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OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE: July 26, 2018

DATE DELIVERED: July 25, 2018

AGENDA ITEM NO.: 12

CAPTION: Docket No. 46245; SOAH Docket No. 473-17-0119.WS - Application of Double Diamond Utility Company, Inc. for Water and Sewer Rate/Tariff Change

ACTION REQUESTED: Discussion and possible action with respect to Chairman Walker's memorandum

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Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Carlos Carrasco ^{cc}
Commission Advising

RE: *Application of Double Diamond Utility Company, Inc. for Water and Sewer Rate/Tariff Change, Docket No. 46245, SOAH Docket No. 473-17-0119.WS, July 26, 2018 Open Meeting, Item No. 12*

DATE: July 25, 2018

Please find enclosed a memorandum by Chairman Walker regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker 

DATE: July 24, 2018

RE: Open Meeting of June 26, 2018 – Agenda Item No. 12
Docket No. 46245 – *Application of Double Diamond Utility Company, Inc. for Water and Sewer Rate/Tariff Change*

At the May 25, 2018 open meeting, the Commission requested that the parties submit briefs on the differences between customer contributions and developer contributions in aid of construction in order to better inform its decision regarding the initial investment in the White Bluff systems. After further consideration of the issues, I recommend that the Commission adopt the conclusions of the administrative law judge (ALJ) concerning the developer-contributed assets of Double Diamond Utilities.

Double Diamond Utilities initially proposed to classify 80% of the costs of its assets to the developer and 20% to Double Diamond Utilities in accordance with company practice. The ALJ determined that Double Diamond Utilities did not meet its burden to show that its proposed 80% to 20% split was appropriate or supported by the record evidence. The ALJ further concluded that Double Diamond Utilities failed to prove the amount of the original cost of utility assets included in its proposed rate base for White Bluff that were contributed by the utility.¹ Accordingly, the ALJ recommended that the majority of White Bluff's assets should be treated as developer-contributed and removed from rate base. However, the ALJ also found that the evidence showed that seven utility assets claimed as part of Double Diamond Utilities' rate base were paid for by Double Diamond Utilities, and the net book value of these assets should remain in Double Diamond Utilities' rate base as invested capital.² The ALJ found that the amounts of the assets that should remain in rate base are \$68,355.48 for White Bluff water and \$24,029.64 for White Bluff sewer. The Commission should adopt these findings.

I further recommend that the Commission conclude that the holding in *Sunbelt Utilities v. Public Utility Commission*³ is not controlling under the facts in this proceeding. In *Sunbelt*, the Supreme Court of Texas examined whether contributions by a customer in aid of

¹ Proposal for Decision (PFD) at 49 and 50.

² PFD at 50.

³ *Petition of Sunbelt Utilities for Authority to Change Rates*, Docket No. 804, 3 P.U.C. Bull. 1167 (Feb. 22, 1978); *Examiner's Report, Petition of Sunbelt Utilities for Authority to Change Rates*, Docket No. 804, 3 P.U.C. Bull. 1167 (Mar. 22, 1978); *Sunbelt Utilities v. Public Utility Commission*, 589 S.W.2d 392 (Tex. 1979).

construction should be excluded from the rate base.⁴ Unlike this proceeding where the ALJ's analysis resulted in a determination that the majority of Double Diamond Utilities' assets at White Bluff were developer-contributed and thus should be removed from rate base, the court's analysis in *Sunbelt* centered on customer contributions and ultimately concluded that "consumer contributions in aid of construction should be excluded from a utility's rate base."⁵ Thus, if the Commission adopts the ALJ's conclusions regarding Double Diamond Utilities' assets at White Bluff, the Commission should also find that *Sunbelt* is not applicable to this proceeding as the majority of the investment at White Bluff has been deemed developer-contributed and not customer-contributed.

Lastly, I recommend that the Commission find that Double Diamond Utilities' investment in the White Bluff system is used and useful in accordance with Texas Water Code (TWC) § 13.185(j). The section states that "[d]epreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service." Thus, Double Diamond Utilities is entitled to recover its depreciation expense on its developer-contributed property at White Bluff only if the property is currently used and useful in the provision of water service.

According to Double Diamond Utilities, there are approximately 65 miles of water line and 60 miles of sewer lines at White Bluff, which was designed to serve 6,314 lots across over approximately 3,500 acres.⁶ The White Bluff water and sewer systems were built in phases as the White Bluff subdivision developed. As new sections of development were opened, the distribution lines for new sections were installed and connected back to the original systems.⁷ At the end of the 2015 test year, Double Diamond Utilities asserted that 85% to 90% of the lots at White Bluff had been sold.⁸ However, at the end of the 2015 test year, Double Diamond Utilities had only 640 water customers and 567 sewer customers at White Bluff.

The lot sales contract used to sell property in the White Bluff subdivision has conditions that "potable water service will be provided to all lots in the subdivision" and "sewage collection and disposal will be provided to all lots in the subdivision."⁹ Therefore, both the lot sales contract and the TWC impose an obligation to provide water and sewer service to any lot at White Bluff when requested.¹⁰ The issue of whether a developer-contribution is used and useful is a fact-specific determination to be made in each case. Based on the specific facts in this case, the Commission should deem Double Diamond Utilities' investment at White Bluff as used and useful. It was reasonable for the developer to construct the water and wastewater systems in phases as the subdivision developed, so that as lots were sold and the new owner requested service, water and sewer service could be timely provided. Accordingly, if the Commission finds that the developer's investment at White Bluff is used and useful, Double Diamond Utilities is permitted to recover a depreciation expense on its developer-contributed assets at White Bluff in accordance with TWC § 13.185(j).

I look forward to discussing this matter with you at the open meeting.

⁴ *Id.*

⁵ *Id.*

⁶ Tr. at 196 and 197 (Harkins Cross) (Oct. 24, 2017).

⁷ Direct Testimony of Randy Gracy at 7 and 8, 10 and 11 (Aug. 4, 2017).

⁸ Tr. at 63 and 64 (Gracy Cross) (Oct. 24, 2017).

⁹ White Bluff Subdivision Sale Contract, WBRG-1G. Direct Testimony of Nelisa Heddin at 90 (Sept. 8, 2017).

¹⁰ TWC § 13.250(a).