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

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

**COMMISSION STAFF’S OBJECTION AND MOTION TO STRIKE PORTIONS
OF THE REBUTTAL TESTIMONY OF GREGORY E. SCHEIG**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff’s Objection and Motion to Strike Portions of the Rebuttal Testimony of Gregory E. Scheig. In support thereof, Staff shows the following:

I. BACKGROUND

On October 16, 2017, Double Diamond Utility Company, Inc. (DDU) filed the rebuttal testimony of Gregory E. Scheig. SOAH Order No. 10 required that objections to DDU’s rebuttal testimony be filed by October 20, 2017. Therefore, this pleading is timely filed.

II. OBJECTION AND MOTION TO STRIKE

The portions of Mr. Scheig’s testimony, which are further identified and discussed below, do not constitute testimony that is responsive to arguments and evidence presented in the direct testimony of other parties to the case, and thus are not appropriate for inclusion in rebuttal. On rebuttal, a party is limited to evidence that directly answers or disproves the last round of the other party’s evidence.¹ Instead, these objectionable portions constitute new testimony and schedules in support of DDU’s *prima facie* case, and therefore must have been presented in DDU’s direct case. This is required in order to afford other parties with the opportunity to meaningfully analyze the case, obtain discovery, and submit testimony. Allowing these portions of Mr. Scheig’s rebuttal to stand would give DDU an improper second bite at the apple --

¹ See *In re Bledsoe*, 41 S.W.3d 807, 813 (Tex. App. 2001).

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permitting it to attempt to bolster its direct case with new evidence that could have been presented as part of its direct case.

As part of its direct case, DDU filed the testimony of Jay Joyce, President of the consulting firm Expergy. Mr. Joyce testified that DDU is requesting a rate of return (ROR) of 8.42%, “based on Double Diamond Delaware’s (‘DDD’) capital structure of 55.84% debt and 44.16% equity, with a return on equity (‘ROE’) of 11.49% and a cost of debt of 6.00%.”² Mr. Joyce further testified that this ROE was calculated based on the Commission’s Instructions for Rate/Tariff Change for Class B Water and Sewer Utilities.³ The instructions that Mr. Joyce references in his testimony provide that “a utility *may use either of two methods* for determining the ROE percentage that it will request.”⁴ The first method, which DDU chose to utilize in its direct case, provides a simple calculation based on Moody’s Baa bond ratings to determine an ROE.⁵ The second method is “the submission of written testimony and other credible evidence that develops and supports the reasonableness and necessity of the requested ROE.”⁶

Mr. Joyce also references the portion of the rate change application instructions that states the method of determining an ROE percentage utilized by DDU in its direct case “will be presumed reasonable if no other party provides opposing testimony.”⁷ Mr. Joyce testified that the additional cost required to defend cost of equity, and the small number of customers from which that cost would be collected, make it “illogical and wasteful for any of the other parties to force DDU to develop ROE testimony by contesting the requested ROE . . .”⁸ First, this argument ignores the fact that the next sentence in the Commission’s instructions after the portion quoted by Mr. Joyce states: “However, if parties to the case do not reach a settlement agreement, there is

² Direct Testimony of Jay Joyce on Behalf of Double Diamond Utility Co., Ex. DDU-6 at 12 (Aug. 4, 2017) (Joyce Direct).

³ *Id.* at 14.

⁴ Commission’s Instructions for Rate/Tariff Change, Class B Water and Sewer Utilities at 9-10 (Sept. 17, 2015) (emphasis added).

⁵ *Id.* at 10.

⁶ *Id.*

⁷ Joyce Direct at 14.

⁸ *Id.* at 15.

no presumed reasonable ROR. Additionally, in specific cases, unusual or extraordinary circumstances may cause the PUC staff to recommend a lower or higher ROE.”⁹ Thus, there was no presumption of reasonableness regarding an ROR percentage, as the parties have not reached a settlement agreement. Furthermore, DDU was on notice that Staff could recommend an ROE and ROR based on analyses besides the simple calculation set out in the instructions, which it has done in other contested water and sewer rate cases.¹⁰ Second, at the time that Mr. Joyce’s testimony was filed, this case had already been protested by over five hundred ratepayers and referred to SOAH for an evidentiary hearing.¹¹ As a party in a contested case, DDU was required to marshal all of its evidence in support of its direct case at the time that it filed its direct testimony.¹²

In rebuttal, DDU filed the testimony of another consultant, Gregory Scheig. The content of this testimony extends beyond appropriate rebuttal and includes new analyses and the application of additional methodologies to support DDU’s requested ROR and ROE. Mr. Scheig’s testimony states in relevant part:

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address the recommendations of Emily Sears on behalf of the Public Utility Commission of Texas (“PUCT”). I have also been asked to determine an independent assessment of a fair rate of return for DDU’s cost of equity capital (also referred to as

⁹ Commission’s Instructions for Rate/Tariff Change, Class B Water and Sewer Utilities at 10.

¹⁰ See *Application of Double Diamond Properties Construction Co dba Rock Creek for a Rate/Tariff Change*, PUC Docket No. 46247, SOAH Docket No. 473-17-0067.WS; *Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change*, PUC Docket No. 45720, SOAH Docket No. 473-16-3831.WS; *Application of Monarch Utilities I, L.P. to Changes Rates for Water and Sewer Service*, PUC Docket No. 45570, SOAH Docket No. 473-16-2873; *Application of Quadvest, LP for a Rate/Tariff Change*, PUC Docket No. 44809, SOAH Docket No. 473-16-1848.WS; *Application of Liberty Utilities (Woodmark Sewer) Corp. (CCN No. 20679)*, *Liberty Utilities (Tall Timbers Sewer) Corp. (CCN No. 20694)*, and *Liberty Utilities (Sub) Corp. to Change Rates for Sewer Services in Smith County, Texas*, PUC Docket No. 46256, SOAH Docket No. 473-17-1641.WS; *Application of Corix Utilities (Texas) Inc. for a Rate/Tariff Change*, PUC Docket No. 45418, SOAH Docket No. 473-16-3886.WS.

¹¹ See Order of Referral (Sept. 8, 2016).

¹² See 16 Tex. Admin. Code §22.225(a)(1) (TAC).

the “return on equity” or “ROE”). I also calculated an overall rate of return (“ROR”) for the company reflecting its capital structure and cost of debt.¹³

By Mr. Scheig’s own admission, the purpose of his testimony is not limited to rebutting the recommendation of Staff witness Ms. Sears, but is also to present his own independent analysis of the issues she provided testimony on. In his testimony, Mr. Scheig offers ROE and ROR recommendations for DDU “based on the analyses that [he] developed using a combination of CAPM models, DCF models, Risk Premium analyses, and an Expected Earnings analysis.”¹⁴ Mr. Scheig’s results yield the same ROE and ROR recommendation offered in Mr. Joyce’s direct testimony,¹⁵ but they are supported by significant additional analyses, which are impermissible evidence on rebuttal. Mr. Scheig’s testimony essentially operates as supplemental direct testimony to support DDU’s requested ROR and ROE which is not permissible, as it raises new analyses and deprives parties of the opportunity to ask discovery or respond to it.¹⁶ If DDU wished to support its requested ROR and ROE percentages with these further models and analyses, it should have offered them as part of its direct case.

Through this additional testimony and corresponding schedules, DDU is attempting to supplement its original ROE calculation by presenting significant additional evidence in accordance with the second method for determining ROE as set out in the Commission’s rate change application instructions. This goes beyond the permissible scope of rebuttal testimony, which should be properly limited to answering the testimony of Staff witness Ms. Sears or White Bluff Ratepayers Group witness Ms. Nelisa Hedin. DDU should not be permitted to backdoor additional evidence on to its case through Mr. Scheig’s extensive analyses to bolster its requested ROR and ROE.

¹³ Rebuttal Testimony and Exhibits of Gregory E. Scheig on Behalf of Double Diamond Utility Company, Inc., Ex. DDU-10 at 4 (Oct. 16, 2017).

¹⁴ *Id.* at 13.

¹⁵ *See id.* at 14 (recommending an ROE of 11.50% and an ROR of 8.40%).

¹⁶ *See* 16 TAC § 22.225(c).

III. PORTIONS OF MR. SCHEIG'S REBUTTAL THAT SHOULD BE STRICKEN

For the reasons discussed above, Staff objects and requests that the following be stricken:

Document	Page and Line	Subject Matter
Scheig Rebuttal Testimony	2:10-13	Mr. Scheig's independent assessment of ROE and ROR
Scheig Rebuttal Testimony	13:15- 15	Results of Mr. Scheig's analyses
Scheig Rebuttal Testimony	21:17- 32:22	Summarizing Mr. Scheig's CAPM analyses, DCF analyses, Risk Premium Analysis, Expected Earnings analysis, and Small Stock Risk Premium analysis used in determining a recommended ROR and ROE for DDU
Exhibit DDU-10B	All Schedules	Schedules for Mr. Scheig's CAPM analyses, DCF analyses, Risk Premium Analysis, Expected Earnings analysis, and Small Stock Risk Premium analysis used in determining a recommended ROR and ROE for DDU

IV. CONCLUSION

DDU has impermissibly presented evidence in its rebuttal case that should have been presented in its direct. Because of the nature of this testimony, and because of the prejudice to Staff and intervenors in not being able to ask discovery on Mr. Scheig's analyses or address them in testimony, Staff respectfully requests that the identified portions of Mr. Scheig's testimony be stricken.

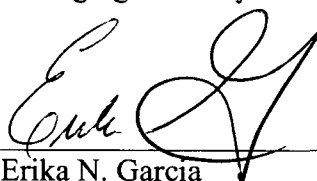
DATED: October 20, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

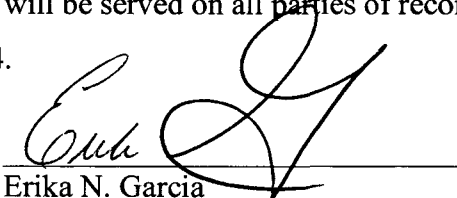


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**SOAH DOCKET NO. 473-17-0119.WS
PUC DOCKET NO. 46245**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 20, 2017 in accordance with 16 TAC § 22.74.



Erika N. Garcia