Bluffs system services 6,314 lots (2.5X)

over 3,500 acres (3.2X). The Cliffs has 239 sewer customers and White Bluffs has 567 customers or 2.37 times more. These first two items place an undue burden on a smaller number of ratepayers, made worse if the PUC finds in favor of DDU and they are allowed to pass their legal expenses on to the ratepayer.

- 3.) It is not clear exactly what the initial investment in plant and equipment was or how they are calculating it and yet they admit (Staff 1-32) they have taken accelerated depreciation expense associated with plant investment on past tax returns and admit they have taken investment tax credits for investment in plant (Staff 1-33).
- 4.) One of the biggest questions we have is about the response to the question posed on Page 15 of DDU-3. "What is the current status of compliance with the TCEQ Rules for The Cliffs and White Bluffs systems?" Answer: "Both systems are compliant with TCEQ rules". How could this possibly be when they have been reprimanded and fined multiple times for missing reports, missing required water tests, and have experienced countless water main breaks (fractures) and leaks? These leaks have required mandatory "Boil Notices" which are required when the water pressure falls below certain levels and we have all experienced low to zero water pressure with no notices given. Last one occurred on Oyster Bay on Tuesday, August 22nd for a four hour period from a water line break, across the street from 170 Oyster Bay, where there was no water being delivered (hence zero water pressure) and no notice was given to anyone on the street. And that was the second fracture which required a major repair in two weeks. The other was on the corner of Oyster Bay and Riviera. The quality of the water released after water pressure was restored was tainted with particulates and unsanitary for potable purposes.



Four more leaks occurred and were reported on August 27th and 28th on Melbourne Trail within less than 200 yards of each other and are still currently under repair with no notices issued.

- 5.) Finally, DDU does not pay federal income tax. DDU is a Subchapter S corporation and as such, all income flows through to individual members for income tax purposes, including accelerated depreciation on assets on the DDU books. Consequently, tax returns for those individuals has been declined to be provided. Their defense was: "The

deferred tax liabilities and assets in the financial statements reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for state (income and gross margin) tax purposes...”. This response is totally unacceptable and will make it impossible for TCUC to calculate ROI or ROCIU and force DDU to justify their rate increase. Consequently, the TCUC is strongly urging the PUC to perform extreme due diligence and force the utility to prove need prior to approving any rate increase for DDU.

Respectfully submitted:

Byrom J. Smith, III; Director, Intervenor and Ratepayer
The Cliff’s Utility Committee