



Control Number: 46245



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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

**REPLY BRIEF OF  
WHITE BLUFF RATEPAYERS GROUP**

Respectfully submitted,



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ATTORNEYS FOR WHITE BLUFF

RATEPAYERS GROUP

Dated: December 15, 2017

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<b>RATE/TARIFF CHANGE</b>	<b>§</b>	

**REPLY BRIEF OF WHITE BLUFF RATEPAYERS GROUP**

White Bluff Ratepayers Group (“WBRG”) hereby files its Reply Brief in this matter. Pursuant to Order No. 10, the deadline for reply briefs is December 15, 2017. Therefore, this brief is timely filed. In support of its Reply Brief, WBRG states the following:

**I. INTRODUCTION AND SUMMARY**

The initial brief filed by DDU suggests that WBRG did not actively participate in the hearing on the merits. As the ALJ is aware, this was not the case. Rather than addressing the issues raised by WBRG in its testimony and at the hearing on the merits, DDU chooses to ignore these arguments. It could be that DDU hopes to minimize the ALJ’s attention to these issues by not addressing the issues. WBRG has no doubt that the ALJ will give these issues the full attention they deserve. It could also be that DDU hopes to shift the burden of proof on the issues in this docket from the utility to the ratepayers. WBRG is confident the ALJ will not allow DDU to abuse the process to unduly shift the burden of proof.<sup>1</sup>

WBRG is concerned DDU may be attempting to effectively shift the burden of proof by waiting until its reply brief to respond for the first time to the issues raised by WBRG through its direct testimony and during the hearing. By waiting, DDU deprives WBRG of the ability to respond to DDU’s position. For example, WBRG presented direct testimony raising an issue regarding who owns specific real property included in DDU’s rate base for White Bluff—DDU or the White Bluff POA. DDU declined to respond to this issue in its rebuttal testimony or its

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<sup>1</sup> See *Texas Alarm & Signal Ass’n v. Public Util. Comm’n*, 603 SW2d 766, 773 (Tex. 1980) (“Utilities are to be consistent in their applications and may not, without supporting evidence, vary their mathematical formulas or relevant factors so as to fit their alleged needs. . . . [T]o justify their rate structure, [the utility] must present its data and produce additional information that is reasonably requested by the Commission or intervenors. . . . [T]he burden of proof of the utility includes the obligation to produce relevant information.”).

initial brief. WBRG submits that based on DDU's decision to remain silent in the face of evidence proving that DDU does not in fact own the property, DDU has failed to meet its burden of proving ownership, and thus the property should be excluded from rate base.<sup>2</sup> If DDU, for the first time in its reply brief, offers some new argument or evidence to which WBRG will have no opportunity to respond, the ALJ should hold that DDU has waived such argument by delaying until its reply brief to first address the issue.

## **II. REVENUE REQUIREMENT [PO ISSUES 3, 5, 6, 34]**

### **A. Operations and Maintenance Expenses [PO Issues 20, 38]; Administrative and General Expenses [PO Issues 21, 25, 38]; Other Expenses [PO Issue 38]**

#### **Salaries: Reply to DDU**

As detailed in WBRG's testimony and WBRG's initial brief,<sup>3</sup> DDU's adjustments for "known and measurable" changes in salaries at White Bluff (\$415 adjustment for water and \$20,472 adjustment for sewer) should be disallowed because DDU did not explain the need for a post-test year adjustment, and because the number of employees in the application differ from the current employee numbers. DDU's rebuttal testimony and initial brief are entirely without a response to WBRG's position.

Without something in rebuttal testimony or in DDU's initial brief, WBRG cannot address DDU's newly-discovered position, which WBRG feels sure will appear in DDU's reply brief. As explained in the introduction, if DDU were to take the approach of laying behind the log until its reply brief to attack arguments that have been made throughout the entire proceeding, this would deprive other parties of a fair opportunity to respond. DDU has so far benefitted by disregarding the application instructions, which clearly require DDU to justify known and measurable changes. If DDU had followed the instruction and explained the need for a post-test year adjustment, DDU would have shifted the burden of proof to any party wishing to contest the known and measurable changes. DDU did not do so. It should not be WBRG's burden to prove that the changes were unjustified until DDU first demonstrates why they were justified.

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<sup>2</sup> DDU claimed that it owned the property by including it in rate base. WBRG provided documentary evidence that the property had been conveyed to the POA. DDU failed to respond to WBRG's evidence.

<sup>3</sup> Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1 at WBRG000052 (Sept. 8, 2017); Initial Brief of White Bluff Ratepayers Group at 4-5 (Nov. 22, 2017).

Many of Staff's concerns with DDU's employee expenses support WBRG's position that DDU failed to adequately support its request for known and measurable changes. Staff recommends that the expenses of two backhoe operators, Mr. Whitworth and Mr. Keeton, be disallowed because DDU failed to explain what they did—other than install taps.<sup>4</sup> It is interesting to note that neither Mr. Whitworth nor Mr. Keeton were employed by DDU at the time that DDU filed its direct testimony.<sup>5</sup> This demonstrates that these two employees are not necessary for the operation of the utility.

To repeat WBRG's position: DDU's request for a known and measurable adjustment for these costs should be disallowed. DDU failed to provide an adequate explanation for the adjustments, and the facts brought out at the hearing do not support DDU's request for a post-test year adjustment.

### **Regulatory Fees**

WBRG agrees with Staff on this issue.

### **Professional Fees**

WBRG agrees with Staff that the CCN amendment expense assigned to White Bluff be reclassified to The Cliffs and then all of the CCN amendment expense assigned to The Cliffs be removed from The Cliffs' cost of service.<sup>6</sup>

### **Miscellaneous Expenses – Reply to Staff**

Staff recommends adjusting DDU's miscellaneous expenses to remove expenses incurred by the White Bluff resort that are allocated to the utility. Staff's position is that DDU did not adequately support the allocation. WBRG would point out that these "allocated" costs are also affiliate transactions because the allocations are a way for DDU to pay the developer affiliate for services provided by the developer. Pursuant to Texas Water Code § 13.185(e), any payment to an affiliated interest for costs of services may not be allowed except to the extent that the Commission finds the payment to be reasonable and necessary, and this finding must include "specific statements setting forth" the costs and a finding that "the price to the utility is no higher

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<sup>4</sup> Commission Staff Initial Brief at 9–11 (Nov. 22, 2017).

<sup>5</sup> Direct Testimony of Randy Gracy, Double Diamond Util. Co., Inc. Ex. DDU-3 at 15 (Aug. 1, 2016).

<sup>6</sup> Commission Staff Initial Brief at 17 (Nov. 22, 2017).

than prices charged” by the affiliate to its other affiliates. Based on the deficiencies noted by Staff, the Commission has no way of making the findings necessary to allow DDU to recover for these affiliate transactions. WBRG supports Staff’s position but asserts that the position may also be supported on other grounds, including those provided by the Texas Water Code.

**B. Depreciation [PO Issues 12, 27]**

**i. Improper Known and Measurable Adjustment/Inappropriate Use of Trended Original Cost Study**

**Improper Use of Trended Original Cost Study**

Neither DDU nor Staff addressed the issue of whether it was appropriate for DDU to use a trended original cost study to adjust its rate base (and depreciation) when reliable accounting records existed to establish rate base and depreciation (which it was not). As set out in WBRG’s initial brief, DDU’s request for a known and measurable change to depreciation, for both White Bluff and The Cliffs, should not be allowed because the known and measurable change resulted from the artificial increase in DDU’s rate base resulting from the inappropriate use of a trended original cost study when historical records were available.

**Error in Trending Study**

Without waiving its objection to the use of the trending cost study in light of the existing records available, WBRG’s direct testimony and initial brief carefully explained that Dr. Harkins erroneously used an installation date of January 1, 1996, rather than an installation date of January 1, 1991, for her trending study. This error resulted in an overstatement of rate base, depreciation expense, return, and income tax expense. DDU’s rebuttal misunderstands—or intentionally confuses—WBRG’s testimony by claiming that Ms. Heddin’s position is that the 1996 date should be used.<sup>7</sup> DDU did not address the issue at all in its initial brief. WBRG maintains its position from its initial brief: January 1, 1991 is the proper installation date. If DDU is allowed to use a trending study, it should at least use the earliest installation date (1991) since that date would be the most conservative.

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<sup>7</sup> Compare Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1 at WBRG000036 (Sept. 8, 2017) (“[T]he assets must be trended using the correct installation date of 1/1/1991.”) with Rebuttal Testimony of Dr. Victoria Harkins, DDU Ex. 9 at 8 (Oct. 16, 2017) (“Ms. Heddin objects to the use of 1991 versus 1996 for dating assets.”).

**ii. Fully Depreciated Assets**

In its direct testimony and initial brief, WBRG identified fully depreciated assets that were improperly included in DDU's depreciation table.<sup>8</sup> DDU chose not to respond to Ms. Heddin's testimony in DDU's rebuttal testimony, chose not to cross-examine Ms. Heddin on this issue at the hearing, and failed to include a response to this argument in its initial brief. DDU has waived its opposition to WBRG's position. Any argument from DDU appearing for the first time in its reply brief should be ignored. A conscious decision to lay behind the log should not be rewarded. The adjustments to remove this property are set out in Tables NDH-14, NDH-15, NDH-16, and NDH-17 in Ms. Heddin's testimony.

**C. Taxes [PO Issues 28, 31]**

**i. Federal Income Tax Expense [PO Issue 30]**

WBRG has no reply arguments on this issue.

**ii. Other Assessments and Taxes [PO Issue 29]**

WBRG has no reply arguments on this issue.

**D. Return on Invested Capital [PO Issues 9, 10, 15, 16, 18, 19]**

**i. Property Not Belonging to DDU**

As explained in Ms. Heddin's testimony, DDU included in its rate base property that was previously conveyed from DDU to the White Bluff Property Owners Association ("POA").<sup>9</sup> Because this property does not belong to DDU, it should not be included in invested capital. DDU did not respond in its rebuttal testimony to Ms. Heddin's testimony on this issue. DDU did not address the issue in its initial briefing. Based on DDU's silence on this issue, the ALJ should presume that DDU has waived any opposition to WBRG's position, and the property conveyed to POA should be removed from invested capital.

**ii. Inappropriate Use of Trended Original Cost Study**

WBRG maintains its position from its initial brief.

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<sup>8</sup> Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1 at WBRG000046-000048 (Sept. 8, 2017).

<sup>9</sup> *Id.* at WBRG000045-000046.



### iii. Rate Base: 100% Developer-contributed Assets

DDU's position is that the "*appropriate amount of developer contributions is zero.*"<sup>10</sup> DDU's position is that it voluntarily decided to "reclassify" portions of some of its assets from utility-provided to developer contributions. According to DDU, these are "hypothetical developer contributions." This is a convenient argument in that, if viable, DDU would not have to support the division between developer contributions and utility contributions because DDU's determination could be wholly arbitrary and would not have to be supported by DDU's books (which would presumably show all of the assets as utility-contributed).

The first problem with DDU's position is that it cannot be true. The bulk of DDU's assets at White Bluff (at least 60%) were constructed before DDU existed.<sup>11</sup> DDU could not have constructed the assets because DDU did not exist when the assets were put in place by the developer. Moreover, there is no evidence in the record showing what DDU paid for the assets acquired from the developer. No documentation exists demonstrating how the property was transferred from the developer to DDU. What is clear is that the developer constructed the facilities. What is "hypothetical" is DDU's investment into these systems.

#### Reconciliation

DDU attempts to discredit WBRG's arguments by creating a straw man. DDU argues that WBRG's position on developer contributions is based *primarily* on Ms. Heddin's claim that DDU's tax depreciation schedules do not reconcile with the asset list included in DDU's application. Contrary to DDU's assertion, this is not WBRG's "primary support" for its position that DDU's assets were developer-contributed. A brief review of Ms. Heddin's testimony shows that this argument is only one of many arguments, the balance of which DDU has failed to address. Indeed, WBRG presented the tax depreciation argument to rebut a potential claim that DDU might make that some of the utility assets were actually recorded as depreciable assets as opposed to assets expensed against lot sales. WBRG's position was, and is, that unless DDU reconciles the tax depreciation schedules to the asset lists, DDU should not be allowed to argue that the tax schedules satisfy its burden to show that assets were depreciated. The tax schedules

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<sup>10</sup> Initial Brief of Double Diamond Util. Co., Inc. at 21 (Nov. 22, 2017) (emphasis added).

<sup>11</sup> Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1 at 18–22 (Sept. 8, 2017) (at least 60% of assets constructed prior to creation of DDU).

do not show what assets were depreciated, and as DDU now reveals in its initial brief, it cannot reconcile the depreciation schedules to the asset lists in the application.

The issue here boils down to whether DDU expensed the cost the utility assets against lot sales (developer-contributed assets) or depreciated the assets to offset utility sales (utility-contributed assets). DDU provided nothing in its direct or rebuttal case to demonstrate how much of the assets were utility-contributed as shown in DDD's accounting records. The record contains some evidence that DDU may have depreciated some of the assets, but this evidence is contradictory and incomplete. This is discussed in detail in WBRG's initial brief.<sup>12</sup> Most importantly, however, as admitted by DDD's CFO at the hearing, the cost of utility infrastructure—along with the other costs associated with preparing raw land for sale—would have been recorded on DDD's books as part of the development costs of the lots in the subdivisions, and that these costs would have been “taken down to the balance sheet and expensed” when lots were sold.<sup>13</sup> DDU's own testimony, which was not contradicted, clearly indicates that the assets were developer-contributed and not utility-contributed.

DDU's “reconciliation” included in its initial brief is not supported by the record and fails to accurately demonstrate either the original cost of DDU's assets or the amount of developer contributions. The “reconciliation” contains numbers and numerical manipulation not supported by the record. The following amounts included in the reconciliation are not contained in the sources cited by DDU:<sup>14</sup> Cost, net of developer contributions;<sup>15</sup> Original Cost of All DDU Fixed Assets (including Rock Creek and The Reserve assets) \$9,333,357; Developer Contributions (\$4,463,135); Orig. Cost of Rock Creek assets (\$2,729,193); Orig. Cost of The Retreat assets (\$1,526,504); All Values shown under “3. Tax Return - Confidential; and Org. Cost of White Bluff & The Cliffs \$3,778,082.

These numbers simply do not appear in the cited evidence. Additionally, to support this extra-record exercise in number manipulation, DDU created a new “Depreciation and

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<sup>12</sup> See Initial Brief of White Bluff Ratepayers Group at 10–15 (Nov. 22, 2017).

<sup>13</sup> Tr. at 156:11–21 (Grout Cross) (Oct. 24, 2017).

<sup>14</sup> These sources are the Excerpts from DDD's Financial Statements (Ex. WBRG-8); Ex. DDU-12; DDU Tax Depreciation Schedule (Ex. WBRG-8); and the Amended Rate Application (Ex. DDU-1 and DDU-2).

<sup>15</sup> The amount shown in the brief does appear in DDD's financial statement as gross value of “Water/wastewater systems.” (DDU003584). The financial statement does not state that this amount is “net of developer contributions.”

Amortization Report” (Attachment 3 to DDU’s initial brief). This report is also not part of the evidentiary record. WBRG was not provided with an opportunity to review this attachment or to cross-examine any of DDU’s witnesses about the content of this report.

DDU’s arguments in its brief also contradict DDU’s response to WBRG RFI 1-15, in which DDU stated that no documentation exists in DDU’s financial records that support the 80/20 split.<sup>16</sup> DDU should not be allowed to claim in discovery that no records exist, and then be allowed to argue in a closing brief that such records do exist.

The other problem with DDU’s argument is that the numbers still do not reconcile. According to this new argument, the original cost of DDU’s utility assets at White Bluff and The Cliffs, net of developer contributions, is somewhere between \$3.7 million and \$4.9 million. This is nowhere close to the original cost, net of developer contributions, shown in the application, which totals \$6,217,675, as set out below:

	<u>The Cliffs</u>	<u>White Bluff</u>	<u>Total</u>
Original Cost	\$2,630,180	\$6,639,292	\$9,269,472
Dev. Contr. (Water)	(\$ 600,062)	(\$1,986,102)	
Dev. Contr. (Sewer)	<u>(\$ 159,668)</u>	<u>(\$ 305,965)</u>	
Orig. Cost net Dev. Contr.	\$1,870,450	\$4,347,225	\$6,217,675

Additionally, the total original cost for White Bluff and The Cliffs (\$9,269,472) contained in the application almost equals the amount DDU now claims to be the original cost of all of DDU’s assets, including the assets of two other systems, Rock Creek and The Reserve (\$9,333,357). DDU offers no explanation for these huge variances. The difference between \$6.2 million and \$4.9 million is not a “minor discrepancy.”<sup>17</sup> The difference between \$4.9 million and \$3.7 million is a major discrepancy for systems the size of White Bluffs and The Cliffs. It represents more than a 30% variance. DDU’s argument is all smoke and mirrors, and its showing (which is based on extra-record evidence) further obscures the issue.

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<sup>16</sup> See Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1M at WBRG000132 (Sept. 8, 2017).

<sup>17</sup> Initial Brief of Double Diamond Util. Co., Inc. at 23 (Nov. 22, 2017).

DDU argues in its brief that the live testimony of Staff's witness, Ms. Loockerman, supports DDU's position.<sup>18</sup> This is not the case. When asked if she was able to reconcile based on the original cost of the assets, Ms. Loockerman replied, "the original costs on the tax return were different than the original costs on the utility's application. So I'm not sure how to answer your question."<sup>19</sup> Ms. Loockerman also explained that because the numbers in the application were greater than those in the tax schedules, she considered her evaluation to be "conservative."<sup>20</sup> Ms. Loockerman recognized that the schedules could not be reconciled, but that fact did not affect her tax expense evaluation.

As a final observation, if one factors in some percentage of the \$2.3 million in wastewater assets that DDU failed to classify as being split 80/20 in its application (which was discussed in Ms. Heddin's testimony and WBRG's initial brief), these numbers become closer. How much closer—and whether they are close enough to confirm that the numbers reconcile—cannot be determined, because DDU does not admit in its brief that it erred in its classification of these assets, nor did DDU present revised schedules showing the effect of the error on revenue requirements. Had DDU acknowledged the error in its 80/20 split, and provided the revised schedules, WBRG would have had the opportunity to review and—perhaps—agree with DDU's numbers.

As explained by WBRG in its initial brief, the reconciliation that DDU needs to do should not be that complicated. Most of the utility assets appear to have been booked in DDD's Inventory account to be expensed against lot sales, and some of the assets were booked in an asset account to be depreciated. DDU needs to show the total amount of assets, the amount included in Inventory, and the amount included in the asset account, and then show that those amounts are equivalent to the amount of assets claimed in the application.<sup>21</sup> This is something that DDU should be able to do. DDD is not a "mom and pop" outfit. DDD is a multi-state,

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<sup>18</sup> See Initial Brief of Double Diamond Util. Co., Inc. at 24 (Nov. 22, 2017); see also Tr. 262:21–263:3 (Loockerman Cross) (Oct. 25, 2017).

<sup>19</sup> Tr. at 264:20–23 (Loockerman Cross) (Oct. 25, 2017).

<sup>20</sup> *Id.* at 265:2–6.

<sup>21</sup> If the ALJ is hesitant to determine that DDU has no invested capital because of DDU's inability to reasonably demonstrate the split between expensed assets and depreciated assets, WBRG asks that the ALJ not simply accept DDU's 80/20 version. DDU should not win simply by being recalcitrant. Instead, if DDU will agree to extend the effective date, the ALJ could reopen the evidentiary record and take additional testimony based on actual accounting records.

multi-million dollar development company. Its own CFO testified that it maintains proper records.<sup>22</sup>

### ***Sunbelt Utilities***

DDU dismisses the *Sunbelt Utilities* case as inapplicable because “DDU has not expensed the costs of constructing its White Bluff and The Cliffs utility systems.”<sup>23</sup> This statement is contrary to the evidence in the record. DDU’s witness, Mr. Grout, testified that the cost of utility infrastructure, along with the other costs associated with preparing raw land for sale, would have been recorded on DDD’s books as part of the development costs of the lots in the subdivisions, and that these costs would have been “taken down to the balance sheet and expensed” when lots were sold.<sup>24</sup> The cost of the utility infrastructure was used to reduce the profit made from the sale of the lots by the developer. The holding of *Sunbelt Utilities* is that when a developer recovers all or part of the cost of the utility system through the sale of lots, the Commission should exclude that amount from rate base.<sup>25</sup> Here, the testimony of Mr. Grout—and the language of the lot sales agreements—clearly indicate that DDD intended to recover the cost of the utility system from the sale of lots, just as it intended to recover, and did recover, the cost of the other infrastructure, such as roads, that were needed to make the lots marketable.

DDU also argues that the “utility assets are still on the parent company’s books as depreciable.”<sup>26</sup> As explained previously, DDU failed to produce documentation showing which assets were included in Inventory to be expensed against lot sales, and which were included as assets to be depreciated. The amount of depreciable assets supposedly shown on the parent company’s books are not consistent with the assets shown in the application. Without some consistent and verifiable demonstration of which assets are on the books as depreciable, DDU has failed to meet its burden of proof.

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<sup>22</sup> Tr. at 159:1–3 (Grout Cross) (Oct. 24, 2017).

<sup>23</sup> Initial Brief of Double Diamond Util. Co., Inc. at 24 (Nov. 22, 2017).

<sup>24</sup> Tr. at 156:11–21(Grout Cross) (Oct. 24, 2017).

<sup>25</sup> *Sunbelt Utilities v. Public Utility Commission*, 589 S.W.2d 392, 394 (Tex. 1979).

<sup>26</sup> Initial Brief of Double Diamond Util. Co., Inc. at 24 (Nov. 22, 2017).

## **Reply to Commission Staff**

In its initial brief, Staff states that it agrees with DDU's witness, Mr. Joyce's, identification of certain developer contributions that should have been shown as 0% rather than 80%. The problem resulted from Staff not identifying the amount of developer contributions for some of the assets the same as they were identified by DDU in its testimony. Staff further states that it "adopts the amount of developer contributions included in Mr. Joyce's rebuttal testimony."<sup>27</sup>

WBRG's alternative position is that the initial wastewater collection assets at both White Bluff and The Cliffs should be treated as 80% developer-funded, and not as 100% utility-funded, as is shown in Mr. Joyce's rebuttal testimony. WBRG does not believe that Staff's statement in its brief challenges WBRG's alternative position. The evidence at the hearing showed that DDU failed to identify the initial wastewater collection systems at both White Bluff and The Cliffs as being subject to the 80/20 split, which DDU appeared to concede.<sup>28</sup> Staff offers no argument to refute WBRG's position, or the evidence obtained at the hearing, on these assets. WBRG asserts that the Staff's "adoption" of Mr. Joyce's rebuttal should be limited to those particular assets that Staff inadvertently changed in developing its spreadsheets.

### **III. RATE OF RETURN**

#### **1. Return on Equity [PO Issue 8]**

In its direct case, WBRG recommended a return on equity of 9.49%, which was based on WBRG's position that DDU's return on equity should be reduced to reflect the utility's poor performance on water accountability.<sup>29</sup> DDU did not respond to WBRG's position in rebuttal testimony, in cross examination of WBRG's witness, or in its initial brief. The ALJ should take DDU's silence on the issue as its agreement with WBRG that DDU's return on equity should be adjusted to reflect DDU's poor performance on water accountability. DDU should be held accountable for expending ratepayer funds to produce water that is not sold.

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<sup>27</sup> Commission Staff's Initial Brief at 29 (Nov. 22, 2017).

<sup>28</sup> See Initial Brief of White Bluff Ratepayers Group at 17–18 (Nov. 22, 2017).

<sup>29</sup> Direct Testimony and Workpapers of Nelisa Heddin, White Bluff Ratepayers Group Ex. WBRG-1 at WBRG000050–WBRG000051 (Sept. 8, 2017).

The issue of water loss is particularly significant since the last drought. The Commission should engage with the Texas Water Development Board and the Texas Commission on Environmental Quality in incentivizing retail water utilities to conserve the State's critical water resources. Allowing DDU to lose water at such high levels, with no financial consequence, will not incentivize DDU to take the actions it needs to take to reduce water loss.

**2. Cost of Debt [PO Issues 8, 14]**

WBRG agrees with Staff's position on the appropriate cost of debt.

**3. Capital Structure [PO Issue 7]**

WBRG maintains that the capital structure should be 0% equity and 100% debt based on the evidence in the record that revealed that DDD removed its equity in the utility through the payment of a dividend of \$3 million paid to DDD by DDU.

**4. Overall Rate of Return [PO Issue 8]**

**IV. RATE DESIGN [PO ISSUES 1, 2, 4, 35, 36, 37]**

WBRG has no position on this topic.

**V. RATE CASE EXPENSES [PO ISSUE 38]**

As explained in WBRG's initial brief, for the purpose of determining whether DDU should be granted rate case expenses, the originally-submitted revenue requirements should be utilized for both White Bluff and The Cliffs. The Commission should use the originally-submitted revenue requirements because that is what is required by Commission rule, and because it would be bad policy to encourage utilities to over-reach in their original filings, if there will be no penalty later if opposition develops.

The Commission's rule provides:

A utility may not recover any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenues that would have been generated by *a utility's proposed rate*.<sup>30</sup>

DDU submitted its proposed rates in an application filed on August 1, 2016. Public notice was given on those rates.<sup>31</sup> Based on those rates, the ratepayers submitted their protests,

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<sup>30</sup> 16 Tex. Admin. Code § 24.33(b) (emphasis added).

<sup>31</sup> Application of Double Diamond Util. Co., Inc. for Water and Sewer Rate/Tariff Change (August 1, 2016).

and WBRG engaged counsel and a rate consultant. On April 26, 2017, DDU filed an amended set of rates.<sup>32</sup> DDU amended its rates to correct for errors in the application—errors that were identified by the diligent work of WBRG. No public notice was provided to the ratepayers of these new rates.

Both Staff and DDU argue that DDU should be allowed to use the amended rates as DDU's proposed rates. This approach is contrary to the 51% rule and the policy behind the 51% rule, which is intended to provide a check on outrageous and wholly unsupported requests made by water and sewer utilities. If a utility asks for an increase which it cannot support, and the ratepayers spend their time and money to prove the rates should be reduced, the ratepayers have earned the right to be relieved of the obligation to pay the utility's costs of preparing and litigating rates which were grossly overzealous. Allowing DDU to use its amended rates for purposes of the 51% determination would violate both the plain text of 16 Tex. Admin. Code § 24.33(b) itself, and the equitable policy underlying this rule.

Under Staff and DDU's position, utilities will be incentivized to file applications seeking unsupported rates with the hope that if no ratepayers intervene, the Commission will grant the request, and if ratepayers intervene, the utility can come in and amend its rate request downward so that it can recover its rate case expenses after litigating a more reasonable request. This is unjust. Although Staff's initial brief does not adopt WBRG's position, Staff's own language provides the rationale as to why WBRG's position should prevail: "A utility should not be permitted to request a certain increase only to later assert that, should it lose certain issues, the portion of its requested increase attributable to those issues should not count for the purposes of the rule."<sup>33</sup> Staff's position that DDU's amended rates should be used is inconsistent with Staff's own argument. DDU lost on the issue of developer-contributed assets when it amended its application to avoid having the entire application dismissed in response to WBRG's motion.

Additionally, Staff and DDU's approach deprives the parties of the opportunity to reach a compromise on rates. Had DDU filed an honest application in this matter in the beginning, there is a likelihood that the parties could have settled on rates. Because DDU destroyed all credibility

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<sup>32</sup> Correspondence Re Corrected Pages to Application and Workpapers (Apr. 26, 2017) (the amended application).

<sup>33</sup> Commission Staff's Initial Brief at 39 (Nov. 22, 2017).



by filing an application that reversed DDU’s prior position regarding developer contributions, the chance of settlement was essentially eliminated.

Additionally, in initial briefs, both Staff and DDU proposed using “revenue requirements” rather than “rate revenues at proposed rates” as the “revenues that would have been generated by a utility’s proposed rate.” For example, Staff recommends the use of \$546,714 as the Rate Revenues at Proposed Rates for White Bluff Water.<sup>34</sup> As shown on Page 95 of Exhibit DDU-2 and explained in Staff’s brief, this number is the Rate Revenue Requirement (\$568,761) less \$22,047 to remove the pass-through costs. The revenues produced by DDU’s proposed rates are shown on this page as \$568,368. While these numbers are similar, they are not identical, and the rule requires that the determination be made using revenues that would have been generated by the proposed rate, not the revenue requirement. The ALJ should recommend the use of “rate revenues at proposed rates” because that is what the rule requires. Additionally, in its rebuttal case, DDU argued that “the appropriate level of revenues under the proposed rates should be the rates in the amended application.”<sup>35</sup>

Also, both Staff and DDU argue that DDU should not be punished for including regulatory costs that in its rates that should have been included as pass-through costs. This position is also contrary to the rule, which focuses on the rates proposed, not the revenue requirements that the utility is seeking to recover. The record contains no proposed rates based on a revenue requirement that does not include the pass-through amounts. Therefore, there is no way to determine what the rate revenues based on those rates would have been. Moreover, DDU was aware that these costs should be recovered as pass-through costs because the application clearly states that they should not be included in rates.

The following table shows the revenues that would have been generated by DDU’s initially-proposed rates and the rates in DDU’s “amended” application.

Utility	Revenues – Proposed <sup>36</sup>	Revenues – Amended <sup>37</sup>
White Bluff – Water	\$642,509	\$568,363

<sup>34</sup> Commission Staff’s Initial Brief at 38 (Nov. 22, 2017).

<sup>35</sup> Rebuttal Testimony of Jay Joyce on Behalf of Double Diamond Util. Co., Inc. Ex. DDU-11 at 11 (Oct. 16, 2017).

<sup>36</sup> Application of Double Diamond Util. Co., Inc. for Water and Sewer Rate/Tariff Change, Attachment A (Aug. 1, 2016).

<sup>37</sup> Correspondence Re Corrected Pages to Application and Workpapers, Attachment A (Apr. 26, 2017) (the amended application).

White Bluff – Sewer	\$577,708	\$572,068
The Cliffs – Water	\$421,515	\$421,488
The Cliffs – Sewer	\$313,686	\$313,686

The following table shows the proper calculation of the 51% of the increase in revenues.

<b>51% for Rate Case Expense Recovery</b>						
	<b>White Bluff</b>			<b>The Cliffs</b>		
	<b>Water</b>	<b>Sewer</b>	<b>Total</b>	<b>Water</b>	<b>Sewer</b>	<b>Total</b>
Rate Revenues at Present Rates	\$465,237	\$412,543	\$877,780	\$368,356	\$215,111	\$583,467
Rate Revenues at Proposed Rates	\$642,509	\$577,708	\$1,220,217	\$421,515	\$313,686	\$735,201
Requested Increase in Revenues	\$177,272	\$165,165	\$342,437	\$53,159	\$98,575	\$151,734
51% of Requested Increase	<b>\$88,636</b>	<b>\$82,583</b>	<b>\$171,219</b>	<b>\$26,580</b>	<b>\$49,288</b>	<b>\$75,868</b>

**INTERIM RATES AND EFFECTIVE DATE [PO ISSUES 39, 40, 41]**

WBRG has no position on this topic at this time

**VI. ISSUES NOT ADDRESSED [PO ISSUES 11, 13, 17, 22, 23, 24, 26, 32, 33]**

Preliminary Order Issues 11, 13, 17, 22, 23, 24, 26, 32, and 33 are not applicable to this proceeding, and are therefore not addressed.

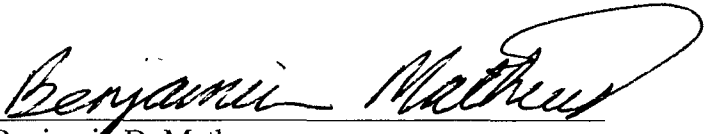
**VII. CONCLUSION**

For the reasons discussed above, White Bluff Ratepayers Group respectfully requests that the presiding officer issue a proposal for decision that adopts WBRG’s recommendations.

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

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing pleading was served on all parties of record in this proceeding on December 15, 2017, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

  
Benjamin D. Mathews

# Attachment A

Excerpts from DDU Applications

# Original Filing

Double Diamond Utilities Co. / White Bluff  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Water Rates / Water Revenue Proof

Line No.	Col (A)	(B)	(C)	(D)	(D)	(E)	(F)
		<u>Billing Units</u>	<u>Current Rates</u>	<u>Revenue under Current Rates</u>	<u>Billing Units</u>	<u>Proposed Rates</u>	<u>Revenue under Proposed Rates</u>
1	Meter Charge						
2	3/4" or Less	606	\$ 31.01	\$ 225,505	606	\$ 45.00	\$ 327,240
3	1"	18	77.51	16,742	18	112.50	24,300
4	1 1/2"	6	155.03	11,162	6	225.00	16,200
5	2"	10	248.04	29,765	10	360.00	43,200
6	3"	-		-	-		-
7	Subtotal	640		\$ 283,174	640		\$ 410,940
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	15,658	\$ 1.59	\$ 24,897	15,658	\$ 2.30	\$ 36,014
10	3,001 - 10,000	15,417	2.19	33,763	15,417	3.20	49,335
11	10,001 - 15,000	6,370	3.02	19,237	6,370	4.45	28,347
12	15,001 - 20,000	4,489	4.17	18,720	4,489	6.10	27,384
13	20,001 +	14,834	4.17	61,859	14,834	6.10	90,489
14	Subtotal	56,769		\$ 158,477	56,769		\$ 231,569
15	Total			\$ 441,651			\$ 642,509
16	Rate Revenue Requirement			\$ 642,700			\$ 642,700
17	Over / (Under) Recovery (\$)			(201,050)			(191)
18	Over / (Under) Recovery (%)			-46%			0%
19	5,000 Gallons		\$ 40.16			\$ 58.30	
20	Increase					\$ 18.14	45%
21	10,000 Gallons		\$ 51.11			\$ 74.30	
22	Increase					\$ 23.19	45%
23	30,000 Gallons		\$ 128.76			\$ 188.05	
24	Increase					\$ 59.29	46%
25	Revenue Increase over Test Year Calculated Revenue						\$ 200,858

# Amended Filing

Double Diamond Utilities Co. / White Bluff  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Water Rates / Water Revenue Proof

Line No.	Col (A)	(B)	(C)	(D)	(D)	(E)	(F)
		<u>Billing Units</u>	<u>Current Rates</u>	<u>Revenue under Current Rates</u>	<u>Billing Units</u>	<u>Proposed Rates</u>	<u>Revenue under Proposed Rates</u>
1	Meter Charge						
2	3/4" or Less	606	\$ 31.01	\$ 225,505	606	\$ 39.00	\$ 283,608
3	1"	18	77.51	16,742	18	97.50	21,060
4	1 1/2"	6	155.03	11,162	6	195.00	14,040
5	2"	10	248.04	29,765	10	312.00	37,440
6	3"	-	-	-	-	-	-
7	Subtotal	640		\$ 283,174	640		\$ 356,148
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	15,658	\$ 1.59	\$ 24,897	15,658	\$ 2.10	\$ 32,883
10	3,001 - 10,000	15,417	2.19	33,763	15,417	2.95	45,480
11	10,001 - 15,000	6,370	3.02	19,237	6,370	3.90	24,843
12	15,001 - 20,000	4,489	4.17	18,720	4,489	5.25	23,569
13	20,001 +	14,834	5.76	85,446	14,834	5.76	85,446
14	Subtotal	56,769		\$ 182,064	56,769		\$ 212,220
15	Total			\$ 465,237			\$ 568,368
16	Rate Revenue Requirement			\$ 568,761			\$ 568,761
17	Over / (Under) Recovery (\$)			(103,523)			(392)
18	Over / (Under) Recovery (%)			-22%			0%
19	5,000 Gallons		\$ 40.16			\$ 51.20	
20	Increase					\$ 11.04	27%
21	10,000 Gallons		\$ 51.11			\$ 65.95	
22	Increase					\$ 14.84	29%
23	30,000 Gallons		\$ 144.66			\$ 169.30	
24	Increase					\$ 24.64	17%
25	Revenue Increase over Test Year Calculated Revenue						\$ 103,131

# Original Filing

Double Diamond Utilities Co. / White Bluff  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Sewer Rates / Sewer Revenue Proof

Line No.	Col (A)	(B) Test Year Billing Units	(C) Current Rates	(D) Revenue under Current Rates	(E) Projected Billing Units	(F) Proposed Rates	(G) Revenue under Proposed Rates
1	Meter Charge						
2	3/4" or Less	540	\$ 41.00	\$ 265,680	540	\$ 57.50	\$ 372,600
3	1"	11	102.50	13,530	11	145.00	19,140
4	1 1/2"	5	205.00	12,300	5	295.00	17,700
5	2"	11	328.00	43,296	11	465.00	61,380
6	3"	-		-	-		-
7	Subtotal	567		\$ 334,806	567		\$ 470,820
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	10,106	\$ -	\$ -	10,106	\$ -	\$ -
10	3,001 +	9,717	8.00	77,737	9,717	11.00	106,888
11	Subtotal	19,823		\$ 77,737	19,823		\$ 106,888
12	Total			\$ 412,543			\$ 577,708
13	Revenue Requirement			\$ 577,714			\$ 577,714
14	Over / (Under) Recovery (\$)			(165,171)			(5)
15	Over / (Under) Recovery (%)			-40%			0%
16	5,000 Gallons		\$ 57.00			\$ 79.50	
17	Increase					\$ 22.50	39%
18	10,000 Gallons		\$ 97.00			\$ 134.50	
19	Increase					\$ 37.50	39%
20	30,000 Gallons		\$ 257.00			\$ 354.50	
21	Increase					\$ 97.50	38%
22	Revenue Increase over Calculated Revenue					\$	165,165

# Amended Filing

Double Diamond Utilities Co. / White Bluff  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Sewer Rates / Sewer Revenue Proof

Line No.	Col (A)	(B) Test Year Billing Units	(C) Current Rates	(D) Revenue under Current Rates	(E) Projected Billing Units	(F) Proposed Rates	(G) Revenue under Proposed Rates
1	Meter Charge						
2	3/4" or Less	540	\$ 41.00	\$ 265,680	540	\$ 56.65	\$ 367,092
3	1"	11	102.50	13,530	11	144.00	19,008
4	1 1/2"	5	205.00	12,300	5	295.00	17,700
5	2"	11	328.00	43,296	11	465.00	61,380
6	3"	-		-	-		-
7	Subtotal	567		\$ 334,806	567		\$ 465,180
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	10,106	\$ -	\$ -	10,106	\$ -	\$ -
10	3,001 +	9,717	8.00	77,737	9,717	11.00	106,888
11	Subtotal	19,823		\$ 77,737	19,823		\$ 106,888
12	Total			\$ 412,543			\$ 572,068
13	Revenue Requirement			\$ 572,130			\$ 572,130
14	Over / (Under) Recovery (\$)			(159,587)			(62)
15	Over / (Under) Recovery (%)			-39%			0%
16	5,000 Gallons		\$ 57.00			\$ 78.65	
17	Increase					\$ 21.65	38%
18	10,000 Gallons		\$ 97.00			\$ 133.65	
19	Increase					\$ 36.65	38%
20	30,000 Gallons		\$ 257.00			\$ 353.65	
21	Increase					\$ 96.65	38%
22	Revenue Increase over Calculated Revenue					\$	159,525



# Original Filing

Double Diamond Utilities Co. / The Cliffs  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Water Rates / Water Revenue Proof

Line No.	Col (A)	(B)	(C)	(D)	(D)	(E)	(F)
		<u>Billing Units</u>	<u>Current Rates</u>	<u>Revenue under Current Rates</u>	<u>Billing Units</u>	<u>Proposed Rates</u>	<u>Revenue under Proposed Rates</u>
1	Meter Charge						
2	3/4" or Less	258	\$ 36.14	\$ 111,889	258	\$ 50.00	\$ 154,800
3	1"	13	90.36	14,096	13	125.00	19,500
4	1 1/2"	1	180.72	2,169	1	250.00	3,000
5	2"	15	289.15	52,047	15	400.00	72,000
6	3"	-	542.16	-	-	-	-
7	Subtotal	287		\$ 180,201	287		\$ 249,300
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	5,260	\$ 2.60	\$ 13,677	5,260	\$ 3.50	\$ 18,411
10	3,001 - 10,000	6,142	3.00	18,425	6,142	4.00	24,558
11	10,001 - 15,000	2,655	5.07	13,463	2,655	6.50	17,253
12	15,001 - 20,000	1,958	8.56	16,763	1,958	10.50	20,562
13	20,001 +	8,708	8.56	74,538	8,708	10.50	91,431
14	Subtotal	24,724		\$ 136,867	24,724		\$ 172,215
15	Total			\$ 317,068			\$ 421,515
16	Rate Revenue Requirement			\$ 421,672			\$ 421,672
17	Over / (Under) Recovery (\$)			(104,605)			(157)
18	Over / (Under) Recovery (%)			-33%			0%
19	5,000 Gallons		\$ 49.94			\$ 68.50	
20	Increase					\$ 18.56	37%
21	10,000 Gallons		\$ 64.94			\$ 88.50	
22	Increase					\$ 23.56	36%
23	30,000 Gallons		\$ 218.69			\$ 278.50	
24	Increase					\$ 59.81	27%
25	Revenue Increase over Test Year Calculated Revenue						\$ 104,448

# Amended Filing

Double Diamond Utilities Co. / The Cliffs  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Water Rates / Water Revenue Proof

Line No.	Col (A)	(B)	(C)	(D)	(D)	(E)	(F)
		<u>Billing Units</u>	<u>Current Rates</u>	<u>Revenue under Current Rates</u>	<u>Billing Units</u>	<u>Proposed Rates</u>	<u>Revenue under Proposed Rates</u>
1	Meter Charge						
2	3/4" or Less	258	\$ 36.14	\$ 111,889	258	\$ 40.00	\$ 123,840
3	1"	13	90.36	14,096	13	110.00	17,160
4	1 1/2"	1	180.72	2,169	1	230.00	2,760
5	2"	15	289.15	52,047	15	395.00	71,100
6	3"	-	542.16	-	-	-	-
7	Subtotal	287		\$ 180,201	287		\$ 214,860
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	5,260	\$ 2.60	\$ 13,677	5,260	\$ 3.50	\$ 18,411
10	3,001 - 10,000	6,142	3.00	18,425	6,142	4.00	24,567
11	10,001 - 15,000	2,655	5.07	13,463	2,655	6.50	17,260
12	15,001 - 20,000	1,958	8.56	16,763	1,958	10.50	20,562
13	20,001 +	8,708	14.45	125,827	8,708	14.45	125,827
14	Subtotal	24,724		\$ 188,155	24,724		\$ 206,628
15	Total			\$ 368,356			\$ 421,488
16	Rate Revenue Requirement			\$ 426,113			\$ 426,113
17	Over / (Under) Recovery (\$)			(57,756)			(4,625)
18	Over / (Under) Recovery (%)			-16%			-1%
19	5,000 Gallons		\$ 49.94			\$ 58.50	
20	Increase					\$ 8.56	17%
21	10,000 Gallons		\$ 64.94			\$ 78.50	
22	Increase					\$ 13.56	21%
23	30,000 Gallons		\$ 277.59			\$ 308.00	
24	Increase					\$ 30.41	11%
25	Revenue Increase over Test Year Calculated Revenue					\$ 53,131	

Double Diamond Utilities Co. / The Cliffs Application for a Rate / Tariff Change Test Year Ended 12/31/2015 Requested Sewer Rates / Sewer Revenue Proof
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Line No.	Col (A)	(B) Test Year Billing Units	(C) Current Rates	(D) Revenue under Current Rates	(E) Projected Billing Units	(F) Proposed Rates	(G) Revenue under Proposed Rates
1	Meter Charge						
2	3/4" or Less	220	\$ 49.37	\$ 130,337	220	\$ 72.00	\$ 190,080
3	1"	4	86.29	4,142	4	126.00	6,048
4	1 1/2"	1	147.83	1,774	1	216.00	2,592
5	2"	14	221.67	37,241	14	324.00	54,432
6	3"	-	393.98	-	-	575.00	-
7	Subtotal	239		\$ 173,493	239		\$ 253,152
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	4,527	\$ -	\$ -	4,527	\$ -	\$ -
10	3,001 +	5,045	8.25	41,617	5,045	12.00	60,534
11	Subtotal	9,571		\$ 41,617	9,571		\$ 60,534
12	Total			\$ 215,111			\$ 313,686
13	Revenue Requirement			\$ 340,281			\$ 340,281
14	Over / (Under) Recovery (\$)			(125,170)			(26,595)
15	Over / (Under) Recovery (%)			-58%			-8%
16	5,000 Gallons		\$ 65.87			\$ 96.00	
17	Increase					\$ 30.13	46%
18	10,000 Gallons		\$ 107.12			\$ 156.00	
19	Increase					\$ 48.88	46%
20	30,000 Gallons		\$ 272.12			\$ 396.00	
21	Increase					\$ 123.88	46%
22	Revenue Increase over Calculated Revenue					\$	98,576

Double Diamond Utilities Co. / The Cliffs  
 Application for a Rate / Tariff Change  
 Test Year Ended 12/31/2015  
 Requested Sewer Rates / Sewer Revenue Proof

Line No.	Col (A)	(B) Test Year Billing Units	(C) Current Rates	(D) Revenue under Current Rates	(E) Projected Billing Units	(F) Proposed Rates	(G) Revenue under Proposed Rates
1	Meter Charge						
2	3/4" or Less	220	\$ 49.37	\$ 130,337	220	\$ 72.00	\$ 190,080
3	1"	4	86.29	4,142	4	126.00	6,048
4	1 1/2"	1	147.83	1,774	1	216.00	2,592
5	2"	14	221.67	37,241	14	324.00	54,432
6	3"	-	393.98	-	-	575.00	-
7	Subtotal	239		\$ 173,493	239		\$ 253,152
8	Volumetric Charge (per 1,000 gal)						
9	0 - 3,000	4,527	\$ -	\$ -	4,527	\$ -	\$ -
10	3,001 +	5,045	8.25	41,617	5,045	12.00	60,534
11	Subtotal	9,571		\$ 41,617	9,571		\$ 60,534
12	Total			\$ 215,111			\$ 313,686
13	Revenue Requirement			\$ 317,357			\$ 317,357
14	Over / (Under) Recovery (\$)			(102,246)			(3,670)
15	Over / (Under) Recovery (%)			-48%			-1%
16	5,000 Gallons		\$ 65.87			\$ 96.00	
17	Increase					\$ 30.13	46%
18	10,000 Gallons		\$ 107.12			\$ 156.00	
19	Increase					\$ 48.88	46%
20	30,000 Gallons		\$ 272.12			\$ 396.00	
21	Increase					\$ 123.88	46%
22	Revenue Increase over Calculated Revenue					\$ 98,576	
						Per Orig Appl:	\$ 98,576