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

DOUBLE DIAMOND UTILITY COMPANY, INC'S OBJECTIONS TO, MOTION TO EXCLUDE AND MOTION TO STRIKE THE DIRECT TESTIMONY AND EXHIBITS OF NELISA HEDDIN

TO THE HONORABLE JUDGE BELL:

COME NOW, Double Diamond Utility Company, Inc. ("DDU") and files the following objections to the direct testimony and exhibits of Nelisa Heddin, which was filed on September 8, 2017, on behalf of the White Bluff Ratepayers Group ("WBRG"), and moves to strike certain portions of Ms. Heddin's testimony, as set forth below:

I. OBJECTIONS TO DIRECT TESTIMONY OF NELISA HEDDIN.

DDU objects to and moves to strike portions of the direct testimony of WBRG's expert witness, Nelisa Heddin, because portions of her testimony are beyond the scope of her expertise and are not relevant to this proceeding. DDU is the investor-owned utility that filed the application to establish rates in this proceeding. DDU is a wholly owned subsidiary of a much larger entity, Double Diamond-Delaware, Inc.. Ms. Heddin attempts to opine at some length on the business organizational structure of Double Diamond-Delaware, Inc., and its subsidiary companies and on matters related to financial accounting and taxation of this large private company and investor-owned utility. However, Ms. Heddin fails to establish her expertise which would qualify her to opine on the business structure or financial accounting and tax issues. Double Diamond-Delaware, Inc. is a large private corporation and Ms. Heddin is not qualified to opine on matter related to its structure, financial accounting or federal taxation.

If a witness is not qualified as an expert, her testimony is limited to opinions rationally based on the witness's perception and helpful to understanding the testimony or determining a

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fact in issue.¹ To give any other opinion, a witness must be qualified “by knowledge, skill, experience, training, or education” and “the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”² All evidence, including the opinions of an expert, must be found to be relevant - which means it must have “any tendency to make a fact more or less probable than it would be without the evidence” and it must be “of consequence in determining the action.”³

In providing her background education and experience, Ms. Heddin describes performing cost of service and rate design studies for utilities - specifically for cities and other governmental or non-profit entities.⁴ She claims that doing so has given her a “broad understanding” of the water utility industry, including “issues associated with water supply, system capacity, operational issues, rate design and financial implications.”⁵ However, this testimony only establishes that Ms. Heddin is qualified to speak to the cost of service and rate design of water service providers - and specifically cities and a few non-profits. It does not establish that she has any knowledge, skill, experience, training, or education that would qualify her to testify as to the business structure, the financial accounting, or federal tax accounting or treatment of assets of investor-owned utilities.

A. Specific Objections to Direct Testimony of Nelisa Heddin

1. Page 3, Lines 15-16, beginning at “indeterminable” and concluding with “property.”

DDU objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.⁶ Ms. Heddin’s statement is an unsupported assertion of fact that is not helpful to understanding the testimony or determining a fact in issue.⁷ In fact, if Ms. Heddin understood the issues related to corporate structure and financial accounting for entities like DDU and its parent company, she would not make such an erroneous assertion. DDU requests that this portion of her answer be stricken from the record.

¹ Tex. R. Evid. 701; 16 Tex. Admin. Code § 22.221 (“TAC”) (applying the Texas Rules of Evidence in contested case hearings).

² Tex. R. Evid. 702.

³ Tex. R. Evid. 402

⁴ Direct Testimony of Nelisa Heddin for WBRG at 1:17-2:1 (September 8, 2017)

⁵ *Id.* at 2:15-17

⁶ Tex. R. Evid. 701.

⁷ Tex. R. Evid. 702.

2. Page 4, Lines 16-19, ending with “assets.”

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.⁸ As above, Ms. Heddin’s statement is an unsupported assertion of fact that is not helpful to understanding the testimony or determining a fact in issue.⁹ In fact, if Ms. Heddin understood the issues related to corporate structure and financial accounting for entities like DDU and its parent company, she would not make such an erroneous assertion. DDU requests that this portion of her answer be stricken from the record.

3. Page 6, Lines 13-Page 8, Line 11

The question beginning on Page 6, Line 13 asks Ms. Heddin to explain how the Commission has addressed the issues of “developer contributed assets” in the past. Ms. Heddin proceeds to quote specific passages from a Commissioner docket and a Texas Supreme Court opinion. Ms. Heddin is an expert on rate design and cost of service analyses for governmental and non-profit entities. She is not a legal expert. Her legal analysis of the Commission case and a Texas Supreme Court opinion, and her opinion of the “holding” of that case, are not proper expert testimony. Without establishing the knowledge, skill, experience, training or education to evaluate the Commission’s or the Texas Supreme Court’s decision, Ms. Heddin’s opinion about the holdings of the cases and their applicability are beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing case law.¹⁰ Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.¹¹ For these reasons, DDU requests that Ms. Heddin’s legal analysis be stricken from the record.

4. Page 8, Lines 13-17

Similarly, the question beginning on Page 8, Line 13 asks Ms. Heddin to explain how the Texas Legislature has addressed the issues of “developer contributed assets”. Ms. Heddin proceeds to paraphrase a statute to suit her needs. Ms. Heddin is an expert on rate design and

⁸ Tex. R. Evid. 701.

⁹ Tex. R. Evid. 702.

¹⁰ Tex. R. Evid. 702.

¹¹ Tex. R. Evid. 701.

cost of service analyses for governmental and non-profit entities. She is not a legal expert. Her legal analysis of the statute, and her opinion of the intent of that statute, are not proper expert testimony. Without establishing the knowledge, skill, experience, training or education to evaluate the statute, Ms. Heddin's opinion about the intent of the legislature and the statutory language are beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing a statute.¹² Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.¹³ For these reasons, DDU requests that Ms. Heddin's legal analysis be stricken from the record.

5. Page 9, Lines 14-Page 10, Line 5

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.¹⁴ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.¹⁵ Ms. Heddin simply is not qualified to opine on the treatment of assets owned by a large for-profit corporation and its wholly owned subsidiaries. In addition, Ms. Heddin attempts to opine about the obligations established by contract between two parties. Without establishing the knowledge, skill, experience, training or education to evaluate the statute, Ms. Heddin's opinion about the contractual obligations between the parties to that contract is beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing a contract.¹⁶ Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.¹⁷ DDU requests that this testimony be stricken from the record.

6. Page 11, Lines 16-17, beginning at "Under"

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.¹⁸ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony

¹² Tex. R. Evid. 702.

¹³ Tex. R. Evid. 701.

¹⁴ Tex. R. Evid. 701.

¹⁵ Tex. R. Evid. 702.

¹⁶ Tex. R. Evid. 702.

¹⁷ Tex. R. Evid. 701.

¹⁸ Tex. R. Evid. 701.

or determining a fact in issue.¹⁹ Ms. Heddin simply is not qualified to opine on the treatment of revenues of a large for-profit corporation and its wholly owned subsidiaries. DDU requests that this testimony be stricken from the record. DDU requests that this testimony be stricken from the record.

7. Page 12, Lines 6-14

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.²⁰ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.²¹ Ms. Heddin simply is not qualified to speculate about the structure of a large for-profit corporation and its wholly owned subsidiaries. DDU requests that this testimony be stricken from the record.

8. Page 12, Lines 18 - Page 13, Line 4

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.²² As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.²³ Ms. Heddin simply is not qualified to speculate about the structure of a large for-profit corporation and its wholly owned subsidiaries. DDU requests that this testimony be stricken from the record.

9. Page 13, Lines 15-18

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.²⁴ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.²⁵ Ms. Heddin simply is not qualified to speculate about the financial treatment of assets of a large for-profit corporation and its wholly owned subsidiaries. DDU requests that this testimony be stricken from the record.

¹⁹ Tex. R. Evid. 702.

²⁰ Tex. R. Evid. 701.

²¹ Tex. R. Evid. 702.

²² Tex. R. Evid. 701.

²³ Tex. R. Evid. 702.

²⁴ Tex. R. Evid. 701.

²⁵ Tex. R. Evid. 702.

10. Page 14, Lines 8-11

DDU also objects to this response which improperly assumes facts that are not in evidence and for which she is not qualified to render an opinion.²⁶ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.²⁷ Ms. Heddin simply is not qualified to speculate about the financial treatment of assets of a large for-profit corporation and its wholly owned subsidiaries or the contractual obligations between parties. DDU requests that this testimony be stricken from the record.

11. Page 15, Lines 6-11

Ms. Heddin attempts to opine about the obligations established by contract between two parties. Without establishing the knowledge, skill, experience, training or education to evaluate the statute, Ms. Heddin's opinion about the contractual obligations between the parties to that contract is beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing a contract.²⁸ Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.²⁹ DDU requests that this testimony be stricken from the record.

12. Page 16, Lines 4-12

Ms. Heddin attempts to opine about the obligations established by contract between two parties. Without establishing the knowledge, skill, experience, training or education to evaluate the statute, Ms. Heddin's opinion about the contractual obligations between the parties to that contract is beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing a contract.³⁰ Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.³¹ DDU requests that this testimony be stricken from the record.

²⁶ Tex. R. Evid. 701.

²⁷ Tex. R. Evid. 702.

²⁸ Tex. R. Evid. 702.

²⁹ Tex. R. Evid. 701.

³⁰ Tex. R. Evid. 702.

³¹ Tex. R. Evid. 701.

13. Page 26, Lines 10-14, beginning at “Most importantly” and ending with “utility rates.”

Ms. Heddin once again attempts to opine about the obligations established by contract between two parties. Without establishing the knowledge, skill, experience, training or education to evaluate the statute, Ms. Heddin's opinion about the contractual obligations between the parties to that contract is beyond the scope of her expertise. Moreover, this opinion testimony is not helpful to the trier of fact who is more than capable of reading and analyzing a contract.³² Finally, her opinion does not qualify as a lay witness opinion because it is not rationally based on her perception.³³ DDU requests that this testimony be stricken from the record.

14. Page 42, Lines 3-17

DDU also objects to these responses which improperly assume facts that are not in evidence and for which she is not qualified to render an opinion.³⁴ As above, Ms. Heddin's statements are unsupported assertions of fact that are not helpful to understanding the testimony or determining a fact in issue.³⁵ Ms. Heddin simply is not qualified to speculate about the financial treatment of assets of a large for-profit corporation and its wholly owned subsidiaries or the contractual obligations between parties or the legal implication of a deed in relation to those assets. DDU requests that this testimony be stricken from the record.

II. CONCLUSION

DDU objects to specific portions of Ms. Heddin's prefiled direct testimony because those portions are beyond the scope of Ms. Heddin's expertise and are not helpful to the trier of fact. Thus, they are inadmissible under Texas Rule of Evidence 702. Because none of the proposed opinions are rationally based on Ms. Heddin's perceptions, they are inadmissible as lay witness opinions under Texas Rule of Evidence 701. In addition, certain opinions offered by Ms. Heddin are not relevant to this proceeding and are inadmissible under Texas Rule of Evidence 402. For these reasons, DDU moves to strike the above-cited portions of Ms. Heddin's testimony from the record in this proceeding.

³² Tex. R. Evid. 702.

³³ Tex. R. Evid. 701.

³⁴ Tex. R. Evid. 701.

³⁵ Tex. R. Evid. 702.

III. Prayer

WHEREFORE, PREMISES CONSIDERED, DDU respectfully request that the Judges sustain DDU's objections and enter an order excluding and striking the Testimony as requested above and such and further relief to which they may be entitled.

Respectfully submitted,

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By: _____
John J. Carlton

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 15th of September, 2017.



John J. Carlton